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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

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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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0802; Directorate Identifier 2012–NM–124–AD; Amendment 39–17145; AD 2011–19–01 R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are revising an existing airworthiness directive (AD) that applies to all Airbus Model A318, A319, A320, and A321 series airplanes. The existing AD currently requires revising the airplane flight manual (AFM) to include a procedure intended to address the unsafe condition, an inspection of the firewall connector for signs of arcing if an integrated drive generator (IDG) (or generator (GEN)) was shut down in-flight automatically or using the AFM procedure, and corrective action if necessary; and provides an optional terminating action for certain AFM revision and inspections. This AD was prompted by the potential for an inadvertent error by flightcrew to use the IDG switch instead of the GEN switch when doing the AFM display unit failure procedure required by the existing AD. This AD retains the actions required by the existing AD and clarifies certain terminology. We are issuing this AD to prevent transient loss of certain systems, which could result in the reduced ability of the flightcrew to cope with adverse flight conditions.

DATES: This AD becomes effective August 22, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 28, 2011 (76 FR 56279, September 13, 2011).

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of August 13, 2004 (69 FR 45243, July 29, 2004).

We must receive comments on this AD by September 21, 2012.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

On September 1, 2011, we issued AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011). That AD required actions intended to address an unsafe condition on the products listed above.

Since we issued AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), we have received information that there is potential for an inadvertent error by flightcrew to use the ''IDG'' (integrated drive generator) switch instead of the ''GEN'' (abbreviation for generator) switch when doing the AFM display unit failure procedure in this AD that requires turning off the integrated drive generator under certain conditions. We find that it is necessary to clarify our intent with the use of the acronym ''IDG'' in relation to ''GEN,'' and to revise paragraphs (h), (i), and (k) of this AD to refer to ''GEN.''

FAA's Determination and Requirements of this AD

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because transient loss of certain systems could result in the reduced ability of the flightcrew to cope with adverse flight conditions. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0802; Directorate Identifier 2012–NM–124–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic,

environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), and adding the following new AD:

2011–19–01 R1 Airbus: Amendment 39–17145; Docket No. FAA–2012–0802; Directorate Identifier 2012–NM–124–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective August 22, 2012.

(b) Affected ADs

This AD revises AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011).

(c) Applicability

This AD applies to Airbus Model A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A320–111, A320–211, A320–212, A320–214, A320–231, A320–232, A320–233, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, and A321–232 airplanes; certificated in any category; all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 31: Instruments.

(e) Reason

This AD was prompted by reports of transient loss of certain systems and the potential for an inadvertent error by flightcrew to use the IDG switch instead of the GEN switch when doing a certain airplane flight manual (AFM) display unit failure procedure. We are issuing this AD to prevent transient loss of certain systems, which could result in the reduced ability of the flightcrew to cope with adverse flight conditions.

(f) Compliance

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

(g) Retained Revision of Airplane Flight Manual (AFM)

This paragraph restates the requirements of paragraph (g) of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011). For Airbus Model A319–131, –132, and –133, A320–231, –232, and –233, and A321–131 and –231 series airplanes, except those airplanes on which Airbus Modification 32943 has been incorporated in production: Within 10 days after August 13, 2004 (the effective date of AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004)), revise the Limitations section of the Airbus A318/319/320/321 AFM to include the information in Temporary Revision (TR) 4.02.00/20, dated May 3, 2004. This may be done by inserting a copy of this TR into the AFM. When this TR has been included in general revisions of the AFM, those general revisions may be inserted into this AFM, provided the relevant information in the general revisions is identical to that in this TR. Accomplishing the actions required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Post-Integrated Drive Generator Shutdown Inspection

This paragraph restates the requirements of paragraph (h) of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), with replacement of the term ''IDG'' with ''GEN.'' For Airbus Model A319–131, –132, and –133, A320–231, –232, and –233, and A321–131 and –231 series airplanes, except those airplanes on which Airbus Modification 32943 has been incorporated in production: If a GEN is shut down by the flightcrew in accordance with the TR procedures specified in paragraph (g) of this AD, or if a GEN is shut down automatically before September 28, 2011 (the effective date of AD 2011–19–01), do the actions specified in paragraph (h)(1) or (h)(2) of this AD. If a GEN is shut down automatically on or after September 28, 2011, do the actions specified in paragraph (k) of this AD.

(1) Before further flight, inspect the firewall connector of the affected GEN to detect signs of arcing, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. If any sign of arcing is detected: Before further flight, either repair the connector or replace the connector with a new connector, in accordance with a method approved by the Manager, International Branch, ANM–116.

(2) Operate the airplane with the affected GEN inoperative in accordance with the provisions and compliance periods specified in the FAA-approved Master Minimum Equipment List or in accordance with a method approved by the Manager, International Branch, ANM–116. Before further use of the affected GEN, do the actions specified in paragraph (h)(1) of this AD. As September 28, 2011 (the effective date of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), operate the airplane in accordance with a method approved by the Manager, International Branch, ANM–116.

Note 1 to paragraph (h) of this AD: Guidance on provisions and compliance periods for operating the airplane with an inoperative, affected GEN can be found in the FAA-approved Master Minimum Equipment List.

(i) Retained Terminating Action for Paragraphs (g) and (h) of This AD if Done Before September 28, 2011 (the Effective Date of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011))

This paragraph restates the requirements of paragraph (i) of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), with replacement of the term ''IDG'' with ''GEN.'' For Airbus Model A319–131, –132, and –133, A320–231, –232, and –233, and A321–131 and –231 series airplanes, except those airplanes on which Airbus Modification 32943 has been incorporated in production: Replacement of the GEN harnesses and connectors on both engines in accordance with Airbus Service Bulletin A320–71–1030, dated February 27, 2003, before September 28, 2011 (the effective date of AD 2011–19–01), terminates the requirements of paragraphs (g) and (h) of this AD.

Note 2 to paragraph (i) of this AD: Airbus Service Bulletin A320–71–1030, dated February 27, 2003, refers to International Aero Engines Information Bulletin V2500–NAC–70–0736, dated January 28, 2003, as an additional source of guidance for the harness/connector replacement specified in paragraph (i) of this AD.

(j) Retained AFM Revision

This paragraph restates the requirements of paragraph (j) of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011). For all airplanes: Within 10 days after September 28, 2011 (the effective date of AD 2011–19–01), revise the applicable section of the Airbus A318/319/320/321 AFM to include the information in Figure 1 to paragraph (j) of this AD or the information in Airbus TR TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM. This may be done by inserting a copy of this AD or Airbus TR TR112, Issue 1.1, dated November 29, 2010, in the AFM. Accomplishing the actions required by this paragraph terminates the requirements of paragraph (g) of this AD.

Note 3 to paragraph (j) of this AD: When the information in Figure 1 to paragraph (j) of this AD or Airbus TR TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM, has been included in the applicable section of the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM, provided the relevant information in the general revisions is identical to that in Figure 1 to paragraph (j) of this AD or Airbus TR TR112, Issue 1.1, dated November 29, 2010.

DISPLAY UNIT FAILURE

- **Affected DU blank or display distorted:**
  Turn off affected DU as required.
  - **If ECAM DUs affected:** Use ECAM/ND SEL
  - **If EFIS DUs affected:** Use PFD/ND XFR.
- **Diagonal line or ''INVALID DATA'' on affected DU:**
  Attempt to recover affected DU by using associated DMC switching.
  - **If unsuccessful:** Turn off then on affected DU.
  - **Inversion of EWD and SD displays:** Turn off then on ECAM upper display.
  - **Affected DU(s) or MCDU flashes intermittently:**
    - **If Captain PFD or ND, both ECAM DUs or upper ECAM DU, or MCDU 1 is (are) affected:** Turn off GEN 1.
      - **If DU(s) stop(s) flashing:** Keen GEN 1 off for the rest of the flight. Use the sideslip indication to verify if the rudder trim needs to be reset. If necessary, reset the rudder trim. **Note:** Intermittent Electrical Power Supply Interruptions may cause offset in the rudder trim. Select AP and/or autothrust as required. APU may be started (Refer to NORM-49 Auxiliary Power Unit (APU) and APU generator may be used (if available).
      - **If DU(s) do(es) not stop flashing:** Restore GEN 1.
    - **If First Officer PFD or ND, lower ECAM DU, or MCDU 2 is (are) affected:** Turn off GEN 2.
      - **If DU(s) stop(s) flashing:** Keep GEN 2 off for the rest of the flight. Use the sideslip indication to verify if the rudder trim needs to be reset. If necessary, reset the rudder trim. **Note:** Intermittent Electrical Power Supply Interruptions may cause offset in the rudder trim. Select AP and/or autothrust as required. APU may be started (Refer to NORM-49 Auxiliary Power Unit (APU)) and APU generator may be used (if available).
      - **If DU(s) do(es) not stop flashing:** Restore GEN 2.

Figure 1 to Paragraph (j)

(k) Retained Post-Integrated Drive Generator Shutdown Inspection

This paragraph restates the requirements of paragraph (k) of AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), with replacement of the term ''IDG'' with ''GEN.'' For all airplanes: If a GEN is shut down by the flightcrew in accordance with the TR procedures specified in paragraph (j) of this AD, or if a GEN is shut down automatically on or after September 28, 2011 (the effective date of AD 2011–19–01), do the actions specified in paragraph (k)(1) or (k)(2) of this AD.

(1) Before further flight, inspect the firewall connector of the affected GEN to detect signs of arcing, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. If any sign of arcing is detected: Before further flight, either repair the connector or replace the connector with a new connector, in accordance with a method approved by the Manager, International Branch, ANM–116.

(2) Operate the airplane with the affected GEN inoperative in accordance with a method approved by the Manager, International Branch, ANM–116. Before further use of the affected GEN, do the actions specified in paragraph (k)(1) of this AD.

Note 4 to paragraph (k) of this AD: Guidance on provisions and compliance periods for operating the airplane with an inoperative, affected GEN can be found in the FAA-approved Master Minimum Equipment List.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1405; fax (425) 227–1149 Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD. AMOCs approved previously for AD 2004–15–14, Amendment 39–13748 (69 FR 45243, July 29, 2004), are acceptable for the corresponding provisions of this AD. AMOCs approved previously in accordance with AD 2011–19–01, Amendment 39–16806 (76 FR 56279, September 13, 2011), are not approved as AMOCs with this AD.

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

to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0142, dated July 25, 2011, and the service information identified in paragraphs (m)(1), (m)(2), and (m)(3) of this AD for related information.

(1) Airbus TR 4.02.00/20, dated May 3, 2004, to the Airbus A318/319/320/321 AFM.

(2) Airbus TR TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 AFM.

(3) Airbus Service Bulletin A320–71–1030, dated February 27, 2003.

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on September 28, 2011 (76 FR 56279, September 13, 2011).

(i) Airbus Temporary Revision TR112, Issue 1.1, dated November 29, 2010, to the Airbus A318/319/320/321 (AFM) Airplane Flight Manual.

(ii) Reserved.

(4) The following service information was approved for IBR on August 13, 2004 (69 FR 45243, July 29, 2004).

(i) Airbus Service Bulletin A320–71–1030, dated February 27, 2003.

(ii) Airbus Temporary Revision 4.02.00/20, dated May 3, 2004, to the Airbus A318/319/320/321 AFM (Airplane Flight Manual).

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

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

(7) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 23, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18625 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1322; Directorate Identifier 2011–NM–211–AD; Amendment 39–17141; AD 2012–15–12]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This AD was prompted by reports of cracks of the underwing longeron fittings in the wing center section. This AD requires repetitive inspections of the underwing longeron fitting for cracking, and related investigative and corrective actions if necessary. We are issuing this AD to detect and correct such cracking, which could result in loss of the primary load path between the fuselage and the wing box, and consequent catastrophic damage to the wing box and failure of the wing.

DATES: This AD is effective September 11, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 11, 2012.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *Berhane.Alazar@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on December 19, 2011 (76 FR 78574). That NPRM proposed to require repetitive high frequency eddy current (HFEC) inspections of the underwing longeron fitting for cracking, and related investigative and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (76 FR 78574, December 19, 2011), and the FAA's response to each comment.

Request To Use Revised Service Information

Boeing, UPS, and United Airlines (United) requested that the NPRM (76 FR 78574, December 19, 2011) use the revised service information, which is Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012. (The NPRM referred to Boeing Alert Service Bulletin 767–57A0126, dated August 12, 2011, as revised by Boeing Service Bulletin 767–57A0126, Revision 1, dated November 9, 2011, as the appropriate source of service information for accomplishing the proposed requirements.) Boeing stated that the correction of the airplane variable effectivity table does not change the intent of the NPRM, because applicability paragraph (c) of the NPRM states that ''This AD applies to all The Boeing Company Model 767–200, –300, –300F and –400ER series airplanes; certified in any category.'' Boeing also stated that including Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, in the AD might prevent confusion for operators of these airplanes.

We agree with this request because Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, clarifies inspection areas and

corrects various typographical errors. Since the NPRM (76 FR 78574, December 19, 2011) applied to all Model 767–200, –300, –300F and –400ER series airplanes, the corrected effectivity in Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, does not affect the applicability of this AD. We have changed the final rule to reference Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012. We have also added new paragraph (i) to the final rule to give credit for actions accomplished before the effective date of this AD using Boeing Alert Service Bulletin 767–57A0126, dated August 12, 2011, as revised by Boeing Service Bulletin 767–57A0126, Revision 1, dated November 9, 2011, and re-identified subsequent paragraphs accordingly.

Request To Address Effects of NPRM (76 FR 78574, December 19, 2011) on Winglets

Aviation Partners Boeing (APB) commented that it has reviewed the NPRM (76 FR 78574, December 19, 2011), and Boeing Alert Service Bulletin 767–57A0126, dated August 12, 2011, and has determined that the installation of winglets, per Supplemental Type Certificate (STC) ST01920SE, ''does not affect them.'' We infer that APB means the installation of these winglets does not affect accomplishing the NPRM.

American Airlines (American) stated that the NPRM (76 FR 78574, December 19, 2011) does not refer to any effects this inspection or potential repair would have on aircraft equipped with APB winglets. American stated that the NPRM should include a reference to procedures or subsequent actions which may need to be taken over and above the repair, if a repair was to be installed on an airplane with such winglets.

We agree that the AD should clarify procedures to address these APB winglets. We have added new Note 1 to paragraph (c) of this AD to state that installation of STC ST01920SE (*http://rgl.faa.gov/Regulatory-and-Guidance-Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' AMOC approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval according to paragraph (j) of this AD.

Request To Increase Compliance Times

United suggested the initial inspection compliance time of within 3,000 flight cycles or 7,000 flight hours, whichever occurs first, for airplanes that have accumulated over 70,000 total flight hours but less than 20,000 total flight cycles, be to changed to within 6,000 flight cycles or 14,000 flight hours, whichever occurs first. United also stated that, as an alternative for any airplane with less than 20,000 total flight cycles and less than 90,000 total flight hours, the initial inspection threshold of ''within 3,000 flight cycles'' be imposed. United stated that imposing the 3,000-flight-cycle or 7,000-flight-hour compliance times, whichever occurs first, might be more suitable for those airplanes with very high flight cycles, such as over 30,000 or 35,000 total flight cycles.

United stated it has reviewed its maintenance history and the most recent inspection results of maintenance planning data (MPD) structural tasks (53–622–00 and 53–632–00) on four of its high-time airplanes. United stated it had no findings, and based on its maintenance history, it considers the initial inspection threshold of 7,000 flight hours or 3,000 flight cycles, whichever occurs first, on any airplane with more than 70,000 total flight hours to be overly aggressive for those operators, like United, that fly airplanes on long routes with very few flight cycles. With average flight hours of approximately 4,500 and approximately 650 flight cycles per year, United stated that the 7,000-flight-hour initial inspection threshold will provide only an approximate 18-month window of opportunity to accomplish the initial inspection on many of its airplanes. United asserts that the 18-month threshold does not provide enough time to schedule this inspection on this many airplanes at a heavy maintenance environment, which is when it should be accomplished.

We do not agree, because fatigue analysis is based on statistical methods. Statistics from four airplanes using only the MPD general visual inspections, without the benefit of an HFEC inspection, does not provide sufficient statistical justification to increase the compliance time. In developing an appropriate compliance time for this AD, we considered the unsafe condition as well as the recommendations of the manufacturer, and the practical aspect of accomplishing the required inspection within an interval of time that corresponds to the normal maintenance schedules of most affected operators. We have not changed the final rule in this regard.

Request To Revise On-Condition Costs

UPS stated that the estimated on-conditions parts cost specified in the NPRM (76 FR 78574, December 19, 2011) only reflect the cost for one wing.

We agree. We have confirmed that one top-kit is required for each wing, and that the parts costs for both wings ranges up to $14,290. We have revised the estimated on-condition costs in the final rule to include the cost required for both wings.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (76 FR 78574, December 19, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 78574, December 19, 2011).

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

Interim Action

We consider this AD interim action. The design approval holder is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD affects 417 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Repetitive HFEC inspection ...	3 work-hours × $85 per hour = $255 per inspection cycle.	$0	$255 per inspection cycle	$106,335 per inspection cycle.

We estimate the following costs to do any necessary inspections and replacements that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these on-condition actions.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Tension bolt hole and front spar lower chord HFEC inspection and fitting replacement.	104 work-hours × $85 per hour = $8,840.	Up to $14,290	Up to $23,130.

We have received no definitive data that would enable us to provide cost estimates for cracking repairs specified in this AD.

Authority for this Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–15–12 The Boeing Company: Amendment 39–17141; Docket No. FAA–2011–1322; Directorate Identifier 2011–NM–211–AD.

(a) Effective Date

This AD is effective September 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category.

Note 1 to paragraph (c) of this AD: Installation of Supplemental Type Certificate (STC) ST01920SE (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgstc.nsf/0/082838ee177dbf62862576a4005cdfc0/$FILE/ST01920SE.pdf*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01920SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports of cracks of the underwing longeron fittings in the wing center section. We are issuing this AD to detect and correct such cracking, which could result in loss of the primary load path between the fuselage and the wing box, and consequent catastrophic damage to the wing box and failure of the wing.

(f) Compliance

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

(g) Inspections, Related Investigative Actions, and Corrective Actions

Except as provided by paragraphs (h)(2) and (h)(3) of this AD, at the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012: Do a high frequency eddy current (HFEC) inspection to detect cracking of the underwing longeron fitting; and do all applicable related investigative and corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, except as provided by paragraph (h)(1) of this AD. Do all applicable related investigative and corrective actions before further flight. Repeat the inspection of the underwing longeron fitting thereafter at the applicable compliance time and intervals specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012.

(h) Exceptions to Paragraph (g) of This AD

(1) If, during accomplishment of the related investigative action required by this AD, any cracking is found and Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, specifies to contact Boeing for repair instructions: Before further flight, do the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(2) Where Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time ''after the effective date of this AD.''

(3) The Condition column of Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012, refers to total flight cycles and total flight hours ''as of the original issue date of this service bulletin.'' However, this AD applies to the airplanes with the specified total flight cycles or total flight hours ''as of the effective date of this AD.''

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Service Bulletin 767–57A0126, dated August 12, 2011, as revised by Boeing Service Bulletin 767–57A0126, Revision 1, dated November 9, 2011; both of which are not incorporated by reference.

(j) 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.

(k) Related Information

For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *Berhane.Alazar@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 767–57A0126, Revision 2, dated March 12, 2012.

(ii) Reserved.

(3) 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; phone: 206–544–5000, extension 1; fax: 206–766–5680; Internet: *https://www.myboeingfleet.com.*

(4) 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.

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

Issued in Renton, Washington, on July 23, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18578 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0414; Directorate Identifier 2011–NM–210–AD; Amendment 39–17138; AD 2012–15–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) certain Airbus Model A310–203, –221, and –222 airplanes. This AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principal structural elements with replacement due at or before their calculated fatigue lives. This AD replaces certain slat extension eccentric bolts with new bolts. We are issuing this AD to prevent fatigue cracking, which could result in the loss of structural integrity of the airplane.

DATES: This AD becomes effective September 11, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 11, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on May 2, 2012 (77 FR 25930). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Slat extension eccentric bolts have been re-classified as Principal Structural Elements (PSE). As a result, associated fatigue lives will be published in the Airbus A310 Airworthiness Limitations Section (ALS) Part 1 and bolts must be replaced at or before their calculated fatigue lives.
>
> The slat extension eccentric bolt Part Number (P/N) A5786451220800 installed at slat 2, track 6 of the left hand (LH) and right hand (RH) wings is manufactured by SONACA, but some bolts with the same P/N, manufactured by FOKKER, may have been installed on A310–200 series aeroplanes and are identical in appearance. The calculated fatigue life of the FOKKER bolt is lower than that of the SONACA equivalent bolt.
>
> The difference between the FOKKER and SONACA bolt cannot be distinguished by a visual inspection. To remedy this, the SONACA bolt part number was changed from P/N A5786451220800 to P/N A5784307920000.
>
> Failure to replace the bolts within the new fatigue life limits constitutes an unsafe condition.
>
> For the reasons described above, this [EASA] AD requires the replacement of all slat extension eccentric bolts, P/N A5786451220800, with slat extension eccentric bolts P/N A5784307920000 at the slat 2 tracks 4, 6 and 7 positions, as well as at the slat 3 track 8 position, on both LH and RH wings.
>
> In addition, it is required to replace the slat extension eccentric bolt P/N A57843624200 at slat 2 track 5 with a bolt P/N A57843624202.

Required actions also include a concurrent inspection of the removed bolts for cracking. If cracking is found, certain bolts at slat 2 track 5 are replaced with new bolts before further flight. If cracking is not found, certain bolts at slat 2 track 5 are replaced with new bolts at 35,900 total flight cycles or 71,800 total flight hours, whichever occurs first. The unsafe condition is fatigue cracking, which could result in the loss of structural integrity of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77

FR 25930, May 2, 2012) or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 48 products of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $35,365 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $1,746,480, or $36,385 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 25930, May 2, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–15–09 Airbus: Amendment 39–17138. Docket No. FAA–2012–0414; Directorate Identifier 2011–NM–210–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–203, –221, and –222 airplanes; certificated in any category; all manufacturer serial numbers (MSN), except airplanes having MSN 0415, 0419, 0424, 0427, 0430, 0454, 0468, 0486, and 0487.

(d) Subject

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

(e) Reason

This AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principal structural elements (PSEs) with replacement due at or before their calculated fatigue lives. We are issuing this AD to prevent fatigue cracking, which could result in the loss of structural integrity of the airplane.

(f) Compliance

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

(g) Bolt Replacement at Slat 2 Track 6 and Visual Inspection

(1) At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD: Replace the slat extension eccentric bolts having part number (P/N) A5786451220800 at slat 2 track 6 on both wings with bolts having P/N A5784307920000, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, dated September 29, 2010.

(i) Before the accumulation of 14,000 total flight cycles or 19,000 total flight hours, whichever occurs first.

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

(2) Concurrently with the actions specified in paragraph (g)(1) of this AD: Do a general visual inspection of the removed slat extension eccentric bolts having P/N A5786451220800 to detect cracking, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, dated September 29, 2010.

(i) If any cracking is found during the inspection required by paragraph (g)(2) of this AD: Before further flight, replace the slat extension eccentric bolt having P/N A57843624200 at slat 2 track 5, on the right or left wing as applicable, with a bolt having P/N A57843624202, in accordance with Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

(ii) If no cracking is found during the inspection required by paragraph (g)(2) of this AD: Before the accumulation of 35,900 total flight cycles or 71,800 total flight hours, whichever occurs first, replace the slat extension eccentric bolt having P/N A57843624200 at slat 2 track 5, on the right or left wing as applicable, with a bolt having P/N A57843624202, in accordance with Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

(h) Bolt Replacement at Slat 2 Track 4 and Track 7, and Slat 3 Track 8

Within 30 months after the effective date of this AD: Replace the slat extension eccentric bolts having P/N A5786451220800 at slat 2 track 4 and track 7, and slat 3 track 8, on both wings, with bolts having P/N A5784307920000, in accordance with the

Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2098, dated July 22, 2011.

(i) Parts Installation Prohibition

After modification of an airplane as required by this AD, do not install any slat extension eccentric bolt having P/N A5786451220800 on any airplane.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2011–0187, dated September 27, 2011, and the following service information, for related information.

(1) Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, dated September 29, 2010.

(2) Airbus Mandatory Service Bulletin A310–57–2098, dated July 22, 2011.

(3) Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

(l) Material Incorporated by Reference

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

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

(i) Airbus Mandatory Service Bulletin A310–57–2043, Revision 05, dated September 29, 2010.

(ii) Airbus Mandatory Service Bulletin A310–57–2098, dated July 22, 2011.

(iii) Airbus Mandatory Service Bulletin A310–57–2099, dated July 22, 2011.

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

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 20, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18579 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0185; Directorate Identifier 2011–NM–001–AD; Amendment 39–17143; AD 2012–15–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A300 B4–103, B4–203, and B4–2C airplanes, and Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model A300 C4–605R Variant F airplanes (collectively called A300–600 series airplanes). This AD was prompted by reports of cracking in the forward lug of the main landing gear (MLG) rib 5 aft bearing attachment. This AD requires repetitive inspections for cracking of the left-hand (LH) and right-hand (RH) wing MLG rib 5 aft bearing forward lugs, and repair if necessary. We are issuing this AD to detect and correct cracking of the LH and RH wing MLG rib 5 aft bearing forward lugs, which could affect the structural integrity of the MLG attachment, resulting in MLG collapse during landing or rollout with consequent damage to the airplane and injury to occupants.

DATES: This AD becomes effective September 11, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 11, 2012.

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

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 28, 2012 (77 FR 11793). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During routine visual inspection, a crack has been found in the wing MLG [main landing gear] rib 5 aft bearing forward lug on two A310 in-service aeroplanes. Laboratory examination of cracked ribs confirmed that the crack was due to the presence of pitting corrosion in the forward lug hole. Also on both aeroplanes medium to heavy corrosion was found in the forward lugs on the opposite wing after removal of the bushes. Similarly to A310 aeroplanes, A300 and A300–600 aeroplanes are concerned by this situation which, if not detected, could affect the structural integrity of the MLG attachment.
>
> The aim of the [EASA] Emergency Airworthiness Directive (EAD) 2006–0372–E [which corresponds to FAA AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007)] was to mandate, for A300 and A300–600 aeroplanes, repetitive detailed visual inspections (DVI) of wing MLG rib 5 aft bearing forward lugs for detection of through cracks.
>
> Since then, in order to ensure the detection of any crack in the forward lug of the RH [right-hand] and LH [left-hand] MLG rib 5 aft bearing attachment at an early stage, Airbus has developed a new inspection by means of ultrasonic method. Due to the early crack detection possibility, this new means of inspection also enables extension of the inspection interval.
>
> For technical reasons, this new means of inspection is only applicable to A300B4, C4,

and F4 and A300–600 aeroplane series (not to A300B2 aeroplane series).

For these reasons, this new [EASA] AD * * * adds new inspection program requirements [a revised detailed inspection, optional ultrasonic inspections, and repair if necessary].

As an option, a modification, which includes installing bushings with an increased interference fit in the aft bearing forward lugs, terminates the repetitive inspections. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Refer to Revised Service Bulletin

UPS requested that we revise the NPRM (77 FR 11793, February 28, 2012) to refer to Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012. UPS pointed out that this revised service bulletin provides a new repair drawing that supersedes a previous repair drawing.

We agree. We have changed paragraphs (j) and (o) of this AD to refer to Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012. We have also added paragraph (m)(5) to this AD to give credit for actions done before the effective date of this AD using Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010.

Request To Change Paragraph Reference for Terminating Action

UPS stated that paragraph (k) of the NPRM (77 FR 11793, February 28, 2012) provides terminating action to AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007), by doing the inspections called out in paragraph (g) of the NPRM. UPS stated that the reference for the terminating action for the repetitive inspections of this NPRM and for AD 2007–03–18 should be paragraph (j) of the NPRM.

We agree that paragraph (k) of this AD should refer to paragraph (j), not paragraph (g), of this AD for the terminating modification. Paragraph (k) of this AD has been changed to refer to paragraph (j) of this AD.

Request To Specify Terminating Action for Related AD

UPS requested that we refer to Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012, which clarifies that the terminating action for the repetitive inspections includes replacing the bushings. UPS also requested that the same reference be included in a related NPRM (Docket No. FAA–2011–1225, Directorate Identifier 2010–NM–269–AD).

We agree that the terminating action should include replacing the bushings, which is clarified in Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012. As stated previously, we have changed paragraph (j) of this AD to refer to Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012. No further change to this AD is necessary.

Directorate Identifier 2010–NM–269–AD, has been issued as AD 2012–08–03, Amendment 39–17019 (77 FR 24367, April 24, 2012), and refers to Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012, for the terminating action.

Other Change Made To This AD

We have revised paragraph (m) of this AD to refer to paragraph (j) of this AD instead of paragraph (g) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 11793, February 28, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 11793, February 28, 2012).

Costs of Compliance

We estimate that this AD will affect 165 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $42,075, or $255 per product.

In addition, we estimate that any necessary follow-on actions would take about 52 work-hours and require parts costing $4,590, for a cost of $9,010 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 11793, February 28, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–15–14 Airbus: Amendment 39–17143. Docket No. FAA–2012–0185; Directorate Identifier 2011–NM–001–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 11, 2012.

(b) Affected ADs

This AD affects AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007).

(c) Applicability

This AD applies to Airbus Model A300 B4–2C, B4–103, and B4–203 airplanes; Model B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, and F4–622R airplanes; and Model A300 C4–605R Variant F airplanes; certificated in any category; all serial numbers except for airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Airplanes on which LH (left-hand) and RH (right-hand) wing main landing gear (MLG) rib 5 forward lugs have oversized interference fit bushings installed per Airbus Repair Instruction R57240221.

(2) Model A300 B4–103, B4–203, and B4–2C airplanes on which Airbus Mandatory Service Bulletin A300–57–0249 has been done in service on the LH and RH wing.

(3) Model A300–600 series airplanes on which Airbus Mandatory Service Bulletin A300–57–6106 has been done in service on the LH and RH wing.

(d) Subject

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

(e) Reason

This AD was prompted by reports of cracking in the forward lug of the MLG rib 5 aft bearing attachment. We are issuing this AD to detect and correct cracking of the LH and RH wing MLG rib 5 aft bearing forward lugs, which could affect the structural integrity of the MLG attachment, resulting in MLG collapse during landing or rollout with consequent damage to the airplane and injury to occupants.

(f) Compliance

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

(g) Inspections

Except as provided by paragraph (h) of this AD, before the accumulation of 12,000 total flight cycles since new, or within 12,000 flight cycles since the most recent MLG rib 5 replacement, if applicable, or within 10 days after the effective date of this AD, whichever occurs latest: Do a detailed inspection or an ultrasonic inspection for cracking of the LH and RH MLG rib 5 aft bearing forward lugs, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, dated August 8, 2007 (for Model A300–600 series airplanes). Repeat the applicable inspections thereafter at the applicable interval specified in paragraph (g)(1) or (g)(2) of this AD, until the modification specified in paragraph (j) of this AD is accomplished.

(1) Repeat the detailed inspections at intervals not to exceed 100 flight cycles.

(2) Repeat the ultrasonic inspections at intervals not to exceed 675 flight cycles.

(h) Exception

For airplanes on which an inspection required by AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007), has been done as of the effective date of this AD: Within 100 flight cycles after doing the most recent inspection required by AD 2007–03–18, or within 10 days after the effective date of this AD, whichever occurs later, do a detailed or ultrasonic inspection as specified in paragraph (g) of this AD. Repeat the applicable inspection thereafter at the times specified in paragraph (g) of this AD.

(i) Repair

If any cracking is detected during any detailed or ultrasonic inspection of the LH and RH MLG rib 5 aft bearing forward lugs required by paragraph (g) of this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

(j) Optional Terminating Modification

Performing the applicable actions specified in paragraphs (j)(1), (j)(2), (j)(3) and (j)(4) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012 (for Model A300–600 series airplanes); terminates the repetitive inspections required by this AD.

(1) Perform a general visual inspection and dye penetrant flaw detection inspection for corrosion and damage of the bore and spotfaces of the lug.

(2) Determine that the diameter of the bore of the lug (dimension Y) is within the tolerance specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012 (for Model A300–600 series airplanes).

(3) If damage or corrosion is detected during any inspection specified in paragraph (j)(1) of this AD, or if dimension Y is outside the tolerance specified in the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012 (for Model A300–600 series airplanes); repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA (or its delegated agent).

(4) Install bushings with an increased interference fit in the aft bearing forward lugs, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012 (for Model A300–600 series airplanes).

(k) Terminating Action for AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007)

Doing the actions required by paragraph (j) of this AD terminates the requirements of AD 2007–03–18, Amendment 39–14929 (72 FR 5919, February 8, 2007), for that airplane.

(l) Reporting

Submit a report (including both positive and negative findings), using the applicable report sheet attached to Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007 (for Model A300 B4–103, B4–203, and B4–2C airplanes); or Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, August 8, 2007 (for Model A300–600 series airplanes); of the first inspection required by paragraph (g) of this AD. Submit the report to Airbus, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, Attn: SEDCC1 Technical Data and Documentation Services; fax: (+33) 5 61 93 28 06; email: *sb.reporting@airbus.com;* at the applicable time specified in paragraph (l)(1) or (l)(2) of this AD.

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

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

(m) Credit for Previous Actions

This paragraph provides credit for the actions specified by paragraph (j) of this AD, if those actions were performed before the effective date of this AD using the applicable service bulletins specified in paragraphs (m)(1), (m)(2), (m)(3), (m)(4), and (m)(5) of this AD.

(1) Airbus Service Bulletin A300–57–0249, dated May 22, 2007 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).

(2) Airbus Service Bulletin A300–57–0249, Revision 01, dated December 19, 2007 (for Model A300 B4–2C, B4–103, and B4–203 airplanes).

(3) Airbus Service Bulletin A300–57–6106, dated May 22, 2007 (Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes).

(4) Airbus Service Bulletin A300–57–6106, Revision 01, dated January 28, 2008 (Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes).

(5) Airbus Service Bulletin A300–57–6106, Revision 02, dated June 18, 2010 (Model A300 B4–601, B4–603, B4–605R, B4–620, B4–622, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes).

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(o) Related Information

Refer to MCAI EASA Airworthiness Directive 2010–0250, dated November 29, 2010, and the service information specified in paragraphs (o)(1), (o)(2), (o)(3), and (o)(4) of this AD, for related information.

(1) Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010.

(2) Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007.

(3) Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012.

(4) Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, August 8, 2007.

(p) Material Incorporated by Reference

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

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

(i) Airbus Mandatory Service Bulletin A300–57–0249, Revision 02, dated June 18, 2010.

(ii) Airbus Mandatory Service Bulletin A300–57–0251, including Appendix 01, dated August 8, 2007.

(iii) Airbus Mandatory Service Bulletin A300–57–6106, Revision 03, dated January 26, 2012.

(iv) Airbus Mandatory Service Bulletin A300–57–6107, including Appendix 01, August 8, 2007.

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

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 23, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18621 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD; Amendment 39–17136; AD 2012–15–07]

RIN 2120–AA64

Airworthiness Directives; Glasflugel Gliders

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Glasflugel Models Standard Libelle-201B, Club Libelle 205, Mosquito, and Kestrel gliders. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion damage to the elevator control rod that could lead to failure of the elevator control rod, possibly resulting in loss of control of the glider. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective September 11, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 11, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

For service information identified in this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106;

telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 19, 2012 (77 FR 2674). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A broken elevator control rod in the vertical fin on a Kestrel sailplane has been reported. The technical investigation revealed that water had soaked into the elevator control rod through a control bore hole and resulted in corrosion damage. The investigation concluded as well that the corrosion cannot be detected from outside the elevator control rod.
>
> This condition, if not detected and corrected, could lead to failure of the elevator control rod, possibly resulting in loss of control of the sailplane.
>
> To address this unsafe condition, Glasfaser Flugzeug-Service GmbH have developed and published Technical Note (TN) TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, TN 604–11, which provides instructions for elevator control rod inspection and replacement.
>
> For the reasons described above, EASA issued AD 2011–0213 to require a one-time inspection and replacement of the affected elevator control rod with an improved part.

Comments

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

Request FAA Withdraw the Proposed AD

Jack Corneveaux wrote that virtually all gliders covered under this proposed action are stored in covered trailers or hangers and not left out in the weather. Therefore, they are not subject to problems from moisture. He claims that those few gliders that have had the elevator control rod replaced were found with the original elevator control rod in perfect condition.

The commenter also wrote that this rule was generated in Europe due to one instance where an elevator control rod on a Hornet was defective. He states that we do not know if this aircraft was mistreated by leaving it out in the weather or any other details that might have caused the problem. Jack Corneveaux concluded that the proposed fix is expensive, time consuming, and probably unnecessary.

Although no specific change was requested, based on the comments, we infer that the commenter requested the FAA withdraw the proposed AD.

We do not agree with the comments. The FAA cannot know the storage details of every aircraft on the U.S. registry. Therefore, we cannot determine the actual amount of time that any given aircraft is subject to the effects of weather, in general, and moisture, in particular. The European Aviation Safety Agency (EASA) issued MCAI based on a broken elevator control rod in the vertical fin on a Kestrel glider caused by corrosion damage from water soaking into the rod through a control bore hole.

The investigation by EASA and the type certificate (TC) holder concluded that the corrosion could not be detected from outside the elevator control rod and, if not detected and corrected, could lead to a failure of the elevator control rod and resultant loss of control of the aircraft. We concur with the findings of EASA and the TC holder. While we recognize the financial burden that this AD places on the gliding community, this does not diminish the need to accomplish the inspection and replacement of the elevator control rod to address the unsafe condition.

We have made no changes to this AD action based on these comments.

Request FAA Allow Certified A&P Mechanics To Accomplish AD Actions

Jack Corneveaux requested that the FAA allow the actions of the proposed AD be done by any certified A&P mechanic since the recommended repair stations are hundreds of miles apart in the United States.

Although not directly referenced within the comment, the repair station requirement comes from Glasfaser Flugzeug Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), referenced in the proposed AD which states in the Action section:

> **Note:** Replacement of control rod (Action 2 to 4) must be carried out by an authorised service facility.

We agree with the comment because within the United States regulatory system, there is no need for the actions required by the AD to be done solely by a repair station. 14 CFR 43.3 defines who is authorized to perform maintenance, preventative maintenance, rebuilding, and alterations. This section includes certificated mechanics in addition to repair stations.

We added text to the body of the AD that specifies that the actions mandated by this AD may be accomplished by persons authorized to perform maintenance in accordance with 14 CFR 43.3 and by persons authorized to approve aircraft for return to service after maintenance in accordance with 14 CFR 43.7.

Request FAA Approve Use of Endoscope As Alternate Inspection Method

Jack Corneveaux suggested that the elevator control rod be inspected using an endoscope. He wrote that this alternative inspection method has been successfully accomplished in Australia.

We do not agree with the comments. The FAA cannot make a determination of the acceptability of this alternative inspection method based on the information provided. The commenter may apply for an alternative method of compliance (AMOC) using the procedures found in 14 CFR 39.19. The commenter should include the AMOC application and all associated substantiating data for review.

We have made no changes to this AD action based on these comments.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 2674, January 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 2674, January 19, 2012).

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

Costs of Compliance

We estimate that this AD will affect 54 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $333 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $45,522, or $843 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

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 the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–15–07 Glasflugel: Amendment 39–17136; Docket No. FAA–2012–0046; Directorate Identifier 2011–CE–040–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the following Glasflugel models and serial number (S/N) gliders, certificated in any category:

(1) Club Libelle 205, all S/Ns

(2) Kestrel, all S/Ns, except S/N 85, 110, and 125

(3) Mosquito, all S/Ns

(4) Standard Libelle-201B, S/N 169

(d) Subject

Air Transport Association of America (ATA) Code 27: Flight Controls.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as corrosion damage to the elevator control rod that could lead to failure of the elevator control rod, possibly resulting in loss of control of the glider. We are issuing this AD to require actions to address the unsafe condition on these products.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) Within 30 days after September 11, 2012 (the effective date of this AD), inspect the elevator control rod in the vertical fin following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(2) If you find any discrepancy in the inspection required by paragraph (f)(1) of this AD, before further flight, replace the elevator control rod with an elevator control rod that does not have a control bore hole, following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(3) Within 9 months after September 11, 2012 (the effective date of this AD), unless already done as required by paragraph (f)(2) of this AD, replace the elevator control rod in the vertical fin with an elevator control rod that does not have a control bore hole, following Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), as applicable to glider model.

(4) As of September 11, 2012 (the effective date of this AD), do not install an elevator control rod with a control bore hole.

(5) The actions mandated by this AD may be accomplished by persons authorized to perform maintenance in accordance with 14 CFR 43.3 and by persons authorized to approve aircraft for return to service after maintenance in accordance with 14 CFR 43.7.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and

suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2011–0213R1, dated November 8, 2011; and Glasfaser Flugzeug-Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011 (EASA translation approval dated September 9, 2011), for related information. For service information related to this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(i) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Glasfaser Flugzeug Service GmbH Technical Note TN 201–40, TN 205–27, TN 206–26, TN 303–25, TN 304–12, TN 401–30, TN 501–10, and TN 604–11, Revision 1, dated July 14, 2011.

(ii) Reserved.

(2) For service information identified in this AD, contact Glasfaser Flugzeug-Service Hansjörg Streifeneder GmbH, D–72582 Grabenstetten, Germany; phone: +49(0)73821032, fax: +49(0)73821629; email: *info@streifly.de;* Internet: *www.streifly.de/.*

(3) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on July 18, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–19088 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0480; Directorate Identifier 2010–NM–035–AD; Amendment 39–17139; AD 2012–15–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747–400 and 747–400D series airplanes. This AD was prompted by a report of an in-flight multi-power system loss of the #1, #2, and #3 alternating current electrical power systems located in the main equipment center (MEC). This AD requires installing aluminum gutter reinforcing brackets to the forward and aft drip shield gutters of the MEC; and adding a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including an inspection for cracking and holes in the MEC drip shield, and corrective actions if necessary. This AD also provides for an option to install an MEC drip shield drain system, which, if accomplished, would extend the compliance time for adding the reinforcing fiberglass overcoat to the top surface of the MEC drip shield. We are issuing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

DATES: This AD is effective September 11, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 11, 2012.

ADDRESSES: 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.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM published in the **Federal Register** on March 5, 2012 (77 FR 13043). The original NPRM (75 FR 27966, May 19, 2010) proposed to require installing aluminum gutter reinforcing brackets to the forward and aft drip shield gutters of the MEC; and adding a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including an inspection for cracking and holes in the MEC drip shield, and corrective actions if necessary. That NPRM also provided for an option to install an MEC drip shield drain system, which, if accomplished, would extend the compliance time for adding the reinforcing fiberglass overcoat to the top surface of the MEC drip shield. The SNPRM proposed to revise the locating dimensions of the brackets and change the routing of the forward drain tubes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (77 FR 13043, March 5, 2012) and the FAA's response to each comment.

Concurrence With Supplemental NPRM (77 FR 13043, March 5, 2012)

Boeing concurs with the contents of the proposed rule (77 FR 13043, March 5, 2012).

Request To Extend Compliance Time

United Airlines (UAL) requested an extension of the compliance time from 24 months to 48 months to accomplish the actions in paragraph (g)(1) of the supplemental NPRM (77 FR 13043,

March 5, 2012). UAL stated that based on parts availability and its normal maintenance schedule, a 48-month compliance time would save costs and would allow time for the operators to perform the terminating action without having to perform the interim action, which would permanently add 26 lbs. to the airplane.

We do not agree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. In consideration of these items, as well as the reports of multi-power system loss affecting flight-critical systems of an airplane in flight, we have determined that a 24-month compliance time will ensure an acceptable level of safety and allow the modifications to be done during scheduled maintenance intervals for most affected operators. The interim action is provided to give operators additional time to perform the more time-consuming action of accessing the necessary locations to perform the terminating action. We have not changed the AD in this regard.

Request To Reduce Compliance Time

Cara Leigh Bitton (Weber State University) concurred with the actions proposed by the supplemental NPRM (77 FR 13043, March 5, 2012), but questioned why the compliance time would need to be extended for adding the reinforcing fiberglass overcoat to the top surface of the MEC drip shield, as required by paragraph (g)(2)(ii) of the supplemental NPRM. The commenter noted the risk and the importance to the passengers and crew of these airplanes. The commenter contended these changes should be made as soon as possible.

We infer the commenter is requesting we reduce the compliance time in paragraph (g)(2)(ii) of this AD. We disagree with the commenter's request. In developing an appropriate compliance time for adding the reinforcing fiberglass overcoat to the top surface of the MEC drip shield, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of replacement of the fasteners. Further, we arrived at the compliance time with operator and manufacturer concurrence.

In consideration of these factors, we determined that the compliance time, as proposed and retained in this final rule, represents an appropriate interval in which operators can install the modification in a timely manner within the fleet, while still maintaining an adequate level of safety. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to add the reinforcing fiberglass overcoat before the specified compliance time of 96 months after the effective date of this AD.

In addition, the purpose of two different compliance times is to provide a more immediate solution to the safety risk of cracked MEC drip shields by installing aluminum reinforcing brackets (i.e., an interim corrective action that specifies installing drains for the water to travel away from the MEC drip shield), and adding a reinforcing fiberglass overcoat to the top surface of the MEC drip shield (i.e., the long-term corrective action). Reducing the compliance time for the terminating action is not necessary based on the safety risk for affected operators of Model 747–400 and 747–400D airplanes. If additional data are presented that would justify a shorter compliance time, we may consider further rulemaking on this issue. However, we have not changed the AD in this regard.

Request To Correct Discrepancies

An email thread between ST Aerospace and The Boeing Company was forwarded to the FAA by The Boeing Company as an ex parte request that we reference a pending service bulletin revision planned by The Boeing Company. The pending service bulletin will address discrepant quantities of nut plates and types of fasteners called out in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, which affects certain airplanes operated by ST Aerospace.

We disagree that a change to the AD is needed, because the ST Aerospace configuration affects a very small number of the airplanes listed in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. Furthermore, doing the actions specified in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, addresses the identified unsafe condition. Operators are allowed to use different types of fasteners, as specified in Note 7. of paragraph 3.A., ''Accomplishment Instructions,'' of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. However, if an operator has a different airplane configuration that might use a different quantity of nut plates than what is specified in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, they may request an alternative method of compliance (AMOC) in accordance with paragraph (i) of the final rule. In addition, if a later revision of the referenced service bulletin is issued, affected operators may request approval to use a later revision as an AMOC, under the provisions of paragraph (i) of the final rule. We have not changed the AD in this regard.

Changes to the AD

Boeing has issued Information Notice 747–25A3555 IN 04, dated February 10, 2012, to inform operators of airplanes in groups 1, 2 and 3 of incorrect applicability tags specified in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. We have included this corrected information in new paragraph (h) of this AD, and changed the subsequent paragraph identifiers accordingly.

Conclusion

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

- Are consistent with the intent that was proposed in the SNPRM (77 FR 13043, March 5, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the SNPRM (77 FR 13043, March 5, 2012).

Costs of Compliance

We estimate that this AD affects 71 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Install brackets	19 work-hours × $85 per hour = $1,615	Up to $2,408 [1]	Up to $4,023 [1]	Up to $285,633.[1]
Add overcoat	63 work hours × $85 per hour = $5,355	$1,731 ($577 × 3)	$7,086	$503,106.
Install optional MEC drip shield drain system.	22 work hours × $85 per hour = $1,870	Up to $8,982 [1]	Up to $10,852 [1]	Up to $770,492.[1]

[1] Depending on work package.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–15–10 The Boeing Company: Amendment 39–17139; Docket No. FAA–2010–0480; Directorate Identifier 2010–NM–035–AD.

(a) Effective Date

This AD is effective September 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400 and 747–400D series airplanes; certificated in any category; as identified in Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 25, Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report of an in-flight multi-power system loss of the #1, #2, and #3 alternating current electrical power systems located in the main equipment center (MEC). We are issuing this AD to prevent water penetration into the MEC, which could result in loss of flight critical systems.

(f) Compliance

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

(g) Modification

Except as required by paragraph (h) of this AD, do the actions specified in either paragraph (g)(1) or (g)(2) of this AD.

(1) Within 24 months after the effective date of this AD, install aluminum reinforcing brackets on the MEC drip shield gutter, in accordance with Work Package 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011; and add a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including doing a general visual inspection for cracking and holes in the top surface of the MEC drip shield, and doing all applicable corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. Do all applicable corrective actions before further flight after doing the general visual inspection.

(2) Do the actions specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 24 months after the effective date of this AD, install aluminum reinforcing brackets on the MEC drip shield gutter, in accordance with Work Package 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011; and install a MEC drip shield drain system, in accordance with Work Package 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011.

(ii) Within 96 months after the effective date of this AD, add a reinforcing fiberglass overcoat to the top surface of the MEC drip shield, including doing a general visual inspection for cracking and holes in the top surface of the MEC drip shield, and doing all applicable corrective actions, in accordance with Work Package 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011. Do all applicable corrective actions before further flight after doing the general visual inspection.

(h) Exceptions

(1) Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, states that Figures 7 and 8 apply to airplanes in Groups 1 and 3; however, Figures 7 and 8 apply to Group 2 airplanes.

(2) Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, states that Figures 9 and 10 apply to airplanes in Group 2; however, Figures 9 and 10 apply to Groups 1 and 3 airplanes.

(3) Where Paragraph 1., ''Kits/Parts,'' of Paragraph 2.C., ''Parts Necessary for Each Airplane,'' of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, states that Groups 1 and 3 airplanes require top kits 015U1854–1 and 015U1854–

2, Groups 1 and 3 airplanes require top kits 015U1854–3 and 015U1854–4.

(4) Where Paragraph 1., ''Kits/Parts,'' of Paragraph 2.C., ''Parts Necessary for Each Airplane,'' of Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011, states that Group 2 airplanes require top kits 015U1854–3 and 015U1854–4, Group 2 airplanes require top kits 015U1854–1 and 015U1854–2.

(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.

(j) Related Information

For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6596; fax: 425–917–6590; email: *francis.smith@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 747–25A3555, Revision 1, dated July 27, 2011.

(ii) Reserved.

(3) 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.*

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

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

Issued in Renton, Washington, on July 20, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18583 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0269; Directorate Identifier 2011–NM–105–AD; Amendment 39–17140; AD 2012–15–11]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Dassault Aviation Model FALCON 7X airplanes. This AD was prompted by a report that a passenger oxygen pipe at frame 10 was chafing against the forward lavatory rear structure, raising the risk of the oxygen pipe developing a crack. This AD requires modifying the routing of and, if necessary, replacing, the oxygen pipe. We are issuing this AD to prevent rupture of the oxygen pipe which, in case of a cabin depressurization, would impair operation of the passenger oxygen distribution system.

DATES: This AD becomes effective September 11, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 11, 2012.

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 20, 2012 (77 FR 16186). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Inspections of two aeroplanes during cabin completions have shown that a passenger oxygen line at frame 10 was chafing with the forward lavatory rear structure.
>
> Design review of the area confirmed a local low clearance value which raises the risk of the oxygen line developing a crack.
>
> This condition, if not detected and corrected, could lead to rupture of the oxygen line which, in case of a cabin depressurization, would impair operation of the passengers' oxygen distribution system.
>
> To address this unsafe condition, Dassault Aviation have designed a modification with a new oxygen line routing.
>
> This AD requires an [general visual] inspection of the oxygen line for interference or damage and, in case of discrepancies [damage, or clearance less than 3 mm], accomplishment of the modification [including general visual inspections, and, if necessary, replacing the oxygen line/pipe] before next flight. It requires as well accomplishment of the modification of the oxygen line routing for the aeroplanes in which [clearance of 3 mm or more but less than 12 mm] were identified.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 16186, March 20, 2012) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 16186, March 20, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 16186, March 20, 2012).

Costs of Compliance

We estimate that this AD will affect about 11 products of U.S. registry. We also estimate that it will take about 11 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $10,285, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 16 work-hours and require parts costing $655, for a cost of $2,015 per product. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM 77 FR 16186, March 20, 2012), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–15–11 Dassault Aviation: Amendment 39–17140. Docket No. FAA–2012–0269; Directorate Identifier 2011–NM–105–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective September 11, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, serial numbers 3, 10, 13, 18, 19, 20, 22, 23, 24, 26, 27, 29, 30, 31, 32, 33, 35, 36, 38, 41, 42, 43, 47, 48, 58, 63, 64, 66, 67, 68, 71, 76, 78, 79, 83, 84, 85, 86, 87, and 93; except for airplanes on which the Dassault Aviation modification specified in Dassault Mandatory Service Bulletin 7X–174 has been incorporated.

(d) Subject

Air Transport Association (ATA) of America Code 35: Oxygen.

(e) Reason

This AD was prompted by a report that a passenger oxygen pipe at frame 10 was chafing against the forward lavatory rear structure, raising the risk of the oxygen pipe developing a crack. We are issuing this AD to prevent rupture of the oxygen pipe which, in case of a cabin depressurization, would impair operation of the passenger oxygen distribution system.

(f) Compliance

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

(g) Inspection

Within 2 months after the effective date of this AD, do a boroscope inspection of the passenger oxygen pipe for clearance and a general visual inspection for damage of the oxygen pipe, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(h) Corrective Actions

If during any inspection required by paragraph (g) of this AD any damage is found or oxygen pipe clearance is less than 3 millimeters (mm) (0.12 inch): Before further flight, modify the oxygen pipe routing, including doing a general visual inspection for chafing of the pipe and doing all applicable replacements, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(i) Oxygen Pipe Routing Modification

If, during any inspection required by paragraph (g) of this AD, oxygen pipe clearance is 3 mm (0.12 inch) or more but less than 12 mm (0.47 inch): Within 98 months or 4,000 flight cycles after the effective date of this AD, whichever occurs first, modify the routing of the passenger oxygen pipe, including doing a general visual inspection for chafing of the pipe and doing all applicable replacements, in accordance with the Accomplishment Instructions of Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2011–0070, dated April 18, 2011; and Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011; for related information.

(l) Material Incorporated by Reference

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

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

(i) Dassault Mandatory Service Bulletin 7X–174, dated March 10, 2011.

(ii) Reserved.

(3) For Dassault service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.*

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

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on July 20, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–18582 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

The Commerce Control List

CFR Correction

In Title 15 of the Code of Federal Regulations, Parts 300 to 799, revised as of January 1, 2012, in supplement no. 1 to part 774, make the following corrections:

■ 1. In Category 7:

■ A. On page 838, in 7A002, under the table in ''Licensing Requirements'', add a ''License Requirements Note'' as set forth below.

■ B. On page 839, in 7A005, above ''License Requirements'', remove the Note to 7A005.

■ C. On page 840, in 7A008, add ''License Requirements'' above ''Reason for Control''.

■ D. On page 843, in 7B101, in the heading, add a quotation mark before ''Production''.

■ E. On page 847, in 7E003, at the end of ''Related Definition'', add ''for 'Maintenance Level I' or 'Maintenance Level II'''.

■ 2. In Category 9, on page 870, in 9E003, below paragraph a.10, remove Note 1 and Note 2.

The text to be added is set forth below:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 7

* * * * *

7A002 Gyros or angular rate sensors, having any of the following see List of Items Controlled) and specially designed components therefor.

* * * * *

License Requirement Note: For the purpose of MT controls only, the term 'stability' is defined as a measure of the ability of a specific mechanism or performance coefficient to remain invariant when continuously exposed to a fixed operating condition. (This definition does not refer to dynamic or servo stability.) (IEEE STD 528–2001 paragraph 2.247)

* * * * *

[FR Doc. 2012–19389 Filed 8–6–12; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. OSHA–2006–0049]

Respiratory Protection; Mechanical Power Presses; Scaffold Specifications; Correction and Technical Amendment

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; correction and technical amendment.

SUMMARY: OSHA is correcting the medical evaluation questionnaire in Appendix C of its Respiratory Protection standard by removing the term ''fits'' in a question. OSHA also is correcting its Mechanical Power Presses standard for general industry by restoring requirements that were removed inadvertently from the regulatory text. Finally, the Agency is correcting a cross reference made in two paragraphs in Appendix A to subpart L of its scaffold standards for construction.

DATES: The effective date for the corrections and technical amendment to the standards is August 7, 2012.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Frank Meilinger, Director, Office of Communications, OSHA, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Kenneth Stevanus, OSHA Office of Engineering Safety, OSHA, Room N–3621, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693 2260; email: *stevanus.ken@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Appendix C (Mandatory) to § 1910.134 (Respiratory Protection)

In the Standards Improvement Project-Phase III (SIP–III) final rule, published on June 8, 2011 (76 FR 33590), OSHA revised question 2.a in the OSHA Respirator Medical Evaluation Questionnaire, Appendix C, Part A, Section 2, of its Respiratory Protection standard (§ 1910.134) by deleting the word ''fits,'' leaving only the word ''seizures'' to describe the applicable medical condition. OSHA received no public comment on this revision in the proposed SIP–III rule (75 FR 38646, 38650). Therefore, in the final SIP–III rule, OSHA determined that (1) use of the term ''fits'' is outdated, unnecessary, and offensive, and (2) this revision would have no effect on administration of, or responses to, the questionnaire (76 FR 33590, 33595). Subsequent to publication of the SIP–III final rule, OSHA found an additional use of the term ''fits'' in Appendix C of § 1910.134: namely, question 7.d. This **Federal Register** notice will remove the term ''fits'' from question 7.d.

In addition, when OSHA promulgated the revised Respiratory Protection standard on January 8, 1998 (63 FR 1152), the introductory language of Appendix C included the following prefatory question to the employee: ''Can you read (circle one): Yes/No.'' Because this question is illogical (i.e., employees who cannot read cannot respond validly to the question), this **Federal Register** notice will remove this question from Appendix C of § 1910.134.

B. Mechanical Power Presses (§ 1910.21)

On December 27, 2011, OSHA published a **Federal Register** notice

making corrections and technical amendments to 16 OSHA standards (76 FR 80735). One of the standards involved the Mechanical Power Presses standard for general industry (§ 1910.217); paragraph (g)(1) of this standard requires employers to submit to OSHA reports of employees injured while operating such presses. Specifically, paragraph (g)(1) requires that employers submit the reports to federal OSHA or, for state-plan states, the state agency administering the plan. The purpose of revising this paragraph was to include the new title of the federal OSHA office designated to receive the reports, and to provide an electronic address for submitting the reports, consistent with the recommendations of the Paperwork Reduction Act and associated regulations (44 U.S.C. chapter 35; 5 CFR 1320.8(a)(5)). However, the requirements in paragraph (g)(1) specifying what information to include in the report were missing from the subsequent Code of Federal Regulations generated by the Office of the Federal Register. This **Federal Register** notice will restore these missing requirements.

C. Appendix A (Non-mandatory) to 29 CFR 1926, Subpart L (Scaffolds)

On August 30, 1996, OSHA published the Scaffold standard for construction at 29 CFR 1926, subpart L (61 FR 46026). Paragraphs (z)(3) and (z)(5) in Appendix A of that standard, which address tank builders' scaffolds, incorrectly refer to the guardrail requirements at § 1926.451(e)(4). The requirements at § 1926.451(e)(4) contain provisions for stair towers, which are not applicable to tank building scaffolds. The reference cited in paragraphs (z)(3) and (z)(5) should be to paragraph § 1926.451(g)(4), which addresses guardrail systems for tank building scaffolds. Accordingly, this **Federal Register** notice will revise paragraphs (z)(3) and (z)(5) of Appendix A to refer to § 1926.451(g)(4) instead of § 1926.451(e)(4).

II. Exemption from Notice-and-Comment Procedures

OSHA determined that this rulemaking is not subject to the procedures for public notice and comment specified in Section 4 of the Administrative Procedures Act (5 U.S.C. 553), Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), and 29 CFR 1911.5. This rulemaking does not affect or change any existing rights or obligations, and no stakeholder is likely to object to them. Therefore, the Agency finds good cause that public notice and comment are unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

List of Subjects

29 CFR Part 1910

Mechanical power presses, Occupational safety and health, Respiratory protection.

29 CFR Part 1926

Scaffolds, Occupational safety and health.

Authority and Signature

David Michaels, MPH, Ph.D., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this document. Accordingly, pursuant to Section 6 of 29 U.S.C. 655, Section 4 of 5 U.S.C. 553, Secretary of Labor's Order No. 1–2012 (77 FR 3912), and 29 CFR 1911.5.

Signed at Washington, DC on July 27, 2012.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

Accordingly, OSHA is amending 29 CFR parts 1910 and 26 by making the following corrections and technical amendments:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Subpart I—[Amended]

■ 1. Revise the authority citation for subpart I to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR 1911.

Sections 1910.132, 1910.134, and 1910.138 of 29 CFR also issued under 29 CFR 1911.

Sections 1910.133, 1910.135, and 1910.136 of 29 CFR also issued under 29 CFR 1911 and 5 U.S.C. 553.

■ 2. In § 1910.134:

■ a. In the introductory text of Appendix C to § 1910.134, remove ''Can you read (circle one): Yes/No''.

■ b. Revise question 7.d. in Part A, Section 2 (Mandatory) of Appendix C, to read as follows:

§ 1910.134 Respiratory protection.

* * * * *

Appendix C to § 1910.134: * * *

* * * * *

Part A. Section 2. * * *

7. * * *

d. Seizures: Yes/No

* * * * *

Subpart O—[AMENDED]

■ 3. Revise the authority citation for subpart O to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912), as applicable; and 29 CFR 1911.

Sections 1910.176, 1910.177, 1910.178, 1910.179, 1910.180, 1910.181, and 1910.184 also issued under 29 CFR part 1911.

■ 4. Amend § 1910.217 by revising paragraph (g) to read as follows:

§ 1910.217 Mechanical power presses.

* * * * *

(g) *Reports of injuries to employees operating mechanical power presses.* (1) The employer shall report, within 30 days of the occurrence, all point-of-operation injuries to operators or other employees to either the Director of the Directorate of Standards and Guidance at OSHA, U.S. Department of Labor, Washington, DC 20210 or electronically at *http://www.osha.gov/pls/oshaweb/mechanical.html;* or to the State Agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health.

(2) The report shall include the following information:

(i) Employer's name, address and location of the workplace (establishment).

(ii) Employee's name, injury sustained, and the task being performed (operation, set-up, maintenance, or other).

(iii) Type of clutch used on the press (full revolution, part revolution, or direct drive).

(iv) Type of safeguard(s) being used (two hand control, two hand trip, pullouts, sweeps, or other). If the safeguard is not described in this section, give a complete description.

(v) Cause of the accident (repeat of press, safeguard failure, removing stuck part or scrap, no safeguard provided, no safeguard in use, or other).

(vi) Type of feeding (manual with hands in dies or with hands out of dies, semiautomatic, automatic, or other).

(vii) Means used to actuate press stroke (foot trip, foot control, hand trip, hand control, or other).

(viii) Number of operators required for the operation and the number of operators provided with controls and safeguards.

* * * * *

PART 1926—SAFETY AND HEALTH REGULATIONS FOR CONSTRUCTION

Subpart L—[AMENDED]

■ 5. Revise the authority citation for subpart L to read as follows:

Authority: 40 U.S.C. 333; 29 U.S.C. 653, 655, 657; Secretary of Labor's Order Nos. 1–90 (55 FR 9033), 5–2007 (72 FR 31159), or 1–2012 (77 FR 3912); and 29 CFR part 1911.

■ 6. Revise paragraphs (z)(3) and (z)(5) of Appendix A to subpart L to read as follows:

* * * * *

(Non-Mandatory) Appendix A to Subpart L of Part 1926—Scaffold Specifications.

* * * * *

(z) * * *

(3) A taut wire or synthetic rope supported on the scaffold brackets shall be installed at the scaffold plank level between the innermost edge of the scaffold platform and the curved plate structure of the tank shell to serve as a safety line in lieu of an inner guardrail assembly where the space between the scaffold platform and the tank exceeds 12 inches (30.48 cm). In the event the open space on either side of the rope exceeds 12 inches (30.48 cm), a second wire or synthetic rope appropriately placed, or guardrails in accordance with § 1926.451(g)(4), shall be installed in order to reduce that open space to less than 12 inches (30.48 cm).

* * * * *

(5) Guardrails shall be constructed of a taut wire or synthetic rope, and shall be supported by angle irons attached to brackets welded to the steel plates. These guardrails shall comply with § 1926.451(g)(4). Guardrail supports shall be located at no greater than 10 feet 6 inch intervals.

* * * * *

[FR Doc. 2012–19077 Filed 8–6–12; 8:45 am]

BILLING CODE 4510–26–P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service ™.

ACTION: Final rule.

SUMMARY: This final rule amends the provisions concerning the discontinuance of USPS®-operated retail facilities to incorporate conforming changes in Post Office ™ classification and terminology.

DATES: *Effective date:* August 7, 2012.

FOR FURTHER INFORMATION CONTACT: Jim Boldt (202) 268–6799.

SUPPLEMENTARY INFORMATION: This final rule makes minor changes to 39 CFR Part 241. Existing regulations provide that a change in the staffing of a Post Office such that it is staffed by another type of Postal Service employee is not a discontinuance. See 39 CFR 241.3(a)(1)(ii). Consistent with this provision, the final rule defines a remotely managed Post Office (RMPO) as a Post Office that offers part-time window service hours, is staffed by a Postal Service employee at the direction of a postmaster, and reports to an Administrative Post Office. The final rule also defines a part-time Post Office (PTPO) as a Post Office that offers part-time window service hours, is staffed by a Postal Service employee, and reports to a district office. In addition, the final rule replaces the term ''lowest non-bargaining (EAS) employee grade'' with ''lowest level RMPO'' in 39 CFR 241.3(a)(5)(i). This change is not substantive, because the hours of service of the lowest EAS grade for Post Offices previously in effect corresponds to window service hours offered by the lowest level RMPO. Last, the final rule no longer includes cost ascertainment grouping classifications in 39 CFR 241.1. The use of such classification systems is not needed in Part 241, in light of the introduction of RMPOs and PTPOs.

Although exempt from the notice and comment rulemaking requirements of Title 5 of the United States Code, the Postal Service hereby adopts the following changes to 39 CFR Part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR Part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

■ 2. Revise § 241.1 to read as follows:

§ 241.1 Post offices.

Post Offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries. A Post Office may be operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster, including when the postmaster is not physically present. A Remotely Managed Post Office (RMPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee under the direction of a postmaster, and reports to an Administrative Post Office. A Part-Time Post Office (PTPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee, and reports to a district office. Unless otherwise specified, all references to ''Post Office'' include RMPOs and PTPOs.

■ 3. In § 241.3, revise paragraph (a) to read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) *Introduction*—(1) *Coverage.* (i) This section establishes the rules governing the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:

(A) Replace a USPS-operated Post Office, station, or branch with a contractor-operated retail facility;

(B) Combine a USPS-operated Post Office, station, or branch with another USPS-operated retail facility; or

(C) Discontinue a USPS-operated Post Office, station, or branch without providing a replacement facility.

(ii) The conversion of a Post Office into, or the replacement of a Post Office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section. A change in the staffing of a Post Office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.

(iii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under § 241.3 as in effect prior to July 14, 2011, shall apply to discontinuance actions for which initial feasibility studies have been initiated prior to July 14, 2011. Discontinuance actions pending as of December 1, 2011, that pertain to the conversion of a Post Office to another type of USPS-operated facility are no longer subject to these regulations.

(2) *Definitions.* As used in this section, the terms listed below are defined as follows:

(i) *''USPS-operated retail facility''* includes any Postal Service employee-operated Post Office, station, or branch, but does not include any station, branch, community Post Office, or other retail facility operated by a contractor.

(ii) *''Contractor-operated retail facility''* includes any station, branch, community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) *''Closing''* means an action in which Post Office operations are permanently discontinued without providing a replacement facility in the community.

(iv) *''Consolidation''* means an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility. The resulting contractor-operated retail facility reports to a Postal Service–operated retail facility.

(v) *''Discontinuance''* means either a closure or a consolidation.

(vi) A *''Remotely Managed Post Office''* (RMPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee at the direction of a postmaster, and reports to an Administrative Post Office. Unless otherwise specified, all references to ''Post Office'' include RMPOs. The classification of a Post Office as an RMPO is not a discontinuance action under this section.

(vii) A *''Part-Time Post Office''* (PTPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee, and reports to a district office. Unless otherwise specified, all references to ''Post Office'' include PTPOs. The classification of a Post Office as a PTPO is not a discontinuance action under this section.

(3) *Requirements.* A District Manager or the responsible Headquarters Vice President, or a designee of either, may initiate a feasibility study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a USPS-operated retail facility must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the USPS-operated retail facility at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals. For purposes of determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required to make any determination subject to 39 U.S.C. 404(d)(5) within the 120 days specified by statute.

(vii) The following table summarizes the notice and appeal periods defined by statute.

Public Notice of Proposal	**Public Notice of Final Determination**
60-day notice	30 days for filing any appeal; up to 120 days for appeal consideration and decision.
	Wait at least 60 days from first day after posting final determination before closing or consolidating USPS-operated retail facility.

(4) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(5) *Initial feasibility study.* A district manager, the responsible Headquarters vice president, or a designee of either may initiate a feasibility study of a USPS-operated retail facility's potential discontinuance, in order to assist the district manager in determining whether to proceed with a written proposal to discontinue the facility.

(i) *Permissible circumstances.* The initial feasibility study may be based upon circumstances including, but not limited to, the following:

(A) A postmaster vacancy;

(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or natural disaster, irreparable damage when no suitable alternate quarters are available in the community, challenge to the sanctity of the mail, or similar reasons;

(C) Earned workload below the minimum established level for the lowest level RMPO;

(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;

(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or

(F) The incorporation of two communities into one or other special circumstances.

(ii) *Impermissible circumstances.* The following circumstances may not be used to justify initiation of an initial feasibility study:

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 et seq.);

(B) The absence of running water or restroom facilities;

(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); or

(D) In the absence of any circumstances identified in paragraph (a)(5)(i) of this section, the operation of a small Post Office at a deficit.

(iii) *Notice to customers.* Local management must provide notification and questionnaires to customers at the USPS-operated retail facility under study. Local management may determine whether notification is appropriate through media outlets. In addition, the following customers that receive delivery service from the USPS-operated retail facility must receive notification and questionnaires by mail:

(A) Post Office Box customers at the USPS-operated retail facility under study;

(B) Customers whose delivery carrier is stationed out of the USPS-operated retail facility under study;

(C) Customers in the delivery area of the same ZIP Code as the retail facility under study, regardless of whether the delivery carriers for those customers are stationed out of the retail facility under study or out of a nearby facility; and

(D) Customers whom the retail facility under study serves for allied delivery services such as mail pickup.

(iv) *Initial feasibility study due to emergency suspension.* Wherever possible when an initial feasibility study is to be initiated under § 241.3(a)(5)(i)(B) (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should initiate the initial feasibility study sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account. If public input cannot be sought sufficiently in advance of the end date of the lease or rental agreement, responsible personnel should endeavor, to the extent possible, to continue operation of the USPS-operated retail facility for the duration necessary to gather public input and make a more fully informed decision on whether to proceed with a discontinuance proposal. Customers formerly served by the suspended facility should receive notice under paragraph (a)(5)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2012–19201 Filed 8–6–12; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0059; FRL–9694–9]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving revisions to the Wisconsin State Implementation Plan (SIP) addressing regional haze for the first implementation period, which extends through July 31, 2018. Wisconsin submitted its regional haze plan on January 18, 2012, with a supplemental submittal on June 7, 2012. EPA received comments on its proposed approval, addressing best available retrofit technology (BART) for a Georgia-Pacific Consumer Products, L.P. (Georgia-Pacific) paper facility and for power plants. EPA provides its response to these comments, and concludes that the Wisconsin regional haze plan satisfactorily addresses these requirements. Consequently, EPA is approving an administrative order establishing BART requirements for Georgia-Pacific into the Wisconsin SIP. More generally, EPA finds that Wisconsin has satisfied the applicable requirements for the State to remedy any existing and to prevent future impairment of visibility at mandatory Class I areas.

DATES: This final rule is effective on September 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2012–0059. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplementary information section is arranged as follows:

I. What was proposed in the proposed rule?
II. What are the responses to comments?
III. What action is EPA taking?
IV. Statutory and Executive Order Reviews

I. What was proposed in the proposed rule?

Wisconsin Department of Natural Resources (WDNR) submitted its regional haze plan on January 18, 2012, with a supplemental submittal on June 7, 2012. This plan was intended to address the requirements in Clean Air Act section 169A and the regional haze rule in Title 40 Code of Federal Regulations 51.308 (40 CFR 51.308). This plan concluded that the Georgia-Pacific paper mill in Green Bay and several electric generating units (EGUs) were subject to requirements for BART. For Georgia-Pacific, EPA proposed action on a draft administrative order that establishes a cap on the sum of sulfur dioxide (SO_2) emissions and of nitrogen oxide (NO_X) emissions from the various boilers at the facility, including two boilers subject to the BART requirement and multiple other boilers not subject to this requirement. For the power plants, Wisconsin is relying on the Cross-State Air Pollution Rule (CSAPR) as a trading program alternative to mandating source-specific BART, except that Wisconsin addressed BART for particulate matter (PM) for EGUs by supplementing existing limits with a more stringent PM emission limit for one plant.

EPA reviewed Wisconsin's plan according to the regional haze rule as promulgated on July 1, 1999 (64 FR 35713), and subsequently amended on July 6, 2005 (70 FR 39156), and on October 16, 2006 (70 FR 60631). The July 6, 2005, amendment provides further guidance on provisions related to BART.

EPA proposed approval of the Wisconsin regional haze plan on February 28, 2012 (77 FR 11928). The proposed rule described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Wisconsin's regional haze plan. The proposed rule provided a lengthy description of the regional

haze plan requirements, including mandating BART, consulting with other states to establish goals for reasonable further progress in mitigating anthropogenic visibility impairment, and adopting limitations necessary to implement a long-term strategy for reducing visibility impairment. EPA proposed to approve the Wisconsin plan as properly identifying the facilities subject to BART and mandating emission reductions meeting the applicable BART requirements. EPA also proposed to approve the Wisconsin plan as meeting other regional haze requirements, such as having a long-term strategy that provides an appropriate contribution from Wisconsin toward meeting reasonable progress goals.

II. What are the responses to comments?

In response to its proposed rule, EPA received comments from the Sierra Club, the National Park Service (NPS), Wisconsin Department of Natural Resources (WDNR), Georgia-Pacific, and the U.S. Forest Service. The comments are included in the docket, EPA–R05–OAR–2012–0059. A summary of the comments are included below along with EPA's response.

Comments by Sierra Club

Comment: Sierra Club submitted extensive comments relating to Wisconsin's reliance on CSAPR to satisfy the BART requirement for EGUs. Sierra Club believes that the Clean Air Act requires BART on a source-by-source basis. Even if reliance on a trading program is permissible, Sierra Club finds that Wisconsin failed to make the source-specific BART determinations that are required under 40 CFR 51.308(e)(2) for assessing the relative merits of a trading program. In the view of Sierra Club, it is not clear that CSAPR provides surplus emission reductions that are creditable for satisfying the BART requirement. Sierra Club comments that, ''CSAPR does not ensure that emissions reductions will be made to help achieve reasonable progress goals (RPGs),'' and in particular does not require BART at a plant that is within 300 kilometers from Seney, i.e., the Pulliam plant. In addition, Sierra Club objects to reliance on CSAPR because it is presently stayed. Sierra Club objects that the annual CSAPR programs only limit annual emissions, thus allowing shorter-term emission variations that could adversely affect visibility. Sierra Club believes that EPA's analysis of whether CSAPR would provide better visibility protection than source-specific application of BART limits is flawed, because EPA used presumptive BART levels to represent BART rather than the more stringent BART levels that source-specific BART analyses would identify.

Response: As noted in the proposed rule, these comments are addressed in a separate rulemaking, published on June 7, 2012, at 77 FR 33642. The EPA's response to these comments can be found in Docket ID No. EPA–HQ–OAR–2011–0729 at *www.regulations.gov.* The Pulliam plant, which is approximately 240 kilometers from Seney Wilderness Area, is one of many plants in the Midwest and beyond that contribute to visibility impairment at the Seney Wilderness Area. EPA's conclusion regarding satisfaction of BART requirements for EGUs is based on a finding that controls required under CSAPR can be expected to provide better visibility protection than would be obtained from direct application of BART at Pulliam and other subject EGUs.

Comment: Sierra Club asserts that EPA cannot approve the administrative order that provides the necessary BART limits for Georgia-Pacific because the State does not have authority to submit administrative orders for this purpose. Sierra Club quotes Wisconsin Statute Section 285.14(1): ''[WDNR] may not submit a control measure or strategy that imposes or may result in regulatory requirements to the federal environmental protection agency for inclusion in a state implementation plan under 42 U.S.C. § 7410 unless the department has promulgated the control measure or strategy as a rule.'' In Sierra Club's view, this statute requires Wisconsin to submit its limitations only in the form of state rule. Sierra Club also notes that Wisconsin law mandates that measures to be submitted must be subject to other mandated review procedures. Sierra Club believes that the State has not met these procedural requirements for the administrative order for Georgia-Pacific. Thus, Sierra Club concludes that Wisconsin does not have the authority to submit this administrative order to EPA and that EPA must disapprove the submission because it does not meet the requirement in Clean Air Act section 110(a)(2)(E) that submissions be valid at the state level.

Response: Wisconsin issued a valid administrative order in full compliance with State law. In its submission, the State clarified that it has in fact met the requirements of Wisconsin Statute 285.14(1) by creating Wisconsin Administrative Code Natural Resources (NR) 433. The statute does not require that particular limits be adopted by rule or that the rule be the means by which the limits are enforced. Instead, in this case, Wisconsin first adopted a rule that mandates implementation of BART for sources determined to be subject to provisions in 40 CFR 51.308(e) requiring BART. Then, in accordance with NR 433, Wisconsin defined the specifics of the control measure by issuing a determination of BART numerical limits. The administrative order for Georgia-Pacific establishes permanency for the BART numerical limits set forth in the determination.

Wisconsin provided multiple opportunities for public comment on this issue. Wisconsin held a public hearing during the adoption of NR 433. Since this rule mandated BART and defined the process by which particular limits would be established, this State rulemaking was the most appropriate time for Sierra Club to identify its concerns regarding the adequacy of NR 433, specifically, and the State's BART process, generally, to provide the rulemaking to satisfy Wisconsin Statute 285.14. Notably, it appears that Sierra Club did not raise this objection during the adoption of NR 433. Wisconsin also met the other procedural requirements for public hearings of concern to Sierra Club during the NR 433 adoption process. Finally, the State solicited public review and responded to comments for several iterations of the proposed BART numerical emission limits that it intended to use as the precise numerical definition of BART for Georgia-Pacific. The State addressed comments in determining final BART conditions and fulfilled the procedural requirements including public hearings necessary under State statutes. Consequently, EPA believes that Wisconsin has met the applicable statutory requirements for requiring BART at Georgia-Pacific, and EPA believes that the State's submitted administrative order is fully valid at the State level and fully approvable under section 110.[1]

Comment: Sierra Club comments on discussion in the proposed rule expressing EPA's concerns about the enforceability of the language of the draft administrative order. Given these EPA concerns, Sierra Club objects to the procedure EPA is using to act on Wisconsin's plan. In particular, Sierra Club objects that EPA's proposal is ''based on a 'premise' '' that the final

[1] Section 110(a)(2)(E) requires that Wisconsin have ''authority under State * * * law to carry out [its] implementation plan,'' but does not define requirements for individual SIP submissions. Nevertheless, the important point here is that the Georgia-Pacific administrative order is a fully valid, fully enforceable, and approvable document.

administrative order will include revisions that address EPA's concerns. ''This circumvents the review process, which requires EPA to determine whether the state's submission is actually sufficient (not whether possible future documents could make the SIP sufficient) and requires that the public have an opportunity to review and comment on the sufficiency of the actual submission by the state and the EPA's proposed basis for approval.''

Response: In actions involving parallel processing, as authorized under 40 CFR 51 appendix V section 2.3, EPA solicits comments regarding an anticipated situation, namely that the state will have completed the administrative process necessary to submit a final SIP submission before EPA takes final action. Similarly here, EPA solicited comments on the anticipated situation in which Wisconsin would submit a final administrative order using language that assures that the limits are fully enforceable and Wisconsin would submit the order before EPA's final action.

EPA believes that this approach fully satisfies the requirements in the Clean Air Act and in the Administrative Procedures Act for soliciting public comment on Wisconsin's plan and EPA's proposed action. These statutes do not mandate that EPA wait for administrative orders to be issued in final form before proposing action. Instead, EPA may propose action on draft administrative orders, so long as the proposal provides sufficient information regarding the prospective administrative order (and other elements of the State submission) and EPA's intended action on the prospective order for commenters to have suitable opportunity to comment on significant issues pertinent to the State material and EPA's proposed approval.

Notably, Sierra Club did not express any concerns of its own regarding the language of the administrative order, suggesting that no further solicitation of comment on the particular differences in language between the draft and the final administrative order was warranted. Therefore, EPA concluded that its proposed rule provided an adequate basis for commenters to identify issues of concern and allow EPA to proceed to final rulemaking without reproposal.

Comment: Sierra Club objects to Wisconsin expressing the limits for Georgia-Pacific as a cap on emissions from four boilers, including two boilers that are not subject to the requirement for BART. In Sierra Club's view, this approach ''dilutes the stringency of the BART limits,'' insofar as ''the control efficiency required of the BART units will depend on the operating characteristics of the other, non-BART units.''

Response: Wisconsin established an emissions cap reflecting baseline emissions of the non-BART boilers plus emissions from the BART boilers at BART control levels, minus a deduction for environmental benefit. This cap assures that total emissions from the facility will be reduced by more than the amount that would be mandated with the establishment of limits solely on emissions from the BART units. That is, in the scenario of concern, in which the company accommodates operation that controls BART unit emissions by less than the unit's full control capacity by reducing non-BART emissions to a slightly greater degree below baseline levels, the company would be achieving a slightly greater environmental benefit than if it had controlled BART unit emissions at full BART control levels and operated the non-BART units at baseline emission levels. This scenario is fully authorized in 40 CFR 51.308(e), which allows satisfaction of BART requirements by alternate strategies involving control at non-BART units that achieve greater environmental benefit than the strategy that simply controls BART units with BART-level control.

Strictly speaking, Wisconsin's administrative order does not regulate which boilers are in operation at any given time. For example, Georgia-Pacific is allowed under the order to resume operation of a fifth boiler. The important point here is that regardless of which boilers are operating, total emissions must be below levels that would occur if Wisconsin were simply mandating BART controls on the BART units.

Comment: Sierra Club echoes comments made by the National Park Service and the U.S. Forest Service (misidentified as the Fish and Wildlife Service) during the State's public comment process that the cap ''is inflated because it relies on 'baseline' emissions'' that include emissions for a shutdown boiler (B24) and used emissions for a '' 'design fuel' rather than the more representative fuels for the boilers.''

Response: In response to similar comments on a July 2011 draft plan, Wisconsin made the recommended changes, determining baseline emissions by excluding emissions from the shutdown boiler and removing any adjustments for ''design fuels.'' Thus, this comment has previously been addressed.

Comment: Sierra Club objects that, with Georgia-Pacific's limit expressed as a cap on emissions from both BART and non-BART boilers, any future requirement to reduce emissions at the non-BART boilers will allow correspondingly more emissions at the BART boilers. Sierra Club in particular identifies two pending actions that in its view will likely require emission reductions at the non-BART boilers: An EPA rulemaking to require maximum available control technology at industrial boilers and a petition by the Sierra Club for EPA to find that this Georgia-Pacific facility should have become subject to tighter limits under prevention of significant deterioration regulations.

Response: EPA's regional haze regulation authorizes the State to establish a BART strategy that includes credit for measures that have been implemented since the baseline date of the SIP (which is 2002). In practice, the boilers at Georgia-Pacific vent to a common stack and the limits are designed to limit the combined set of emissions from the facility. Consistent with EPA's regional haze rule, Wisconsin's limits require a suitable degree of emission reduction from this facility and it is not necessary for Wisconsin to require these reductions to apply to the emissions of particular boilers. Second, Wisconsin is not required to mandate further emission reductions, either at the BART boilers or at other boilers from which it mandates emission reductions as part of its BART strategy, to go beyond the reductions that might be required in the future. Instead, the degree of reduction required to satisfy the regional haze rule is independent of the reductions mandated by other regulatory requirements that apply sooner or later after the baseline date. Third, future requirements on the non-BART boilers, such as Maximum Available Control Technology for boilers, will also apply to the BART boilers. As a result, the situation feared by the commenter, in which compliance with tight requirements on the non-BART boilers allows Georgia-Pacific to have minimal control of the BART boilers, is unlikely to arise. Finally, the degree of SO_2 and NO_X emission control, if any, that might be required by the regulations cited by Sierra Club is speculative and too uncertain to consider here.

Comment: Sierra Club cites EPA as noting that ''its Draft Economic Incentives Program Guidance is relevant to this rulemaking.'' Sierra Club states that this guidance allows credit only for emission reductions that are surplus and beyond current regulatory

requirements. Furthermore, ''the Guidance notes that the reduction cannot be required by any regulatory requirement at the time the reductions occur,'' which Sierra Club considers to mean reductions required by 2015. Sierra Club cites ''the industrial boiler hazardous air pollutant rule, the 1-hour SO_2 SIP, and new source review requirements'' as regulations that will require reductions before 2015, such that Wisconsin may only use credit for reductions below the 2015 levels.

Response: In cases like this where a subject is addressed by both the general guidance in the draft Economic Incentive Program Guidance and in program-specific guidance that more directly addresses specific statutory requirements, EPA gives more weight to the regulatory provisions that are promulgated for the specific statutory requirements, in this case to the provisions of the regional haze rule. As noted above, the regional haze regulations promulgated in 40 CFR 51.308 allow credit for reductions achieved after the baseline date of the SIP (2002), irrespective of any recommendations to the contrary in the draft Economic Incentives Program Guidance.

Comment: Sierra Club comments that, ''the emission limits proposed by Wisconsin also apply the BART-level emission reductions to a faulty 'baseline.' * * * First, Wisconsin's baseline relies on an unreasonable assumption that the boilers always operate at the *maximum* heat input during any 30-day period or annual period between 2002–2004. [As a result,] boilers B26 and B27 will rarely, if ever, actually be required to meet the control efficiencies determined to represent BART. * * * Furthermore, because the facility operated more and emitted more in 2002–2004 than in recent years, using a baseline from a decade ago is unrepresentative of more recent operations.'' Sierra Club provided various calculations to illustrate its point that current operations cause substantially lower emissions, so that deriving a limit from emissions in 2002–2004 yields an inflated limit that requires substantially less control than BART. Similarly, Sierra Club objects to the derivation of a monthly emission limit from the peak operating rate rather than from a more representative operating rate. Sierra Club recommends instead that EPA ''require that the boilers B26 and B27 comply with a percent reduction [limit] through a weighted average of fuel input into each boiler.''

Response: EPA believes that Wisconsin has made a reasonable choice in formulating its limits on Georgia-Pacific's SO_2 and NO_X emissions as mass emission limits governing the emissions of all the boilers in the facility. While the facility's current emissions are lower than the emissions during the baseline period, EPA's regional haze rule allows credit for such reductions, insofar as the reductions contribute to mitigating regional haze. Wisconsin reasonably based its limits on the peak baseline emission levels rather than average emission levels, since the State must set a limit that requires continuous compliance and the limit must be a level that can be achieved even at peak operating rates. EPA agrees that a limit defined as a weighted average of the intended emission factor (e.g., in pounds per million British Thermal Units for each boiler) times the applicable boiler's heat input would also be an appropriate form for the limit, but EPA finds Wisconsin's formulation of its limit to be fully approvable and fully adequate as well.

Comment: Sierra Club comments that EPA should have required further control at the non-BART boilers at Georgia-Pacific, for purposes of achieving reasonable progress in mitigating visibility impairment.

Response: Since the non-BART boilers by definition are not required to install or operate BART-level controls, the reasonableness of control at the non-BART boilers at Georgia-Pacific is judged according to the same criteria as control at other facilities. EPA believes that Wisconsin has mandated sufficient emission reductions to address the requirements for reasonable progress.

Comments by NPS

Comment: NPS states, ''Boiler B25 ceased operation in 2008. WDNR and EPA propose to allow the combined baseline emissions to include emissions from boiler B25 that has not operated for three years, as well as boilers B26, B27, and B28. However, in its September 2011 letter to WDNR, EPA commented that including emissions from the non-operational boiler B25 in the combined emissions limit would allow less effective controls of the BART boilers.''

Response: As Wisconsin explains in its response to comments, while Georgia-Pacific ceased operation of boiler B24 in 2004, it has only suspended operation of boiler B25, pending resolution of questions regarding whether the requirements of the Clean Air Interstate Rule apply to this boiler. EPA then found, on May 2, 2011, that the boiler was exempt from requirements of the Clean Air Interstate Rule, so that the company no longer had this disincentive for operating this boiler. While this issue was being resolved, Georgia-Pacific had relatively constant total boiler use but shifted load from boiler B25 to its other boilers. Now that this issue is resolved, representative operation of Georgia-Pacific's boilers may be considered to include operation of boiler B25. For this reason, EPA considers boiler B25 (unlike B24) to be a source for which the baseline emissions may reasonably be included in determining a collective limit on emissions of operating boilers at Georgia-Pacific.

Comment: NPS asserts that, ''Controls on boiler B28 are warranted for reasonable progress because the northern Class I areas impacted by Wisconsin's emissions are not meeting or just meeting the uniform rate of progress for visibility improvement. The BART and reasonable progress levels of control should be 95% for sulfur dioxide and 75–85% for nitrogen dioxide.''

Response: The non-BART boilers at Georgia-Pacific are a few among many boilers in Wisconsin that warrant consideration for control. The Georgia-Pacific boilers warrant review under the same criteria as the other boilers in the State. Wisconsin reviewed the information generated by the Midwest Regional Planning Organization (MRPO), addressing the factors pertinent for judging potentially reasonable measures, and concluded that additional control of industrial, commercial, and institutional boilers was not a reasonable measure at this time. This conclusion implicitly applies to the non-BART boilers at Georgia-Pacific as well as to other boilers in the State. Wisconsin will reassess the reasonableness of control of this category of boilers in a regional haze plan for a future implementation period.

Comment: NPS ''disagree[s] with Wisconsin's and EPA's proposal to approve four different combinations of SO_2 and NO_X emissions limits as BART for the combined stack and to allow Georgia-Pacific to select by July 15, 2013, which emissions limits to meet. We are not aware of any other situation in the country where EPA proposes to allow a source to meet one of multiple emissions limits. * * * In the approved Plan, the more stringent limits each for SO_2 and for NO_X should be determined to be BART and less stringent alternative emissions limits should not be permitted.''

Response: The administrative order that EPA proposed to approve identifies four potential sets of emission limits and specifies a process by which one of these sets of limits shall be identified by July 15, 2013, as the enforceable limits

for Georgia-Pacific. The ''baseline'' limits were derived independently for SO_2 and for NO_X based on baseline emissions for the four operating (or potentially operating) boilers minus the emission reductions expected from BART controls on the BART boilers minus a reduction for ''environmental benefit.'' EPA found these limits to satisfy the requirements under 40 CFR 51.308(e)(2) for providing greater reasonable progress in mitigating visibility impairment than direct application of BART limits, and so EPA found these limits to satisfy the BART requirements of 40 CFR 51.308(e). EPA then examined the three alternative sets of limits submitted by Wisconsin. The intent of the State was to establish equivalent alternatives, by setting increased NO_X emission limits and setting SO_2 emission limits that were reduced by an amount equal to twice the amount by which the NO_X limits were increased. The three alternatives differ only in the magnitude of the NO_X limit increases and the associated SO_2 limit decreases. In EPA's view, the modeling submitted by Wisconsin justifies the State's view that the three alternative sets of limits could be expected to provide at least approximately the same degree of visibility protection as the baseline limits. From this, EPA concluded that any of the four sets of limits that may be selected would provide better visibility protection than would be obtained with direct application of BART limits on the BART sources. While states do not usually identify and submit, and EPA does not usually approve, alternative sets of limits, EPA believes in this case that Wisconsin has provided sufficient justification for each of the alternatives. EPA is assured that a single set of limits will be unambiguously identified as the applicable limits within a sufficiently short period of time (by July 15, 2013, well before the January 1, 2016 compliance date) and thus is approving this approach.

Comment: NPS observes that Wisconsin's determination of whether its EGUs warranted tighter particulate matter (PM) limits was based on actual emissions rather than allowable emissions. NPS provided a table comparing actual PM emission rates to permissible PM emission rates, indicating that the applicable emission limits are in most cases substantially higher than actual emission rates. NPS believes that Wisconsin's modeling is an inadequate justification for avoiding a full five-factor review of BART with respect to PM. NPS suggests that Wisconsin could satisfactorily justify avoiding a full five-factor analysis either by demonstrating (with revised modeling) that allowable PM emission rates have minimal visibility impact or by revising PM limits to reflect current actual emissions.

Response: EPA believes that Wisconsin has adequately justified its conclusion that its limits for PM emissions from EGUs satisfy BART requirements. First, Wisconsin's findings are consistent with findings by MRPO and findings by other states that even the higher allowable levels of PM emissions are unlikely to cause significant visibility impairment, as a result of the dispersion of PM that occurs over the distances from the EGUs and the Class I areas. Second, Wisconsin's PM limits, despite being well above actual controlled emission levels in most cases, are arguably tight enough to require the companies to reduce PM emissions to levels that are insignificant from a visibility perspective. Wisconsin did note that one facility complying with applicable limits was emitting relatively large quantities of PM; Wisconsin reduced this facility's allowable PM emissions. EPA is satisfied that all of Wisconsin's EGUs can be expected to emit quantities of PM that are *de minimis* for visibility purposes.

Comment: NPS comments that limits should be based on more recent data that better represent the current operations. These more recent data suggest use of a baseline with significantly lower emissions.

Response: The regional haze rule authorizes states to determine limits based on emissions during the baseline period, irrespective of subsequent emission reductions. The subsequent emission reductions would be considered creditable emission reductions that needn't result in calculation of lower emission limits. The most significant change in emissions over that period has been the result of the use of fuel with lower sulfur content. These reductions are creditable, and Wisconsin is not required to use a baseline that is reduced to reflect these reductions.

Comment: NPS takes note of EPA's finding ''that emissions limits of 2,340 [tons per year (tpy)] of SO_2 and 977 tpy of NO_X are [BART] * * * EPA then goes on to propose that a SO_2 limit as low as 1,250 tpy and a NO_X limit as high as 1,522 tpy are also [BART].'' NPS continues, ''If EPA believes that 1,250 tpy is BART for SO_2 then it should not allow Georgia-Pacific to emit 2,340 tpy under any circumstance. Likewise, if EPA believes that 977 tpy is BART for NO_X, then it should not allow Georgia-Pacific to emit 1,522 tpy under any circumstance.''

Response: Wisconsin defines BART in terms of control equipment that achieves specified levels of control of SO_2 and NO_X emissions from boilers B26 and B27. These limits do not define BART per se; instead, these limits, which also limit emissions from two boilers that are not required to have BART control, are designed to satisfy BART requirements by requiring emission reductions that would yield better visibility protection than would be obtained by requiring BART alone. The limits of 2,340 tpy of SO_2 and 977 tpy of NO_X represent Wisconsin's ''baseline'' 12-month rolling emission limits. The limits of 1,250 tpy of SO_2 and 1,522 tpy of NO_X represent Wisconsin's ''Alternative 3'' 12-month rolling emission limits. In each case, the limits reflect a set of control measures that EPA finds to provide better visibility protection than would be obtained from direct application of the measures determined to represent BART. Requiring Georgia-Pacific to meet the Alternative 3 SO_2 limits and the baseline NO_X limits would of course also provide better visibility protection, but such an approach is not necessary to meet BART requirements.

Comment: NPS states, ''Emission limits must reflect the best level of 'continuous emission reduction,' and the proposed mass cap limits would allow a very high lb/mmBtu emission rate during periods of low utilization.''

Response: Wisconsin's emission limits apply at all times and therefore require continuous emission reduction. EPA allows states to express limits in various forms, including in the form of mass limits, as adopted by Wisconsin, as well as in the form of emission rate limits, as urged by NPS. Wisconsin has adopted a reasonable limit, which was designed to be achievable with BART level control even during periods of maximum plant utilization. Given the air pollution control equipment that these limits will require Georgia-Pacific to install, EPA expects significant emission reductions at all times.

Comment: NPS comments, ''EPA should not allow the source to mix-and-match to find the least stringent combination for each situation.'' NPS quotes from an EPA letter to Wisconsin: ''If Wisconsin wishes to pursue 30-day averaging, in combination with an annual emissions cap, the State must provide justification.'' NPS then comments that, ''EPA has not explained why it now accepts the approaches that it recently rejected.''

Response: Wisconsin is no longer pursuing the variable limit approach that EPA was referring to in the letter the commenter is citing. Georgia-Pacific has an initial option to choose among four defined sets of limits, each of which has been found acceptable. To be precise, Wisconsin's administrative order establishes a baseline set of limits that apply by default, but the order also provides that one of three identified alternative sets of limits becomes the enforceable limits if Georgia-Pacific selects the alternative by July 15, 2013. The selected limits, or, in absence of a selection, the baseline limits, are permanently enforceable unless Wisconsin justifies limit revisions through a SIP revision process. Thus, EPA is not accepting an approach ''it recently rejected.''

Wisconsin has provided suitable justification for using a 30-day average limit. Regional haze is measured as an average over 20 percent of the days of a year (the 20 percent worst days or the 20 percent best days), and so expressing the emissions limit as a 30-day limit, supplemented by a 12-month limit that further limits average emission controls, suitably limits emissions consistent with the averaging time of the metric being addressed.

Comment: NPS objects that, ''EPA proposes to allow WDNR to take advantage of the purported Stack S10 10 percent emission reduction more than once.'' NPS states, ''while it is appropriate under EPA's Economic Incentive Program to reduce allowable emissions by '10 percent for the benefit of the environment,' it is not appropriate to use that same 10 percent reduction again to 'arguably compensate for that uncertainty as to how much the emissions from the BART boilers will be controlled.' ''

Response: NPS provides no reason that the pertinent reduction in the emission limit cannot serve multiple purposes. Arguably, the 10 percent reduction recommended in the Economic Incentive Program policy is to assure that the economic incentive program provides environmental benefit, notwithstanding the uncertainty regarding the extent to which individual sources will be controlled. EPA guidance does not require that Wisconsin reduce its emission limits to provide environmental benefit and then reduce its emission limits further to address uncertainty about which sources will reduce emissions by how much.

Comment: NPS does not believe that EPA has properly supported a conclusion that Wisconsin's long-term strategy provides for satisfaction of RPGs. NPS notes differences between the visibility projections of the Central Regional Air Partnership (CENRAP) given in Minnesota's SIP and the projections of the MRPO that Wisconsin presents. With either set of projections, ''The [RPGs] provides for less annual progress towards the ultimate visibility goals than the uniform rate of progress.''

NPS notes comments it made to Wisconsin regarding an absence of a four-factor analysis of potential emission control measures for providing reasonable progress. NPS observes that Wisconsin responded by providing an analysis of emissions divided by distance (''Q/d'') and by noting significant emission reductions that have occurred beyond the reductions originally expected in Wisconsin's regional haze plan, but NPS finds that Wisconsin set no criteria for conducting a four-factor review. In NPS' view, several sources in Wisconsin, including the non-BART units at Georgia-Pacific, warrant consideration for further controls for purposes of achieving reasonable progress. Finally, NPS quotes EPA as finding that ''additional controls for [industrial, commercial, and institutional (ICI) boilers] are not needed now,'' but NPS believes that EPA has not justified this conclusion.

Response: Wisconsin relied on information developed by the MRPO that addressed the four factors to be considered in evaluating reasonable measures for purposes of providing reasonable progress. Wisconsin evaluated this information and concluded that the control measure that warranted most consideration as a further measure was control of ICI boilers. However, Wisconsin noted that EPA is exploring setting limits on these facilities in conjunction with CSAPR. Regional multi-state action on these sources would provide significantly more benefit than action in Wisconsin alone. Wisconsin noted that the limiting factor for providing further progress in addressing visibility impairment was the time needed to define and implement further controls. Wisconsin noted that EPA is still evaluating the potential for further reductions from ICI boilers. The State concludes that further reductions from this sector cannot reasonably be required in a timely fashion for the long-term strategy of this implementation period. Wisconsin further concluded that other sources categories are less appropriate to regulate in this long-term strategy. EPA concurs with Wisconsin's conclusion, finding that the State has conducted adequate analysis and presented suitable justification that its long-term strategy provides adequate contribution to meeting applicable RPGs.

Comment: NPS quotes Wisconsin as ''assert[ing] that the rate of emission reduction projected for Wisconsin sources, compared to those of Michigan and Minnesota, shows that Wisconsin is meeting its share of visibility improvement. Figures 6 and 7 * * * show that Wisconsin emissions, using the 'on the books' inventory, decrease at a similar or greater rate than Michigan and Minnesota emissions.'' NPS observes, ''However, inspection of Figures 6 and 7 finds that, while Wisconsin is predicting greater reductions in NO_X than MI and MN, it falls short of the SO_2 reductions estimated in MN. WDNR should have conducted a valid four factor analysis of specific sources to determine what emissions controls are reasonable.''

Response: NPS correctly characterizes the information in Figures 6 and 7. However, the critical test is whether Wisconsin has provided ''all measures necessary to obtain its share of the emission reductions needed to meet the progress goal for the [affected Class I areas].'' (40 CFR 51.308(d)(3)(ii)) Irrespective of modest differences in the emission reductions achieved in different states, Wisconsin's data show that Wisconsin is implementing measures similar to those in other neighboring states. Based on Wisconsin's submission, EPA concludes that Wisconsin has in place measures that will allow it to meet applicable RPGs.

WDNR

Comment: ''WDNR believes that U.S. EPA inadvertently mislabeled the control technologies for NO_X and SO_2 which WDNR * * * determined to be BART at the Georgia-Pacific facility in Green Bay. Accordingly, WDNR requests that U.S. EPA make the following corrections to the BART control technologies listed in the proposed approval: change 'wet scrubbing' to 'dry scrubbing' for SO_2 BART; and change 'recirculating selective catalytic reduction' to 'regenerative selective catalytic reduction' for NO_X BART.''

Response: EPA acknowledges and corrects these errors. As noted by WDNR, the technologies that it determined to be BART are dry scrubbing for SO_2 and regenerative selective catalytic reduction for NO_X.

Georgia-Pacific

Comment: Georgia-Pacific notes the same errors that WDNR identified in EPA's description of the control technology found to be BART.

Specifically, Georgia-Pacific quotes from WDNR's submission: ''The final BART determination for SO_2 reflects fuel switching of petroleum coke from BART boilers B26 and B27, followed by circulating bed dry scrubbing technology at 93 percent control.'' Georgia-Pacific quotes further from WDNR's submittal: ''For B27, a cyclone boiler, the BART determination for NO_X reflects overfire air combustion modifications followed by Regenerative Selective Catalytic Reduction (RSCR) to yield an 85 percent long-term NO_X Control requirement.''

Response: As requested, EPA is correcting the description of the technology determined to be BART to include, in part, dry scrubbing technology and regenerative selective catalytic reduction.

Comment: Georgia-Pacific supports EPA's findings regarding the adequacy of its limits to satisfy BART requirements. The company in particular agrees with EPA's position that the limits established for the sum of emissions across all operating boilers at the facility provide additional environmental benefits, as recommended in the EPA Draft Economic Incentive Policy Guidance.

Response: EPA acknowledges Georgia-Pacific's support for its proposed action.

Comment: Georgia-Pacific ''supports WDNR's simplified approach for establishing a 'not-to-exceed' emissions curve (line) instead of a mass cap established by a single point or a set of three sets [of] alternative emission limits.'' Georgia-Pacific notes that EPA in its notice of proposed rulemaking ''agrees that different pairs of SO_2 and NO_X emission limits can provide equivalent visibility improvement.'' Georgia-Pacific then notes that WDNR in its submission ''supports a more simplified approach'' in which Georgia-Pacific ''does not need to elect one set of SO_2 and NO_X mass caps,'' but instead allows inter-pollutant trading, using ''the established 2:1 trading ratio'' (*i.e.,* requiring two tons less SO_2 emissions for each ton more of NO_X emissions), such that Georgia-Pacific may comply with any combination of SO_2 and NO_X emissions that meet an equation defining combinations with equivalent benefits. Accordingly, Georgia-Pacific envisions a graph of the SO_2 and NO_X limits in the baseline limits and the three alternative sets of limits, and the company observes that these four points on this imagined graph lie along a straight line. ''We believe that equivalent improvements in visibility exist for any emission limit set that also lies on the line.'' Georgia-Pacific quotes from WDNR's submittal: ''This approach allows the control levels to be varied over time based on the most effective option at that time. Further, this approach does not require an election of one set of mass caps by July 15, 2013, and or SIP approval for mass caps identified at a later time.''

Georgia-Pacific concludes, ''The compliance date for BART controls in DNR's SIP is December 31, 2015. We request the SIP allow the state flexibility in granting alternate emission limits through December 31, 2015 through amendment of a state-authorized order or other mechanism deemed appropriate by WDNR. Between today and December 31, 2015, these boilers require other controls to meet 40 CFR 63 DDDDD (Industrial Boiler MACT). With the ultimate Boiler MACT rule requirements still uncertain, adjustments to the alternate BART emission limits may be necessary to provide a reasonable solution to comply with both overlapping requirements.''

Response: Wisconsin's submission identifies a baseline set of limits and three alternative sets of limits, with provision for Georgia-Pacific either to become subject to the baseline set of limits or to choose by July 15, 2013 to become subject to one of the three alternative sets of limits. The Wisconsin submission does not include any limits based on the more flexible approach that Georgia-Pacific suggests, and so these comments are not directly germane to Wisconsin's submission or to EPA's proposed rule. Furthermore, EPA does not have the latitude to approve a hypothetical SIP revision that differs from the State submission by including the requested flexibility.

A similar issue arose in the context of Wisconsin's July 2011 draft SIP. Therefore, EPA's comments to Wisconsin in response to that draft SIP also serve to respond to these comments. In a letter to Wisconsin dated September 16, 2011, EPA stated:

> ''While EPA's regional haze rule offers some flexibility for establishing combinations of particular control measures that provide more or less control of particular pollutants, the rule does not provide for states to adopt limits that provide for a range of control levels for one pollutant that is dependent on the level of emissions of another pollutant. Georgia-Pacific can expect to be required to reduce SO_2 emissions substantially over the next several years. Georgia-Pacific will likely need to install emission control equipment to satisfy the maximum achievable control technology (MACT) regulation for industrial boilers, and the SO_2 emission reductions will likely also be necessary to provide for attainment of the SO_2 national ambient air quality standard. If Wisconsin allows these SO_2 emission reductions (or reductions from reduced boiler usage) to replace the NO_X reductions that would otherwise be required as BART, it is quite plausible that implementation of these reductions would allow Georgia-Pacific to implement no reductions of NO_X emissions at all. In contrast, the baseline scenario involving standard limits requiring BART would require NO_X emission control regardless of whether extraneous factors require or otherwise yield SO_2 emissions below BART levels. While Wisconsin is comparing visibility levels with various potential emission scenarios against visibility in 2002 to 2004, EPA is comparing visibility under these scenarios against visibility that would be expected under a standard scenario in which BART limits apply directly to the BART units. Consequently, Wisconsin's proposed approach must be considered to authorize Georgia-Pacific to cause more visibility impairment than would be authorized under an approach that applied standard BART limits.''

Forest Service

Comment: The Forest Service referenced the comments it made to Wisconsin regarding draft regional haze plans. In particular, it cites letters to Wisconsin dated March 4, 2011, and July 27, 2011. The Forest Service states, ''We do not believe the changes made address the concerns in our previous letters.'' The Forest Service encloses copies of the previous letters, but provides no discussion regarding which concerns remain unaddressed. The letters address BART for Georgia-Pacific (generally supporting Wisconsin's January 13, 2011 draft and objecting to Wisconsin's July 1, 2011 draft), the determination that the BART requirement does not apply to other sources in the State other than EGUs, and the provisions in the long-term strategy for achieving RPGs.

Response: Wisconsin's regional haze plan includes responses to comments, including responses to both comment letters from the Forest Service. Implicit in EPA's proposal to approve Wisconsin's plan is a finding that Wisconsin has satisfactorily addressed the comments it received. In general, Wisconsin modified its BART determination for Georgia-Pacific in response to some comments and justified its draft determination with respect to other comments. Wisconsin justified its determination of which sources were subject to a BART requirement, and Wisconsin justified the features of its long-term strategy as implementing its share of reductions for achieving RPGs. In absence of identification of particular issues that remain of concern and explanation of the Forest Service's disagreements with EPA's proposed rule and with Wisconsin's responses to its comments,

EPA continues to believe that Wisconsin has appropriately addressed comments by the Forest Service.

III. What action is EPA taking?

EPA is approving Wisconsin's regional haze plan as satisfying the applicable requirements in 40 CFR 51.308. The plan identifies affected Class I areas, calculates the baseline and natural visibility, establishes RPGs, relies on CSAPR to address BART requirements for nine EGUs that are subject to BART, mandates BART measures for Georgia-Pacific, establishes a Long-Term Strategy for making reasonable progress toward visibility goals, and provides a monitoring strategy.

A key element of Wisconsin's plan is an administrative consent order establishing emission limits satisfying BART requirements for Georgia-Pacific. Wisconsin issued this order, Administrative Consent Order Number 405032870, on June 8, 2012. This Order provides a baseline set of emission limits and three alternative sets of emission limits, and provides a selection process to be completed by June 15, 2013, such that one of these sets of emission limits for Georgia-Pacific shall become permanent and State enforceable. The Georgia-Pacific BART emission limits will become Federally enforceable with this SIP approval.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 15, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.2570 is amended by adding paragraph (c)(124) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(124) On January 18, 2012, supplemented on June 7, 2012, Wisconsin submitted Wisconsin's regional haze plan to EPA. This regional haze plan includes an administrative consent order specifying limits satisfying best available retrofit requirements for Georgia-Pacific Consumer Products, L.P. This plan also includes a long-term strategy with emission reductions to provide Wisconsin's contribution toward achievement of reasonable progress goals at Class I areas affected by emissions from Wisconsin sources.

(i) Incorporation by reference.

(A) Administrative Consent Order Number 405032870, issued by the Wisconsin Department of Natural Resources on June 8, 2012, to Georgia-Pacific Consumer Products LP.

(B) Construction Permit Number 11–POY–123, issued by the Wisconsin Department of Natural Resources on November 11, 2011, to Wisconsin Power & Light for its Columbia Energy Center.

* * * * *

[FR Doc. 2012–19137 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0501; FRL9699–3]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Forest County Potawatomi Community Reservation Class I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving procedures for permitting certain sources in relation to the Forest County Potawatomi Community (FCP Community) Class I Area into the Wisconsin State Implementation Plan (SIP). These provisions were submitted by the Wisconsin Department of Natural Resources (WDNR) on May 12, 2011. The provisions include the regulation of certain sources constructing near the FCP Community Class I Area, as well as procedures for the FCP Community's demonstration regarding a source that may have an adverse impact on the Class I Area. The provisions implement portions of a Memorandum of Agreement (MOA) entered into by Wisconsin and the FCP Community as part of a dispute resolution related to the Class I Area redesignation.

DATES: This final rule is effective on September 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2011–0501. All documents in the docket are listed on the *www.regulations.gov* web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What is being addressed by this document?
II. What sections of Wisconsin's rules are we approving?
III. What comments did we receive on the proposed rule?
IV. What action is EPA taking?
V. Statutory and executive order reviews.

I. What Is Being Addressed by This Document?

On April 5, 2012, at 77 FR 20575, EPA proposed to approve regulatory revisions that Wisconsin submitted for EPA's approval which include defining the geographic center of the FCP Community Class I Area for purposes of air quality management; provisions which require proposed new major sources or major modifications of existing sources locating within 22.25 miles of the geographic center of the FCP Community Class I Area to conduct a Class I increment analysis; and provisions which would require proposed new major sources or major modifications of existing sources locating outside 22.25 miles of the geographic center of the FCP Community Class I Area to conduct a Class II increment analysis. The rules also include procedures for the FCP Community to coordinate with the State regarding comments on sources potentially impacting the Class I Area and to make a demonstration to the State that a proposed source may have an adverse effect on Air Quality Related Values(AQRVs). Finally, the rules provide the FCP Community with the opportunity to review certain best available control technology (BACT) and maximum achievable control technology (MACT) determinations made by the State, and provide a dispute resolution mechanism for resolving disagreements regarding those BACT or MACT determinations.

The changes to the Wisconsin SIP implement portions of an MOA signed by Wisconsin and the FCP Community in 1999. This MOA was part of a dispute resolution process related to the FCP Community Class I Area redesignation in 2008. For additional background information on the Class I Area redesignation, see 73 FR 23086, April 29, 2008, and 77 FR 20575, April 5, 2012.

II. What sections of Wisconsin's rules are we approving?

EPA is approving revisions to chapters NR 400, 405, and 406 of the Wisconsin Administration Code into the Wisconsin SIP. Specifically, we are approving NR 400.02(66m), 405.19 and 406.08(4). The revisions include adding a definition for the geographic center of the FCP Community, as well as establishing the distance from this center point at which a major source or major modification would be required to comply with regulations regarding impacts to the Class I Area, including a Class I increment analysis and consumption limits. Additionally, the provisions establish procedures for the FCP Community to have opportunities to review BACT and MACT determinations and to demonstrate that impacts from a new source would have an adverse impact on AQRV's of the FCP Community Class I Area.

III. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on May 7, 2012. EPA received comments in support of the proposed approval from the FCP Community. EPA received no adverse comments on the proposed rule.

IV. What action is EPA taking?

In today's action, EPA is approving NR 400.02(66m), 405.19 and 406.08(4) into the Wisconsin SIP relating to permitting for certain sources with the potential to impact the FCP Community Class I Area. As explained above, and at 77 FR 20575, the provisions will affect permitting for those sources constructing within a certain distance to the FCP Community as well as any source with the potential to have an adverse impact on the increment or AQRVs associated with the FCP Community's Class I Area. This action does not affect any permitting within the FCP Community's reservation and EPA remains the federal permitting authority for the FCP Community's reservation.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. In May 2011, EPA issued its policy on consultation and coordination with Indian tribes. EPA explained that its policy is to consult on a government-to-government basis with Federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Accordingly, EPA engaged in consultation with the FCP Community regarding the Wisconsin proposed SIP revisions. This process is further described in 77 FR 20575, 20577.

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

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 27, 2012.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(125) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(125) On May 12, 2011, the Wisconsin Department of Natural Resources submitted a request to revise the State Implementation Plan regarding procedures for permitting certain sources in relation to the Forest County Potawatomi Community Class I Area.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 400.02 Definitions. NR 400.02(66m) ''Forest County Potawatomi Community Class I area'' or ''FCPC Class I area'' as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

(B) NR 405.19 Forest County Potawatomi Class I area, as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

(C) NR 406.08 Action on permit applications. NR 406.08(4)(a) and (4)(b) as published in the Wisconsin Administrative Register November 2010, No. 659, effective December 1, 2010.

* * * * *

[FR Doc. 2012–19138 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0695; FRL–9689–8]

Approval and Promulgation of Implementation Plans; Wisconsin; Volatile Organic Compound Emission Control Measures for Milwaukee and Sheboygan Ozone Nonattainment Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving, under the Clean Air Act (the Act), revisions to the Wisconsin State Implementation Plan (SIP) submitted on September 1, 2009, November 16, 2011, and January 26, 2012. The purpose of these revisions is to satisfy the Act's requirement that states revise their SIPs to include Reasonably Available Control Technology (RACT) for sources of Volatile Organic Compound (VOC) emissions in moderate ozone nonattainment areas. Wisconsin's VOC rules provide RACT requirements for the Milwaukee-Racine and Sheboygan 1997 8-hour ozone nonattainment areas. These rules are approvable because they are consistent with the Control Technique Guideline (CTG) documents issued by EPA in 2006 and 2007 and satisfy the RACT requirements of the Act. EPA proposed this rule for

approval on February 22, 2012, and received no comments.

DATES: This final rule is effective on September 6, 2012.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–R05–OAR–2009–0695. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Steven Rosenthal, Environmental Engineer, at (312) 886–6052 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Steven Rosenthal, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6052.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What public comments were received on the proposed approval?
II. What action is EPA taking today and what is the basis of this action?
III. Statutory and Executive Order Reviews

I. What public comments were received on the proposed approval?

EPA proposed this rule for approval on February 22, 2012, and received no comments.

II. What action is EPA taking today and what is the basis of this action?

EPA is taking final action to approve into Wisconsin's SIP VOC RACT rules for the Milwaukee-Racine and Sheboygan 1997 8-hour ozone nonattainment areas that were submitted on September 1, 2009, November 16, 2011, and January 26, 2012. The purpose of these rules is to satisfy the Act's requirement that states revise their SIPs to include RACT for sources of VOC emissions in moderate ozone nonattainment areas. Wisconsin's VOC rules provide RACT requirements for the Milwaukee-Racine and Sheboygan 1997 8-hour ozone nonattainment areas. These rules are approvable because they are consistent with the CTG documents issued by EPA in 2006 and 2007 and satisfy the RACT requirements of the Act.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 9, 2012. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: June 11, 2012.

Susan Hedman,

Regional Administrator, Region 5.

Therefore, 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.2570 is amended by revising paragraph (c)(123) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(123) On September 1, 2009, November 16, 2011, and January 26, 2012, the Wisconsin Department of Natural Resources submitted new and revised rules to be incorporated into its SIP. Wisconsin revised it Volatile Organic Compound (VOC) rules to satisfy the Clean Air Act's (Act) requirement that states revise their SIPs to include Reasonably Available Control Technology (RACT) for sources of VOC emissions in moderate ozone nonattainment areas. Wisconsin's VOC rules provide RACT requirements for the Milwaukee-Racine and Sheboygan 1997 8-hour ozone nonattainment areas.

(i) *Incorporation by reference.* The following sections of the Wisconsin Administrative Code are incorporated by reference:

(A) NR 400.02 Definitions. NR 400.02(26m), (54m), (85m), (93m), (107m), (133e), (133m), and (133s), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(B) NR 419.02 Definitions. NR 419.02(8m) and (14r), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(C) NR 419.02 Definitions. NR 419.02(1e), (1m), (1s), (3e), (3m), (3s), (6m), (7m), (8e), (10g), (10r), (11m), (12m), (14b), (14e), (14h), (14L), (14p), (14u), (14y), (15d), (15h), (15p), (15t), (16m), (18e), (18m), (18s), (22), and (23), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(D) NR 419.045 Industrial wastewater operations, as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(E) NR 420.02 Definitions. NR 420.02(31), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(F) NR 421.02 Definitions. NR 421.02(18m) and (23), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(G) NR 421.05 Synthetic resin manufacturing. NR 421.05(1)(a), (1)(b)(intro.), (1)(c), (2m), (3)(a)(intro.), (3)(c), and (4), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(H) NR 421.06 Coatings manufacturing. NR 421.06(1)(a), (1)(b)(intro.), (1)(c), (2m), (3)(a)(intro.), (3)(c), and (4), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(I) NR 421.07 Synthetic organic chemical manufacturing industry. NR 421.07(1)(b), (2), (3), (4), and (6), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(J) NR 421.07 Synthetic organic chemical manufacturing industry. NR 421.07(1)(a), (3)(a)5, (4)(a)5, and (5), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(K) NR 422.02 Definitions. NR 422.02(12s), (13), (21g), (26m), (37m), (40m), (53i), (54s), (57m), (77), (80m), (87v), (87x), (90m), (102), and (107m), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(L) NR 422.02 Definitions. NR 422.02 (12), (34g), (34r), (83), and (90r), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(M) NR 422.03 Exemptions. NR 422.03 (1) and (3), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(N) NR 422.05 Can coating. NR 422.05(1), (1m), (3), and (4), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(O) NR 422.06 Coil coating. NR 422.06(1), (1m), (3), and (4), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(P) NR 422.07 Paper coating—part 1. NR 422.07 (title), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(Q) NR 422.075 Paper coating—part 2. NR 422.075(1), (2), (3)(intro.), (3)(a), (3)(c), (3)(d), (3)(e), and (3)(f), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(R) NR 422.075 Paper coating—part 2. NR 422.075(3)(b), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(S) NR 422.08 Fabric and vinyl coating. NR 422.08(1), (1m), (3), and (4), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(T) NR 422.083 Plastic parts coating. NR 422.083(1)(a), (1)(b), (1)(bm), (3) including Table 1B (title), and (3m), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(U) NR 422.085 Leather coating. NR 422.085(1), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(V) NR 422.09 Automobile and light-duty truck manufacturing. NR 422.09(1) and (6), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(W) NR 422.095 Automobile refinishing operations. NR 422.095(1), (2)(a), (2)(c), (2)(d), (2)(e), (2)(f), (2)(g), (2)(h), (2)(i), (7), and (8), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(X) NR 422.10 Furniture metal coating—part 1. NR 422.10 (title), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(Y) NR 422.105 Furniture metal coating—part 2. NR 422.105(1), (2), (3), (4), (5)(intro.), (5)(a), (5)(c), (5)(d), (5)(e), and (5)(f), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(Z) NR 422.105 Furniture metal coating—part 2. NR 422.105(5)(b), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(AA) NR 422.11 Surface coating of large appliances—part 1. NR 422.11 (title), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(BB) NR 422.115 Surface coating of large appliance—part 2. NR 422.115(1), (2), (3), (4), (5)(intro.), (5)(a), (5)(c), (5)(d), (5)(e), and (5)(f), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(CC) NR 422.115 Surface coating of large appliance—part 2. NR 422.115 (5)(b), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(DD) NR 422.125 Wood furniture coating. NR 422.125(1) and (4m), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(EE) NR 422.127 Use of adhesives. NR 422.127(2), (3m), (4)(a)(intro.), and (4)(b), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(FF) NR 422.13 Flat wood panel coating—part 1. NR 422.13 (title), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(GG) NR 422.131 Flat wood panel coating—part 2, as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(HH) NR 422.132 Wood door coating. NR 422.132(1), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(II) NR 422.135 Molded wood parts or products. NR 422.135(1), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(JJ) NR 422.14 Graphic arts. NR 422.14(1), (1m), (4), and (5), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(KK) NR 422.141 Flexible package printing, as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(LL) NR 422.142 Lithographic printing—part 1. NR 422.142 (title) and (1m), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(MM) NR 422.142 Lithographic printing—part 1. NR 422.142(5)(d), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(NN) NR 422.143 Lithographic printing—part 2. NR 422.143(1), (1m), (2), (3a), (3b), (4), (5), (6)(intro.), (6a), (6b), (6c), (6e), (7), and (8), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(OO) NR 422.143 Lithographic printing—part 2. NR 422.143(3)(c) and (6)(d), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(PP) NR 422.144 Letterpress printing, as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(QQ) NR 422.145 Screen printing. NR 422.145(1), (1m), (2m), and (4), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(RR) NR 422.15 Miscellaneous metal parts and products. NR 422.15(1) and (9), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(SS) NR 422.155 Fire truck and emergency response vehicle manufacturing. NR 422.155(1) and (5), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(TT) NR 423.02 Definitions. NR 423.02(5m) and (9t), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(UU) NR 423.035 Industrial cleaning operations—part 1. NR 423.035 (title), (1), (2)(intro.), (2)(b)(intro.), (2)(b)4, (2)(e), (2)(g), (3)(intro.), (6)(a), (6)(b), and (9)(a), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(VV) NR 423.035 Industrial cleaning operations—part 1. NR 423.035(2)(a)1, (2)(h), (4)(intro.), and (4)(a), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(WW) NR 423.037 Industrial cleaning operations—part 2, as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(XX) NR 439.04 Recordkeeping. NR 439.04(4)(intro), (4)(d), (4)(f), (4)(g), and (6), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(YY) NR 439.06 Methods and procedures for determining compliance with emission limitations (by air contaminant). NR 439.06 (3)(j), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(ZZ) NR 439.06 Methods and procedures for determining compliance with emission limitations (by air contaminant). NR 439.06(3)(b), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(AAA) NR 439.075 Periodic compliance emission testing requirements. NR 439.075(2)(c) 3. j., as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(ii) *Additional material.*

(A) NR 484.04 Code of federal regulations appendices. NR 484.04 (intro.), (13), (17), (19), (20), (20e), (25), and (27s), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(B) NR 484.04 Code of federal regulations appendices. NR 484.04(16), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(C) NR 484.05 National technical information service. NR 484.05(1), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(D) NR 484.06 Other government organizations. NR 484.06(4)(Note), (4)(e), (4)(f), and (4)(g), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(E) NR 484.10 American Society for Testing and Materials. NR 484.10(9), (12), (14), (21), (32), (36), and (56), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(F) NR 484.10 American Society for Testing and Materials. NR 484.10(6), (39m), (55b), (55bg), and (55br), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

(G) NR 484.11 Other private organizations. NR 484.11(4), as published in the Wisconsin Administrative Register July 2009, No. 643, effective August 1, 2009.

(H) NR 484.11 Other private organizations. NR 484.11(5)(Table 6E) and (12), as published in the Wisconsin Administrative Register January 2012, No. 673, effective February 1, 2012.

* * * * *

[FR Doc. 2012–19133 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R06–2012–0471; FRL–9701–7]

Oklahoma: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. The EPA uses the regulations entitled ''Approved State Hazardous Waste Management Programs'' to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to the EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Oklahoma's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations.

DATES: This regulation is effective October 9, 2012, unless the EPA receives adverse written comment on this regulation by the close of business September 6, 2012. If the EPA receives such comments, it will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect.

The Director of the Federal Register approves this incorporation by reference as of October 9, 2012 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Submit your comments by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Email: patterson.alima@epa.gov or banks.julia@epa.gov.*

3. *Mail:* Alima Patterson, Region 6, Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

4. *Hand Delivery or Courier:* Deliver your comments to Alima Patterson, Region 6, Regional Authorization Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

Instructions: Direct your comments to Docket ID No. EPA–R06–RCRA–2012–0471. EPA's policy is that all comments received will be included in the public docket without change, including personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov,* or email. The Federal *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means the 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 the EPA without going through *http://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the 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 the EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, the 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.

You can view and copy the documents that form the basis for this codification and associated publicly available materials from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202–2733, phone number (214) 665–8533 or (214) 665–8178. Interested persons wanting to examine these documents should make an appointment with the office at least two weeks in advance.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone numbers: (214) 665–8533 or (214) 665–8178, email address: *patterson.alima@epa.gov* or *banks.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. What is codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. The EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that the EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What is the history of the authorization and codification of Oklahoma's hazardous waste management program?

Oklahoma initially received Final authorization effective January 10, 1985, (49 FR 50362) to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications effective on June 18, 1990 (55 FR 14280), November 27, 1990 (55 FR 39274), June 3, 1991 (56 FR 13411), November 19, 1991 (56 FR 47675), November 29, 1993 (58 FR 50854), December 21, 1994 (59 FR 51116), April 27, 1995 (60 FR 2699), March 14, 1997 (62 FR 12100), July 14, 1998 (63 FR 23673), November 23, 1998 (63 FR 50528), February 8, 1999 (63 FR 67800), March 30, 2000 (65 FR 16528), July 10, 2000 (65 FR 29981) March 5, 2001 (66 FR 28), June 9, 2003 (68 FR 17308), April 6, 2009 (74 FR 5994), May 6, 2011 (76 FR 18927), and May 14, 2012 (77 FR 15273). The EPA first incorporated by reference Oklahoma's hazardous waste program effective December 13, 1993 (58 FR 52679), and updated the incorporation by reference effective July 14, 1998 (63 FR 23673), October 25, 1999 (64 FR 46567), October 27, 2003 (68 FR 51488), August 27, 2010 (75 FR 36546), and July 16, 2012 (77 FR 29231). In this document, the EPA is revising Subpart LL of 40 CFR part 272 to include the recent authorization revision actions effective May 6, 2011 (76 FR 18927) and May 14, 2012 (77 FR 15273).

C. What codification decisions have we made in this rule?

The purpose of this **Federal Register** document is to codify Oklahoma's base hazardous waste management program and its revisions through RCRA Cluster XX. The EPA provided notices and opportunity for comments on the Agency's decisions to authorize the Oklahoma program, and the EPA is not now reopening the decisions, nor requesting comments, on the Oklahoma authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference Oklahoma's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying Oklahoma's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the Oklahoma hazardous waste management program.

The EPA is incorporating by reference the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. Section 272.1851 incorporates by reference Oklahoma's authorized hazardous waste statutes and regulations. Section 272.1851 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program

Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What is the effect of Oklahoma's codification on enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved Oklahoma procedural and enforcement authorities. Section 272.1851(c)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State provisions are not part of the codification?

The public needs to be aware that some provisions of Oklahoma's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are ''broader in scope'' than RCRA subtitle C (see 40 CFR 271.1(i));

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions that are ''broader in scope'' than the Federal program are not part of the RCRA authorized program and the EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1851(c)(3) lists the Oklahoma regulatory provisions which are ''broader in scope'' than the Federal program and which are not part of the authorized program being incorporated by reference. ''Broader in scope'' provisions cannot be enforced by the EPA; the State, however, may enforce such provisions under State law.

Oklahoma has adopted but is not authorized for the Federal rules published in the **Federal Register** on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); June 29, 1995 (60 FR 33912), May 26, 1998 (63 FR 28556), June 14, 2005 (70 FR 34538), August 1, 2005 (70 FR 44150); December 19, 2008 (73 FR 77954); and June 15, 2010 (75 FR 33712). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:205–3–2(b) through 252:205–3–2(m) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by this **Federal Register** document.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, the EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What will be the effect of Federal HSWA requirements on the codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by the EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by the EPA (50 FR 28702, July 15, 1985). The EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), the EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by the EPA. However, until the EPA authorizes those State requirements, the EPA can only enforce the HSWA requirements and not the State analogs. The EPA will not codify those State requirements until the State receives authorization for those requirements.

G. Statutory and Executive Order Reviews

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 *FR* 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference Oklahoma's authorized hazardous waste management regulations and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which the EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it 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).

This action 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 (64 *FR* 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 *FR* 67249, November 6, 2000).

This action also is not subject to Executive Order 13045 (62 *FR* 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 *FR* 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Oklahoma's voluntary participation in the EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 *FR* 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 *FR* 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this document 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 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).

Authority: This action is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: July 5, 2012.

Samuel Coleman,

Acting Regional Administrator, EPA Region 6.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Revise § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997, July 14, 1998 and November 23, 1998, February 8, 1999, March 30, 2000, July 10, 2000, March 5, 2001, June 9, 2003, April 6, 2009, May 6, 2011, and May 14, 2012.

(b) The State of Oklahoma has primary responsibility for enforcing its hazardous waste management program. However, EPA retains the authority to exercise its inspection and enforcement authorities in accordance with sections 3007, 3008, 3013, 7003 of RCRA, 42 U.S.C. 6927, 6928, 6934, 6973, and any other applicable statutory and regulatory provisions, regardless of whether the State has taken its own actions, as well as in accordance with other statutory and regulatory provisions.

(c) *State Statutes and Regulations.* (1) The Oklahoma statutes and regulations cited in paragraph (c)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain copies of the Oklahoma regulations that are incorporated by reference in this paragraph from the State's Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152–3390; Phone number: 405–521–4911; Web site: *www.sos.state.ok.us/oar/oar_welcome.htm.* The statutes are available from West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526; Phone: 1–800–328–4880; Web site: *http://west.thomson.com.* You may inspect a copy at EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202 (Phone number (214) 665–8533), or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(i) The binder entitled ''EPA-Approved Oklahoma Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program'', May, 2012. Only those provisions that have been authorized by EPA are incorporated by reference. These provisions are listed in Appendix A to Part 272.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Oklahoma Environmental Crimes Act, as amended through July 1, 2010, 21 Oklahoma Statutes (O.S.), Sections 1230.1 *et seq.*

(ii) Oklahoma Open Meetings Act, as amended through July 1, 2010, 25 Oklahoma Statutes (O.S.), Sections 301 *et seq.*

(iii) Oklahoma Statutes, Title 27A, ''Environment and Natural Resources'', as amended through July 1, 2010: Chapter 1, ''Oklahoma Environmental Quality Act'', Sections 1–1–101 *et seq.;* Chapter 2, ''Oklahoma Environmental Quality Code'', Sections 2–2–101, 2–2–104, 2–2–201, 2–3–101(F)(1), 2–3–104, 2–3–202, 2–3–501, 2–3–502, 2–3–503, 2–3–504; ''Oklahoma Hazardous Waste Management Act'', Sections 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–109, 2–7–110(A), 2–7–111(C)(2)(b) and (c), 2–7–111(C)(3), 2–7–113.1, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(H)(1), 2–7–117, 2–7–123, 2–7–126, 2–7–129, 2–7–130, 2–7–131, 2–7–132, and 2–7–133; ''Oklahoma Uniform Environmental Permitting Act'', Sections 2–14–101 *et seq.*

(iv) Oklahoma Open Records Act, as amended through July 1, 2010, 51

Oklahoma Statutes (O.S.), Sections 24A.1 *et seq.*

(v) Oklahoma Administrative Procedures Act, as amended through July 1, 2010, 75 Oklahoma Statutes (O.S.), Sections 250 *et seq.*

(vi) The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, Hazardous Waste Management, effective July 1, 2011: Subchapter 1, Sections 252:205–1–1(b), 252:205–1–3(a) and (b), 252:205–1–4(a)–(d); Subchapter 3, Sections 252:205–3–2(a) introductory paragraph, 252:205–3–2(a)(1) and 252:205–3–2(a)(3); Subchapter 11, Section 252:205–11–3.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statutes (O.S.) as amended through July 1, 2010, Sections 2–7–119, 2–7–120, 2–7–121, 2–7–121.1 and 2–7–134.

(ii) The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, effective July 1, 2011: Subchapter 1, Sections 252:205–1–1(c)(2) and (3), 252:205–1–2 ''RRSIA''. 252:205–1–2 ''Reuse'', 252:205–1–2 ''Speculative accumulation'', 252:205–1–2 ''Transfer facility'', 252:205–1–2 ''Transfer station'', 252:205–1–4(e); Subchapter 5, Section 252:205–5–1(4), Subchapter 15; Subchapter 17; Subchapter 21; Subchapter 23; and 252:205 Appendices B, C and D.

(4) *Unauthorized State Amendments.* The State's adoption of the Federal rules listed in the following table is not approved by the EPA and are; therefore, not enforceable:

Federal requirement	**Federal Register** reference	Publication date
Toxicity Characteristics; Hydrocarbon Recovery Operations	55 FR 40834	10/5/90
	56 FR 3978	2/1/91
	56 FR 13406	4/2/91
Toxicity Characteristics; Chlorofluorocarbon Refrigerants	56 FR 5910	2/13/91
Administrative Stay for K069 Listing	56 FR 19951	5/1/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations	56 FR 66365	12/23/91
Removal of Legally Obsolete Rules	60 FR 33912	6/29/95
Mineral Processing Secondary Materials Exclusion.—Amendments to 40 CFR	63 FR 28556	5/26/98
Methods Innovation: SW–846	70 FR 34538	6/14/05
	70 FR 44150	8/1/05
Expansion of RCRA Comparable Fuel Exclusion	73 FR 77954	12/19/08

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Oklahoma, signed by the EPA Regional Administrator on March 11, 2011, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921, *et seq.*

(6) *Statement of Legal Authority.* ''Attorney General's Statement for Final Authorization'', signed by the Attorney General of Oklahoma January 20, 1984 and revisions, supplements, and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; April 15, 1997; February 6, 1998, December 2, 1998, October 15, 1999, May 31, 2000, October 15, 2001, June 27, 2003, March 1, 2005, July 12, 2005, July 03, 2006, August 25, 2008, March 26, 2010, October 11, 2010, and October 31, 2011 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272 is amended by revising the listing for ''Oklahoma'' to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 2011 Replacement Volume, Sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B), 2–7–111(C)(1), 2–7–111(C)(2)(a), 2–7–111(D), 2–7–111(E), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118, 2–7–124, 2–7–125, 2–7–127, and 2–10–301(G), as published by West Publishing Company, 610 Opperman Drive, P.O. Box 64526, St. Paul, Minnesota 55164–0526; Phone: 1–800–328–4880; Web site: *http://west.thomson.com.*

The regulatory provisions include:

The Oklahoma Administrative Code (OAC), Title 252, Chapter 205, effective July 1, 2011: Subchapter 1, Sections 252:205–1–1(a), 252:205–1–1(c) introductory paragraph, 252:205–1–1(c)(1), 252:205–1–2 introductory paragraph, 252:205–1–2 ''OHWMA'', 252:205–1–2 ''Post-closure permit'', 252:205–1–3(c); Subchapter 3, Sections 252:205–3–1, 252:205–3–2(a)(2), 252:205–3–2(b)–(n), 252:205–3–4, 252:205–3–5 and 252:205–3–6; Subchapter 5, Sections 252:205–5–1 (except 252:205–5–1(4)), 252:205–5–2 through 252:205–5–5; Subchapter 7, Sections 252:205–7–2 and 252:205–7–4 (except the phrase ''or in accordance with 252:205–15–1(d)); Subchapter 9, Sections 252:205–9–1 through 252:205–9–4; Subchapter 11, Sections 252:205–11–1(a) (except the word ''recycling''), 252:205–11–1(b)–(e), and 252:205–11–2; and Subchapter 13, Sections 252:205–13–1(a)–(e), as published by the State's Office of Administrative Rules, Secretary of State, P.O. Box 53390, Oklahoma City, OK 73152–3390; Phone number: 405–521–4911; Web site: *www.sos.state.ok.us/oar/oar_welcome.htm.*

* * * * *

[FR Doc. 2012–19139 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–8241]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities where the sale of flood insurance has been authorized under the National Flood Insurance Program

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

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the tables in this rule.

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

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

In addition, FEMA publishes a Flood Insurance Rate Map (FIRM) that identifies the Special Flood Hazard Areas (SFHAs) in these communities. The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year on FEMA's initial FIRM for the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment procedures under 5 U.S.C. 553(b), are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in SFHAs
Region III				
Pennsylvania:				
Athens, Township of, Crawford County	421562	November 28, 1980, Emerg; July 2, 1982, Reg; August 16, 2012, Susp.	Aug. 16, 2012 ...	Aug. 16, 2012.
Beaver, Township of, Crawford County	422385	January 27, 1977, Emerg; September 10, 1982, Reg; August 16, 2012, Susp.	.....do*	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in SFHAs
Bloomfield, Township of, Crawford County.	421563	July 7, 1975, Emerg; September 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Blooming Valley, Borough of, Crawford County.	421559	October 3, 1975, Emerg; November 17, 1978, Reg; August 16, 2012, Susp.	.....do	Do.
Cambridge, Township of, Crawford County.	421564	December 10, 1975, Emerg; September 10, 1984, Reg; August 16, 2012, Susp.	.....do	Do.
Cambridge Springs, Borough of, Crawford County.	420346	July 2, 1974, Emerg; August 2, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Centerville, Borough of, Crawford County.	420347	November 29, 1976, Emerg; May 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Cochranton, Borough of, Crawford County.	420348	September 10, 1975, Emerg; June 4, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Conneaut, Township of, Crawford County.	422387	November 28, 1980, Emerg; September 10, 1984, Reg; August 16, 2012, Susp.	.....do	Do.
Conneaut Lake, Borough of, Crawford County.	422386	June 10, 1975, Emerg; August 10, 1979, Reg; August 16, 2012, Susp.	.....do	Do.
Conneautville, Borough of, Crawford County.	420349	May 28, 1975, Emerg; September 18, 1987, Reg; August 16, 2012, Susp.	.....do	Do.
Cussewago, Township of, Crawford County.	422388	April 9, 1976, Emerg; September 10, 1984, Reg; August 16, 2012, Susp.	.....do	Do.
East Fairfield, Township of, Crawford County.	421565	May 20, 1975, Emerg; June 18, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
East Fallowfield, Township of, Crawford County.	422389	October 25, 1977, Emerg; September 24, 1984, Reg; August 16, 2012, Susp.	.....do	Do.
East Mead, Township of, Crawford County.	421566	August 5, 1975, Emerg; September 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Fairfield, Township of, Crawford County	421567	November 19, 1975, Emerg; August 2, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Greenwood, Township of, Crawford County.	422390	February 21, 1980, Emerg; September 10, 1984, Reg; August 16, 2012, Susp.	.....do	Do.
Hayfield, Township of, Crawford County	421227	August 12, 1975, Emerg; August 2, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Hydetown, Borough of, Crawford County.	420350	May 13, 1975, Emerg; April 17, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Linesville, Borough of, Crawford County	421560	April 15, 1976, Emerg; June 5, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Meadville, City of, Crawford County	420351	June 16, 1972, Emerg; June 1, 1977, Reg; August 16, 2012, Susp.	.....do	Do.
North Shenango, Township of, Crawford County.	423636	December 4, 1975, Emerg; October 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Oil Creek, Township of, Crawford County.	421568	June 27, 1974, Emerg; August 15, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Pine, Township of, Crawford County	422392	January 29, 1976, Emerg; June 19, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Randolph, Township of, Crawford County.	422393	January 28, 1976, Emerg; July 18, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Richmond, Township of, Crawford County.	421569	May 23, 1975, Emerg; September 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Rockdale, Township of, Crawford County.	422394	November 19, 1975, Emerg; May 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Rome, Township of, Crawford County ..	422395	February 11, 1976, Emerg; January 7, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Sadsbury, Township of, Crawford County.	422396	August 6, 1975, Emerg; August 19, 1991, Reg; August 16, 2012, Susp.	.....do	Do.
Saegertown, Borough of, Crawford County.	420352	May 12, 1975, Emerg; June 18, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
South Shenango, Township of, Crawford County.	422397	October 26, 1976, Emerg; July 3, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Sparta, Township of, Crawford County	422398	September 10, 1975, Emerg; January 28, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Spartansburg, Borough of, Crawford County.	421561	September 15, 1975, Emerg; November 23, 1979, Reg; August 16, 2012, Susp.	.....do	Do.
Spring, Township of, Crawford County	421570	March 1, 1977, Emerg; September 1, 1986, Reg; August 16, 2012, Susp.	.....do	Do.
Springboro, Borough of, Crawford County.	420353	May 23, 1975, Emerg; September 30, 1987, Reg; August 16, 2012, Susp.	.....do	Do.
Steuben, Township of, Crawford County	421571	April 7, 1975, Emerg; July 16, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Summerhill, Township of, Crawford County.	422399	July 16, 1980, Emerg; June 25, 1982, Reg; August 16, 2012, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in SFHAs
Summit, Township of, Crawford County	422400	June 27, 1975, Emerg; May 19, 1987, Reg; August 16, 2012, Susp.	.....do	Do.
Titusville, City of, Crawford County	420354	July 23, 1973, Emerg; February 15, 1978, Reg; August 16, 2012, Susp.	.....do	Do.
Townville, Borough of, Crawford County	422401	March 9, 1976, Emerg; February 15, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Troy, Township of, Crawford County	421572	April 17, 1975, Emerg; June 18, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Union, Township of, Crawford County ..	421573	March 8, 1977, Emerg; February 15, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Venango, Borough of, Crawford County	420355	March 9, 1977, Emerg; June 18, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Venango, Township of, Crawford County.	421574	January 12, 1977, Emerg; February 1, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Vernon, Township of, Crawford County	421575	July 24, 1975, Emerg; July 16, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Wayne, Township of, Crawford County	421576	August 21, 1975, Emerg; July 16, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
West Fallowfield, Township of, Crawford County.	422651	May 23, 1977, Emerg; July 3, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
West Mead, Township of, Crawford County.	420356	April 14, 1972, Emerg; June 15, 1977, Reg; August 16, 2012, Susp.	.....do	Do.
West Shenango, Township of, Crawford County.	422402	April 25, 1979, Emerg; February 1, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Woodcock, Borough of, Crawford County.	422403	June 14, 1979, Emerg; January 17, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Woodcock, Township of, Crawford County.	421578	July 9, 1975, Emerg; June 18, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Region IV				
Kentucky:				
Livingston County, Unincorporated Areas.	210146	August 25, 1997, Emerg; March 6, 2001, Reg; August 16, 2012, Susp.	.....do	Do.
Smithland, City of, Livingston County ...	210147	November 3, 1975, Emerg; September 16, 1988, Reg; August 16, 2012, Susp.	.....do	Do.
Lyon County, Unincorporated Areas	210314	January 24, 2012, Emerg; N/A, Reg; August 16, 2012, Susp.	.....do	Do.
South Carolina:				
Clinton, City of, Laurens County	450123	April 4, 1974, Emerg; June 17, 1977, Reg; August 16, 2012, Susp.	.....do	Do.
Laurens, City of, Laurens County	450125	December 26, 1973, Emerg; November 2, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Laurens County, Unincorporated Areas	450122	December 21, 1978, Emerg; December 15, 1990, Reg; August 16, 2012, Susp.	.....do	Do.
Region V				
Indiana:				
Fulton County, Unincorporated Areas ...	180070	September 22, 1976, Emerg; July 3, 1985, Reg; August 16, 2012, Susp.	.....do	Do.
Rochester, City of, Fulton County	180071	February 10, 1977, Emerg; April 30, 1984, Reg; August 16, 2012, Susp.	.....do	Do.
Michigan:				
Beaugrand, Township of, Cheboygan County.	260646	November 10, 1975, Emerg; May 1, 1992, Reg; August 16, 2012, Susp.	.....do	Do.
Cheboygan, City of, Cheboygan County	260058	June 5, 1975, Emerg; March 16, 1988, Reg; August 16, 2012, Susp.	.....do	Do.
Grant, Township of, Cheboygan County	260610	June 2, 1977, Emerg; January 18, 1989, Reg; August 16, 2012, Susp.	.....do	Do.
Region VI				
New Mexico:				
Albuquerque, City of, Bernalillo County	350002	September 9, 1974, Emerg; October 14, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Bernalillo County, Unincorporated Areas.	350001	August 26, 1974, Emerg; September 15, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Edgewood, Town of, Bernalillo County	350018	N/A, Emerg; September 2, 2011, Reg; August 16, 2012, Susp.	.....do	Do.
Los Ranchos de Albuquerque, Village of, Bernalillo County.	350123	June 26, 1978, Emerg; January 3, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Rio Rancho, City of, Bernalillo County ..	350146	November 14, 1990, Emerg; April 15, 1992, Reg; August 16, 2012, Susp.	.....do	Do.
Oklahoma:				

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current Effective Map Date	Date certain Federal assistance no longer available in SFHAs
Arkoma, Town of, Le Flore County	400343	February 3, 1977, Emerg; April 19, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Bokoshe, Town of, Le Flore County	400350	August 17, 1976, Emerg; April 17, 1979, Reg; August 16, 2012, Susp.	.....do	Do.
Cameron, Town of, Le Flore County	400271	February 8, 1977, Emerg; April 19, 1983, Reg; August 16, 2012, Susp.	.....do	Do.
Heavener, City of, Le Flore County	400090	May 28, 1975, Emerg; March 16, 1982, Reg; August 16, 2012, Susp.	.....do	Do.
Howe, Town of, Le Flore County	400091	October 21, 1976, Emerg; April 15, 1982, Reg; August 16, 2012, Susp.	.....do	Do.
Le Flore County, Unincorporated Areas	400484	September 6, 2002, Emerg; June 1, 2003, Reg; August 16, 2012, Susp.	.....do	Do.
Panama, Town of, Le Flore County	400092	October 26, 1976, Emerg; September 1, 1981, Reg; August 16, 2012, Susp.	.....do	Do.
Pocola, Town of, Le Flore County	400432	March 7, 1978, Emerg; July 4, 1989, Reg; August 16, 2012, Susp.	.....do	Do.
Poteau, City of, Le Flore County	400093	November 24, 1975, Emerg; January 20, 1982, Reg; August 16, 2012, Susp.	.....do	Do.
Spiro, Town of, Le Flore County	400413	April 21, 1978, Emerg; April 20, 1982, Reg; August 16, 2012, Susp.	.....do	Do.
Talihina, Town of, Le Flore County	400094	April 16, 1975, Emerg; September 1, 1981, Reg; August 16, 2012, Susp.	.....do	Do.
Wister, Town of, Le Flore County	400095	August 6, 1971, Emerg; April 14, 1976, Reg; August 16, 2012, Susp.	.....do	Do.
Texas:				
Decordova, City of, Hood County	480469	November 18, 2010, Emerg; N/A, Reg; August 16, 2012, Susp.	.....do	Do.
Granbury, City of, Hood County	480357	May 16, 1979, Emerg; January 15, 1988, Reg; August 16, 2012, Susp.	.....do	Do.
Hood County, Unincorporated Areas	480356	May 11, 1979, Emerg; October 18, 1988, Reg; August 16, 2012, Susp.	.....do	Do.
Lipan, City of, Hood County	481075	December 4, 2008, Emerg; October 1, 2009, Reg; August 16, 2012, Susp.	.....do	Do.
Tolar, Town of, Hood County	480868	February 15, 2000, Emerg; N/A, Reg; August 16, 2012, Susp.	.....do	Do.

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

Dated: July 24, 2012.

David L. Miller,

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

[FR Doc. 2012–19224 Filed 8–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

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

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

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and

modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sacramento County, California, and Incorporated Areas Docket No.: FEMA–B–1192			
Dry Creek	Approximately 1.6 miles upstream of the Natomas East Main Drainage Canal confluence.	+42	City of Sacramento, Unincorporated Areas of Sacramento County.
	Approximately 0.4 mile upstream of Elverta Road	+77	
Dry Creek (North Branch)	At the Dry Creek confluence	+43	Unincorporated Areas of Sacramento County.
	At the divergence from Dry Creek	+73	
Grand Island (static flooding)—floodplain area between Sacramento River and Steamboat Slough.	At the area between State Highway 160 and Grand Island Road.	+10	Unincorporated Areas of Sacramento County.
Linda Creek	Approximately 0.7 mile downstream of Indian Creek Drive	+173	Unincorporated Areas of Sacramento County.
	Approximately 1.0 mile upstream of Cherry Avenue (at the Placer County boundary).	+271	
Linda Creek (South Branch)	At the Linda Creek confluence	+198	Unincorporated Areas of Sacramento County.
	Approximately 700 feet upstream of Walnut Avenue	+235	
Pierson District (static flooding)—floodplain area east of Sacramento River.	At the area north and east of River Road, south of Randall Island Road, and west of the levee extending from River Road to the intersection of Randall Island Road and State Highway 24.	+16	Unincorporated Areas of Sacramento County.
RD 744 (static flooding)—floodplain area east of Sacramento River.	At the area south and east of River Road	+20	Unincorporated Areas of Sacramento County.
RD 746 (static flooding)—floodplain area east of Sacramento River.	At the area north of Blair Street and east of River Road	+18	Unincorporated Areas of Sacramento County.
RD 813 (static flooding)—floodplain area east of Sacramento River.	At the area southeast of River Road, northeast of Herzog Road, and south of Blair Street.	+17	Unincorporated Areas of Sacramento County.
Sheet Flow Areas (AO Zones)	At the area between Bradshaw Road and Gerber Road and approximately 0.4 mile north of Carmen Cita Avenue.	#2	Unincorporated Areas of Sacramento County.
Sheet Flow Areas (AO Zones)	At the area approximately 0.8 mile east of the intersection of Bradshaw Road and Elder Creek Road and approximately 0.9 mile south of Jackson Road.	#1	Unincorporated Areas of Sacramento County.
Sierra Creek	At the Dry Creek confluence	+70	Unincorporated Areas of Sacramento County.
	Approximately 260 feet upstream of 28th Street	+70	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sutter Island (static flooding)—floodplain area between Sacramento River, Steamboat Slough, and Sutter Slough.	At the area between State Highway 160 and Sutter Island Road.	+16	Unincorporated Areas of Sacramento County.

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

ADDRESSES

City of Sacramento

Maps are available for inspection at City Hall, 915 I Street, 5th Floor, Sacramento, CA 95814.

Unincorporated Areas of Sacramento County:

Maps are available for inspection at the Sacramento County Water Resources Department, 827 7th Street, Room 301, Sacramento, CA 95814.

Livingston County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1037

Bayou Creek (backwater effects from Ohio River).	From the Ohio River confluence to approximately 4.7 miles upstream of the Sugarcamp Creek confluence.	+348	Unincorporated Areas of Livingston County.
Bayou Creek Tributary 20 (backwater effects from Ohio River).	From the Bayou Creek confluence to approximately 1.8 miles upstream of the Bayou Creek confluence.	+348	Unincorporated Areas of Livingston County.
Bissell Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 2.9 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Buck Creek (backwater effects from Ohio River).	From the Ohio River confluence to approximately 3.3 miles upstream of the Ohio River confluence.	+355	Unincorporated Areas of Livingston County.
Claylick Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 5 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Cooper Creek (backwater effects from Tennessee River).	From the Tennessee River confluence to approximately 2.2 miles upstream of the Tennessee River confluence.	+343	Unincorporated Areas of Livingston County.
Cumberland River (backwater effects from Ohio River).	From the Ohio River confluence to approximately 2.5 miles upstream of the Cypress Creek confluence.	+343	City of Smithland, Unincorporated Areas of Livingston County.
Cypress Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 3.2 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Deer Creek (backwater effects from Ohio River).	From the Ohio River confluence to approximately 1.7 miles upstream of the Turkey Creek confluence.	+356	Unincorporated Areas of Livingston County.
Dry Branch (backwater effects from Tennessee River).	From the Tennessee River confluence to approximately 0.6 mile upstream of the Tennessee River confluence.	+342	Unincorporated Areas of Livingston County.
Dry Fork (backwater effects from Ohio River).	From the Sandy Creek confluence to approximately 2.6 miles upstream of the Sandy Creek confluence.	+343	Unincorporated Areas of Livingston County.
Dyer Hill Creek (backwater effects from Ohio River).	From approximately 3 miles upstream of the Ohio River confluence to approximately 4.4 miles upstream of the Ohio River confluence.	+345	Unincorporated Areas of Livingston County.
Ferguson Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 2.1 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Givens Creek (backwater effects from Ohio River).	From approximately 1 mile upstream of the Ohio River confluence to approximately 2.6 miles upstream of the Ohio River confluence.	+352	Unincorporated Areas of Livingston County.
Guess Creek (backwater effects from Tennessee River).	From the Tennessee River confluence to approximately 3.3 miles upstream of the Tennessee River confluence.	+342	Unincorporated Areas of Livingston County.
Guess Creek Tributary 9 (backwater effects from Tennessee River).	From the Tennessee River confluence to approximately 0.8 mile upstream of the Tennessee River confluence.	+342	Unincorporated Areas of Livingston County.
Hickory Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 3.8 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Jones Creek (backwater effects from Tennessee River).	From the Cooper Creek confluence to approximately 1.8 miles upstream of the Cooper Creek confluence.	+343	Unincorporated Areas of Livingston County.
Kentucky Lake	Entire shoreline	+375	City of Grand Rivers, Unincorporated Areas of Livingston County.
Lake Barkley	Entire shoreline	+375	City of Grand Rivers, Unincorporated Areas of Livingston County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Lee Creek (backwater effects from Tennessee River).	From the Tennessee River confluence to approximately 2 miles upstream of the Tennessee River confluence.	+342	Unincorporated Areas of Livingston County.
McCormick Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 2 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
McGilligan Creek (backwater effects from Ohio River).	From the Ohio River confluence to approximately 4.4 miles upstream of the Ohio River confluence.	+350	Unincorporated Areas of Livingston County.
Ohio River	Just upstream of the Tennessee River confluence	+340	City of Carrsville, City of Smithland, Unincorporated Areas of Livingston County.
	Approximately 3,500 feet upstream of the Deer Creek confluence.	+356	
Phelps Creek (backwater effects from Ohio River).	From the Ohio River confluence to approximately 2.2 miles upstream of the Ohio River confluence.	+346	Unincorporated Areas of Livingston County.
Phelps Creek Tributary 2 (backwater effects from Ohio River).	From the Phelps Creek confluence to approximately 0.3 mile upstream of the Phelps Creek confluence.	+346	Unincorporated Areas of Livingston County.
Sandy Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 3 miles upstream of the Dry Fork confluence.	+343	Unincorporated Areas of Livingston County.
Smith Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 2.2 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Snglin Creek (backwater effects from Ohio River).	From the Hickory Creek confluence to approximately 1,350 feet upstream of the Hickory Creek confluence.	+343	Unincorporated Areas of Livingston County,
Sugar Creek (backwater effects from Ohio River).	From the Cumberland River confluence to approximately 5.7 miles upstream of the Cumberland River confluence.	+343	Unincorporated Areas of Livingston County.
Sugarcamp Creek (backwater effects from Ohio River).	From the Bayou Creek confluence to approximately 3 miles upstream of the Bayou Creek confluence.	+348	Unincorporated Areas of Livingston County.
Sugarcamp Creek Tributary 3 (backwater effects from Ohio River).	From the Sugarcamp Creek confluence to approximately 1.4 miles upstream of the Sugarcamp Creek confluence.	+348	Unincorporated Areas of Livingston County.
Tennessee River	Approximately 5,100 feet downstream of the Hodges Creek confluence.	+341	Unincorporated Areas of Livingston County.
	At the downstream side of the Kentucky Dam	+343	
Turkey Creek (backwater effects from Ohio River).	From the Deer Creek confluence to approximately 0.8 mile upstream of the Deer Creek confluence.	+356	Unincorporated Areas of Livingston County.

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

ADDRESSES

City of Carrsville
Maps are available for inspection at the Livingston County Courthouse, 339 Courthouse Drive, Smithland, KY 42081.

City of Grand Rivers
Maps are available for inspection at City Hall, 122 West Cumberland Avenue, Grand Rivers, KY 42045.

City of Smithland
Maps are available for inspection at City Hall, 310 Wilson Avenue, Smithland, KY 42081.

Unincorporated Areas of Livingston County
Maps are available for inspection at the Livingston County Courthouse, 339 Courthouse Drive, Smithland, KY 42081.

Lyon County, Kentucky, and Incorporated Areas
Docket No.: FEMA–B–1021

Cumberland River (Lake Barkley).	At the Barkley Dam	+375	City of Eddyville, City of Kuttawa, Unincorporated Areas of Lyon County.
	At the confluence with Hurricane Creek (Trigg County boundary).	+375	
Tennessee River (Kentucky Lake).	Approximately 500 feet downstream of the Barkley Canal	+375	Unincorporated Areas of Lyon County.
	Approximately 3,200 feet upstream of the Duncan Creek confluence.	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

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

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Eddyville
Maps are available for inspection at 200 Commerce Street, Eddyville, KY 42038.

City of Kuttawa
Maps are available for inspection at 90 Beech Street, Kuttawa, KY 42055.

Unincorporated Areas of Lyon County
Maps are available for inspection at 500A West Dale Avenue, Eddyville, KY 42038.

Cheboygan County, Michigan (All Jurisdictions)
Docket No.: FEMA–B–1161

Black Lake	Entire shoreline within community	+616	Township of Waverly.
Black River	Approximately 2.69 miles downstream of North Black River Road.	+612	Township of Aloha.
	Approximately 1.13 miles downstream of North Black River Road.	+613	
Lake Huron	Entire shoreline within community	+583	Township of Beaugrand, Township of Benton, Township of Mackinaw.

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

ADDRESSES

Township of Aloha
Maps are available for inspection at the Aloha Township Hall, 3012 North M–33, Cheboygan, MI 49721.

Township of Beaugrand
Maps are available for inspection at the Beaugrand Township Hall, 1999 Old Mackinaw Road, Cheboygan, MI 49721.

Township of Benton
Maps are available for inspection at the Benton Township Hall, 5012 Orchard Beach Road, Cheboygan, MI 49721.

Township of Mackinaw
Maps are available for inspection at the Mackinaw Township Hall, 1095 Wallick Road, Mackinaw City, MI 49701.

Township of Waverly
Maps are available for inspection at the Waverly Township Hall, 11133 Twin School Road, Onaway, MI 49765.

Bernalillo County, New Mexico, and Incorporated Areas
Docket No.: FEMA–B–1196

Basketball Pond	Entire shoreline	+5421	City of Albuquerque.
Glenrio Storm Drain (shallow ponding area at the intersection of Palisades Drive Northwest and Glenrio Drive Northwest).	Entire shoreline	+5095	City of Albuquerque.
Glenrio Storm Drain	Approximately 650 feet downstream of the intersection of Hanover Road Northwest and 54th Street Northwest.	+5095	City of Albuquerque.
	At the intersection of 56th Street Northwest and Hanover Road Northwest.	+5095	
Kirtland Detention Pond	Entire shoreline	+5359	City of Albuquerque.
McKnight Storm Drain	Sheet flow area between Cyndi Court Northeast and Embudo Channel.	#3	City of Albuquerque.
Shallow Ponding Area Southeast of the Intersection of Alameda Boulevard Northwest and the Albuquerque Main Line Canal.	Entire shoreline	+4997	Unincorporated Areas of Bernalillo County.
Sheet Flow along Candelaria Avenue, Northeast.	Sheet flow area along Candelaria Avenue Northeast between Vermont Street Northeast and Louisiana Boulevard Northeast.	#1	City of Albuquerque.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Sheet Flow between San Mateo Boulevard Southeast and Gibson Boulevard Southeast.	At the intersection of San Mateo Boulevard Southeast and Kathryn Avenue Southeast.	#1	City of Albuquerque.
	At the intersection of Gibson Boulevard Southeast and Cardenas Drive Southeast.	#1	

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

ADDRESSES

City of Albuquerque

Maps are available for inspection at the Planning Department, Development and Building Services Division, 600 2nd Street Northwest, Albuquerque, NM 87103.

Unincorporated Areas of Bernalillo County

Maps are available for inspection at the Bernalillo County Public Works Division, 2400 Broadway Southeast, Albuquerque, NM 87102.

Le Flore County, Oklahoma, and Incorporated Areas
Docket Nos.: FEMA–B–1083 and FEMA–B–1216

C Creek	At the McMurtrey Creek confluence	+459	City of Poteau, Unincorporated Areas of Le Flore County.
	At the downstream side of U.S. Route 59	+490	
Caston Creek	Approximately 100 feet upstream of the Poteau River confluence.	+463	City of Poteau, Town of Wister, Unincorporated Areas of Le Flore County.
	Approximately 500 feet upstream of the confluence with Mountain Creek.	+470	
McMurtrey Creek	Approximately 0.42 mile downstream of Kansas City Southern Railroad.	+450	City of Poteau, Unincorporated Areas of Le Flore County.
	Approximately 1,105 feet upstream of Cavanal Scenic Expressway.	+547	
Morris Creek	Approximately 0.56 mile downstream of Morris Tributary confluence.	+469	Town of Howe, Unincorporated Areas of Le Flore County.
	Approximately 925 feet upstream of County Road East 1425.	+492	
Morris Tributary	At the Morris Creek confluence	+476	Town of Howe, Unincorporated Areas of Le Flore County.
	Approximately 525 feet downstream of County Road East 1430.	+501	
Mountain Creek	At the confluence with Caston Creek	+470	Town of Wister, Unincorporated Areas of Le Flore County.
	Approximately 600 feet upstream of U.S. Route 270	+483	
Polk Creek	Approximately 0.6 mile downstream of Possum Valley Road.	+443	City of Poteau, Unincorporated Areas of Le Flore County.
	Just upstream of Polk Creek Road	+584	
Poteau River	Approximately 0.85 mile upstream of Old State Route 112	+445	City of Poteau, Unincorporated Areas of Le Flore County.
	Flooding effects from the Poteau River extending from 2.3 miles upstream of County Road East 1370.	+453	
Rock Creek	Approximately 1,500 feet downstream of U.S. Route 27	+470	Town of Wister, Unincorporated Areas of Le Flore County.
	Approximately 0.39 mile upstream of U.S. Route 271	+487	
Town Creek North	Approximately 958 feet upstream of Witte Street	+453	City of Poteau.
	Just upstream of Cavanal Scenic Expressway	+571	
Town Creek South	At the Town Creek North confluence	+448	City of Poteau.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	At the upstream side of Saddler Street	+461	

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

ADDRESSES

City of Poteau
Maps are available for inspection at 111 Peters Street, Poteau, OK 74953.

Town of Howe
Maps are available for inspection at 21781 West Main Street, Howe, OK 74940.

Town of Wister
Maps are available for inspection at 101 Caston Street, Wister, OK 74966.

Unincorporated Areas of Le Flore County
Maps are available for inspection at 100 South Broadway Street, Poteau, OK 74953.

Crawford County, Pennsylvania (All Jurisdictions)
Docket No.: FEMA–B–1130

Conneaut Creek	Approximately 975 feet downstream of Old Depot Road	+842	Township of Spring.
	Approximately 80 feet upstream of Old Depot Road	+927	
Conneaut Outlet	Approximately 400 feet downstream of Mercer Pike	+1066	Township of Union.
	Approximately 1,000 feet upstream of Marsh Road	+1066	
Conneauttee Creek	Just upstream of State Route 99	+1142	Township of Venango.
	Approximately 385 feet downstream of McClellan Street	+1142	
French Creek	Approximately 10 feet upstream of Townhall Road	+1066	Township of Union.
	Approximately 1.97 mile downstream of Williams Street	+1072	
French Creek	Approximately 0.86 mile downstream of Gravel Run Road	+1133	Township of Venango.
	Approximately 696 feet downstream of McClellan Street	+1142	
French Creek	Approximately 1.17 miles upstream of Main Street	+1143	Township of Rockdale.
	Approximately 2.42 miles upstream of Main Street	+1143	
Little Sugar Creek	Approximately 250 feet downstream of U.S. Route 322	+1080	Township of Wayne.
	Approximately 80 feet downstream of U.S. Route 322	+1082	
Torry Run	Approximately 0.56 mile downstream of Drake's Mill Road	+1142	Township of Venango.
	Approximately 0.38 mile upstream of Drake's Mill Road	+1142	

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

ADDRESSES

Township of Rockdale
Maps are available for inspection at the Rockdale Township Hall, 29393 Miller Station Road, Cambridge Springs, PA 16403.

Township of Spring
Maps are available for inspection at the Spring Township Building, 16 Beaverridge Road, Beaver Springs, PA 17812.

Township of Union
Maps are available for inspection at the Union Township Municipal Building, 3111 State Route 72, Jonestown, PA 17038.

Township of Venango
Maps are available for inspection at the Township Supervisor's Office, 21790 Center Road, Venango, PA 16440.

Township of Wayne
Maps are available for inspection at the Wayne Township Supervisor's Office, 25500 Bell Hill Road, Cochranton, PA 16314.

Laurens County, South Carolina, and Incorporated Areas
Docket No.: FEMA–B–1197

Beards Creek	Approximately 170 feet downstream of Little Acres Road	+447	City of Clinton, Unincorporated Areas of Laurens County.
	Approximately 490 feet upstream of Brook Road	+564	
Burnt Mill Creek	At the Little River confluence	+501	Unincorporated Areas of Laurens County.
	Approximately 1,750 feet upstream of State Route 127	+558	
Burnt Mill Creek Tributary 16	At the Burnt Mill Creek confluence	+583	City of Laurens, Unincorporated Areas of Laurens County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1.0 mile upstream of the Burnt Mill Creek confluence.	+658	
Burnt Mill Creek Tributary 21	At the Burnt Mill Creek confluence	+586	Unincorporated Areas of Laurens County.
	Approximately 1,735 feet upstream of Strickland Avenue	+620	
Burnt Mill Creek Tributary 5	Approximately 0.5 mile downstream of Roper Road	+514	Unincorporated Areas of Laurens County.
	Approximately 1.9 miles upstream of Roper Road	+596	
Burnt Mill Creek Tributary 9	At the Burnt Mill Creek confluence	+530	Unincorporated Areas of Laurens County.
	Approximately 1.4 miles upstream of Easy Road	+637	
Burnt Mill Creek Tributary 9.2.2	At the Burnt Mill Creek Tributary 9 confluence	+582	Unincorporated Areas of Laurens County.
	Approximately 1.0 mile upstream of the Burnt Mill Creek Tributary 9 confluence.	+632	
Bush River	At the downstream side of State Route 560	+509	City of Clinton, Unincorporated Areas of Laurens County.
	Approximately 1.9 miles upstream of State Route 72	+629	
Cane Creek	Approximately 2.2 miles downstream of State Route 72	+442	Unincorporated Areas of Laurens County.
	Approximately 3.8 miles upstream of Harris Springs Road	+529	
Lake Greenwood	Entire shoreline within community	+442	Unincorporated Areas of Laurens County.
Little River	Approximately 1,075 feet upstream of Holmes Bridge Road.	+496	City of Laurens, Unincorporated Areas of Laurens County.
	Approximately 1.0 mile upstream of Ghost Creek Road	+606	
Little River Tributary 1	At the Little River confluence	+542	Unincorporated Areas of Laurens County.
	Approximately 1,850 feet upstream of the Little River confluence.	+544	
Little River Tributary 2	At the Little River confluence	+551	City of Laurens.
	Approximately 495 feet upstream of River Street	+554	
Little River Tributary 25	At the Little River confluence	+508	Unincorporated Areas of Laurens County.
	Approximately 1.0 mile upstream of the Little River confluence.	+537	
Little River Tributary 28	At the Little River confluence	+519	Unincorporated Areas of Laurens County.
	Approximately 0.8 mile upstream of the Little River confluence.	+540	
Little River Tributary 3	At the Little River confluence	+563	City of Laurens.
	Approximately 0.5 mile upstream of the Little River confluence.	+567	
Little River Tributary 31	At the Little River confluence	+530	Unincorporated Areas of Laurens County.
	Approximately 0.8 mile upstream of East Jerry Road	+547	
Little River Tributary 37	At the Little River confluence	+544	City of Laurens.
	Approximately 1,190 feet upstream of East Farley Avenue	+609	
Reedy Fork Creek	At the Little River confluence	+558	City of Laurens.
	Approximately 715 feet downstream of Anderson Drive	+570	
Saluda River	Approximately 3.9 miles downstream of U.S. Route 25	+448	Unincorporated Areas of Laurens County.
	Approximately 230 feet upstream of U.S. Business Route 25.	+531	
Scout Branch	Approximately 310 feet upstream of Pamela Lane	+641	City of Laurens.
	Approximately 0.6 mile upstream of Pamela Lane	+670	
Shell Creek	Approximately 1,330 feet upstream of the Bush River confluence.	+541	City of Clinton, Unincorporated Areas of Laurens County.
	Approximately 1,060 feet upstream of Springdale Drive	+607	
South Durbin Creek	Approximately 1,500 feet downstream of Boyd Street	+743	Unincorporated Areas of Laurens County.
	Approximately 675 feet downstream of Boyd Street	+749	

* National Geodetic Vertical Datum.

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

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

ADDRESSES

City of Clinton
Maps are available for inspection at City Hall, 211 North Broad Street, Clinton, SC 29325.

City of Laurens
Maps are available for inspection at City Hall, 126 East Public Square, Laurens, SC 29360.

Unincorporated Areas of Laurens County
Maps are available for inspection at the Laurens County Courthouse, 3 Catherine Street, Laurens, SC 29360.

Hood County, Texas, and Incorporated Areas
Docket Nos.: FEMA–B–1114 and FEMA–B–1218

Brazos River	Approximately 100 feet downstream of the Lusk Branch confluence.	+695	City of DeCordova, City of Granbury, Unincorporated Areas of Hood County.
	At the Parker County boundary	+710	
Lambert Branch	Just upstream of U.S. Route 377	+790	Unincorporated Areas of Hood County.
	Approximately 1,830 feet upstream of Holmes Drive	+819	
Stream LB–2	Just upstream of U.S. Route 377	+774	Unincorporated Areas of Hood County.
	Approximately 550 feet upstream of Ross Lane	+833	

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

ADDRESSES

City of DeCordova
Maps are available for inspection at 5301 Country Club Drive, Granbury, TX 76049.

City of Granbury
Maps are available for inspection at City Hall, 116 West Bridge Street, Granbury, TX 76048.

Unincorporated Areas of Hood County
Maps are available for inspection at 100 East Pearl Street, Granbury, TX 76048.

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

Dated: July 25, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–19220 Filed 8–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2012–0003]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

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

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

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

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472,

(202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

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

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

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

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

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

§ 67.11 [Amended]

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

Flooding source(s)	Location of referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Caldwell Parish, Louisiana, and Incorporated Areas Docket Nos.: FEMA–B–1192 and FEMA–B–1207			
Hurricane Creek	Approximately 500 feet downstream of the railroad	+125	Town of Clarks, Village of Grayson.
	Approximately 0.66 mile upstream of State Highway 126	+160	
Hurricane Creek/Branch 2–3	Approximately 0.9 mile upstream of the Hurricane Creek confluence.	+146	Unincorporated Areas of Caldwell Parish.
	Approximately 1.0 mile upstream of the Hurricane Creek confluence.	+146	
Hurricane Creek/Branch 3–1	Approximately 1,275 feet upstream of the Hurricane Creek confluence.	+168	Unincorporated Areas of Caldwell Parish.
	Approximately 1.0 mile upstream of the Hurricane Creek confluence.	+168	
Hurricane Creek/Branch 3–4 (Hanchey Tributary).	Approximately 265 feet upstream of the Hurricane Creek confluence.	+156	Unincorporated Areas of Caldwell Parish.
	Approximately 0.87 mile upstream of the Hurricane Creek confluence.	+156	
Ouachita River	Approximately 0.7 mile downstream of U.S. Route 165	+73	Unincorporated Areas of Caldwell Parish.
	Approximately 1,475 feet upstream of U.S. Route 165	+73	

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

ADDRESSES

Town of Clarks

Maps are available for inspection at the Town Hall, 1714 State Highway 845, Clarks, LA 71415.

Unincorporated Areas of Caldwell Parish

Maps are available for inspection at the Caldwell Parish Community Recreation Center/911 Complex, 6563 U.S. Route 165, Columbia, LA 71418.

Village of Grayson

Maps are available for inspection at the Village Hall, 5228 State Highway 126 East, Grayson, LA 71435.

Flooding source(s)	Location of referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Callaway County, Missouri, and Incorporated Areas Docket No.: FEMA–B–1210			
Auxvasse Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.66 mile upstream of County Road 447.	+539	Unincorporated Areas of Callaway County.
Blue Creek (backwater effects from Missouri River).	From the Auxvasse Creek confluence to approximately 1.46 miles upstream of the Auxvasse Creek confluence.	+539	Unincorporated Areas of Callaway County.
Clabber Creek (backwater effects from Missouri River).	From the Clabber Creek confluence to approximately 175 feet downstream of County Road 470.	+542	Unincorporated Areas of Callaway County.
Collier Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,800 feet upstream of the Ewing Creek confluence.	+541	City of Mokane, Unincorporated Areas of Callaway County.
Eagle Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 600 feet upstream of Eagle Creek Road.	+534	Unincorporated Areas of Callaway County.
Ewing Creek (backwater effects from Missouri River).	From the Collier Creek confluence to approximately 0.40 mile upstream of the Collier Creek confluence.	+541	City of Mokane, Unincorporated Areas of Callaway County.
Hillers Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 400 feet upstream of County Road 485.	+546	Unincorporated Areas of Callaway County.
Little Tavern Creek North (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,900 feet downstream of State Route 94.	+532	Unincorporated Areas of Callaway County.
Logan Creek East (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.63 mile upstream of County Road 468.	+536	Unincorporated Areas of Callaway County.
Middle River (backwater effects from Missouri River).	From the Missouri River confluence to approximately 600 feet upstream of State Highway PP.	+544	Unincorporated Areas of Callaway County.
Missouri River	Approximately 0.68 mile upstream of the Montgomery County boundary.	+530	City of Mokane, Unincorporated Areas of Callaway County.
	At the Boone/Cole County boundary	+563	
Missouri River Tributary 1 (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1,000 feet upstream of Harrisons Hill Road.	+563	Unincorporated Areas of Callaway County.
Missouri River Tributary 5.1 (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.63 mile downstream of County Road 4023.	+552	Unincorporated Areas of Callaway County.
Missouri River Tributary 5.2 (backwater effects from Missouri River).	From the Missouri River confluence to approximately 50 feet downstream of State Route 94.	+550	Unincorporated Areas of Callaway County.
Mud Creek East (backwater effects from Missouri River).	From the Logan Creek East confluence to approximately 0.47 mile downstream of County Road 457.	+537	Unincorporated Areas of Callaway County.
Muddy Creek (backwater effects from Missouri River).	From the Middle River confluence to approximately 1.19 miles upstream of County Road 480.	+544	Unincorporated Areas of Callaway County.
Niemans Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.91 mile downstream of County Road 4039.	+554	Unincorporated Areas of Callaway County.
Niemans Creek Tributary 3 (backwater effects from Missouri River).	From the Niemans Creek confluence to approximately 1,200 feet upstream of the Niemans Creek confluence.	+554	Unincorporated Areas of Callaway County.
Rivaux Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 0.47 mile downstream of the Rivaux Creek Tributary 7 confluence.	+552	Unincorporated Areas of Callaway County.
Tavern Creek (backwater effects from Missouri River).	From the Missouri River confluence to approximately 1.25 miles upstream of State Route 94.	+532	Unincorporated Areas of Callaway County.

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

ADDRESSES

City of Mokane

Maps are available for inspection at the Callaway County Courthouse, 10 East 5th Street, Fulton, MO 52251.

Unincorporated Areas of Callaway County

Maps are available for inspection at the Callaway County Courthouse, 10 East 5th Street, Fulton, MO 52251.

Flooding source(s)	Location of referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Clark County, Washington, and Incorporated Areas Docket No.: FEMA–B–1166			
Burnt Bridge Creek	Just upstream of I–205	+192	City of Vancouver, Unincorporated Areas of Clark County.
	Approximately 1,056 feet upstream of Northeast 152nd Street.	+200	
China Ditch	Just upstream of Northeast Ward Road	+252	Unincorporated Areas of Clark County.
	Approximately 0.4 mile upstream of Northeast 144th Street.	+275	
Curtin Creek	At the confluence with Salmon Creek	+172	Unincorporated Areas of Clark County.
	Approximately 700 feet upstream of Anderson Road	+260	
Dead Lake	Entire shoreline within community	+191	City of Camas, Unincorporated Areas of Clark County.
Fifth Plain Creek	At the confluence with Lacamas Creek	+208	City of Vancouver, Unincorporated Areas of Clark County.
	Approximately 0.7 mile upstream of Northeast Davis Road	+342	
Gee Creek	Just downstream of Burlington Northern Santa Fe Railroad.	+27	City of Ridgefield, Unincorporated Areas of Clark County.
	Approximately 0.5 mile upstream of I–5	+315	
Lacamas Creek	Just downstream of Northeast 3rd Avenue	+35	City of Camas, Unincorporated Areas of Clark County.
	Approximately 1.3 miles upstream of Northeast 3rd Avenue.	+163	
	Approximately 1 mile downstream of Northeast Goodwin Road.	+191	
	Approximately 0.5 mile upstream of Northeast 217th Avenue.	+281	
Lake Lacamas	Entire shoreline within community	+191	City of Camas, Unincorporated Areas of Clark County.
Mill Creek	At the confluence with Salmon Creek	+137	City of Battle Ground, Unincorporated Areas of Clark County.
	Just downstream of Northwest 20th Avenue	+279	
Packard Creek	Approximately 375 feet downstream of Northwest 179th Street.	+66	Unincorporated Areas of Clark County.
	Approximately 1,040 feet upstream of Northwest 11th Avenue.	+290	
Padden Creek	Approximately 460 feet downstream of Northeast 83rd Street.	+214	Unincorporated Areas of Clark County.
	Approximately 160 feet upstream of Northeast 88th Street	+228	
Round Lake	Entire shoreline within community	+191	City of Camas, Unincorporated Areas of Clark County.
Salmon Creek	At the confluence with Weaver Creek	+210	City of Battle Ground, Unincorporated Areas of Clark County.
	Just upstream of Risto Road	+363	
Spring Branch Creek	At the confluence with Lacamas Creek	+198	Unincorporated Areas of Clark County.
	Approximately 1.25 miles upstream of the confluence with Lacamas Creek.	+200	
Weaver Creek	Approximately 320 feet upstream of Northeast 169th Street.	+215	City of Battle Ground, Unincorporated Areas of Clark County.
	Approximately 1.1 miles upstream of Northeast 152nd Avenue.	+345	
Whipple Creek	Just downstream of Northwest Krieger Road	+28	Unincorporated Areas of Clark County.

Flooding source(s)	Location of referenced Elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 0.8 mile upstream of Northeast 179th Street.	+241	

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

ADDRESSES

City of Battle Ground
Maps are available for inspection at 109 Southwest 1st Street, Battle Ground, WA 98604.

City of Camas
Maps are available for inspection at 616 Northeast 4th Avenue, Camas, WA 98607.

City of Ridgefield
Maps are available for inspection at 230 Pioneer Street, Ridgefield, WA 98642.

City of Vancouver
Maps are available for inspection at 210 East 13th Street, Vancouver, WA 98668.

Unincorporated Areas of Clark County
Maps are available for inspection at 1300 Franklin Street, Vancouver, WA 98668.

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

Dated: July 25, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–19222 Filed 8–6–12; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 77, No. 152
Tuesday, August 7, 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 COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

Revisions of Boundaries for the Monterey Bay National Marine Sanctuary; Intent To Prepare an Environmental Impact Statement; Scoping Meetings

AGENCY: Office of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of Intent to Revise Boundaries; Intent to Prepare an Environmental Impact Statement; Scoping Meetings.

SUMMARY: In accordance with section 304 of the National Marine Sanctuaries Act, as amended, (NMSA) (16 U.S.C. 1431 et seq.), the Office of National Marine Sanctuaries (ONMS) of the National Oceanic and Atmospheric Administration (NOAA) has initiated a review of the Monterey Bay National Marine Sanctuary (MBNMS or sanctuary) boundaries, to evaluate the opportunity and effects of expanding the sanctuary's boundary. The process required by NMSA will be conducted concurrently with a public process under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.). This notice also informs the public that NOAA will coordinate its responsibilities under section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. 470) with its ongoing NEPA process, pursuant to 36 CFR 800.8(a), including the use of NEPA documents and public and stakeholder meetings to also meet the requirements of section 106. NOAA anticipates completion of the final environmental impact statement and concomitant documents will require approximately twelve months from the date of publication of this Notice of Intent.

DATES: Comments must be received by October 10, 2012. Dates for scoping meetings are:

(1) August 16, 2012
(2) August 23, 2012
(3) September 12, 2012

ADDRESSES: Comments may be submitted by any one of the following methods:

—Federal eRulemaking Portal: *http://www.regulations.gov.* Submit electronic comments via the Federal eRulemaking Portal with Docket Number NOAA–NOS–2012–0153.
—Mail: Maria Brown, Sanctuary Superintendent, Gulf of the Farallones National Marine Sanctuary, 991 Marine Drive, The Presidio, San Francisco, CA 94129.

Instructions: All comments received are a part of the public record. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NOAA will accept anonymous comments (enter N/A in the required fields to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, Wordperfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Leslie Abramson, Advisory Council Coordinator, at *Leslie.Abramson@noaa.gov* or 415–561–6622 x306.

SUPPLEMENTARY INFORMATION:

Background Information

The Monterey Bay National Marine Sanctuary (MBNMS), designated in 1992, is a Federally protected marine area offshore of California's central coast. Stretching from Marin to Cambria, the MBNMS encompasses a shoreline length of 276 miles and 6,094 square miles of ocean, extending an average distance of 30 miles from shore. At its deepest point, the MBNMS reaches down 12,713 feet (more than two miles). The Gulf of the Farallones National Marine Sanctuary (GFNMS) has administrative jurisdiction over the northern portion of the MBNMS from the San Mateo/Santa Cruz County line northward to the existing boundary between the two sanctuaries, and maintains an office in San Francisco.

When the MBNMS was designated, the urban waters of San Francisco, Daly City, and Pacifica were deemed incompatible with sanctuary regulations and excluded from MBNMS designation. This unprotected area is referred to as the San Francisco-Pacifica Exclusion Area. The following activities taking place at the time of MBNMS designation were listed as reasons for excluding the region:

1. Pollution problems stemming from the combined sewer overflow component of the City and County of San Francisco's sewage treatment program;
2. High vessel traffic in the area;
3. Potential pollutants from dredge spoils deposited in the exclusion area.

The Sanctuary has received reports that these three conditions are no longer valid issues for exclusion of this area. The San Francisco Public Utilities Commission (SFPUC) Oceanside Wastewater Treatment Plant has functioned for 17 years without a permit violation and is viewed as a national model of environmental sustainability. Recommended vessel traffic patterns have been moved offshore of the exclusion area and dredge materials are reported to be clean and are permitted under the Environmental Protection Agency.

In 2008, the Joint Management Plan Review for Cordell Bank, Gulf of the Farallones and Monterey Bay National Marine Sanctuaries determined that GFNMS would *''facilitate a public process in the next five years to consider whether the exclusion area should be incorporated into the MBNMS.''* At the February 23, 2012 and June 7, 2012 GFNMS Advisory Council meetings, the Sanctuary Advisory Council (SAC) unanimously recommended that the sanctuary superintendent explore the option of incorporating the exclusion area into MBNMS boundaries.

In accordance with Section 304 of the NMSA, ONMS is initiating a review of the MBNMS boundaries to ''evaluate and assess a proposed expansion'' for the sanctuary. NOAA is proposing to administratively add the exclusion area to the sanctuary as a way to protect additional nationally-significant seascape, wildlife, shipwrecks, and to promote ecotourism. An expanded sanctuary could protect up to an additional seventy-seven square nautical miles (101 square statute

miles), from the waters west of the Golden Gate Bridge to the current sanctuary boundaries, and would support the Administration's focus on growing travel and tourism in the United States and in particular in the San Francisco Bay Area.

Review Process

The review process is composed of four primary stages:

1. Information collection and characterization, including public scoping meetings.
2. Preparation and release of a draft environmental impact statement (DEIS) as required by Section 304(a) of the NMSA that identifies boundary expansion alternatives, as well as a notice of proposed rulemaking (NPRM) to amend the sanctuary regulations to reflect any new boundary if proposed.
3. Public review and comment on the DEIS and NPRM; and
4. Preparation and release of a final environmental impact statement, including a response to public comments, with a final rule if appropriate.

NOAA anticipates that the completion of the final environmental impact statement and concomitant documents will require approximately twelve months.

At this time, NOAA is opening a public comment period to:

1. Gather information and public comments from individuals, organizations, and government agencies on whether MBNMS should expand its boundary and the potential effects of a boundary expansion;
2. Help determine the scope of issues to be addressed in the preparation of an environmental impact statement (EIS) pursuant to the NEPA, if warranted; and
3. Conduct a series of public scoping meetings to collect public comment. The public scoping meeting schedule is presented below.

Public Scoping Meetings: The public scoping meetings will be held on the following dates and at the following locations and times:

1. Santa Cruz, CA

Date: August 16, 2012.
Location: Louden Nelson Community Center.
Address: 301 Center Street, Santa Cruz, CA 95060.
Time: 4 p.m. to 6 p.m.

2. San Francisco, CA

Date: August 23, 2012.
Location: Golden Gate National Recreation Area Headquarters.
Address: Upper Fort Mason, Bldg. 201, San Francisco, CA.
Time: 5:30 p.m. to 7:30 p.m.

3. Pacifica, CA

Date: September 12, 2012.
Location: Pacifica Community Center, The Card Room.
Address: 540 Crespi Drive Pacifica, CA 94044.
Time: 6 p.m. to 8 p.m.

Consultation Under National Historic Preservation Act

This notice confirms that NOAA will fulfill its responsibility under section 106 of the NHPA through the ongoing NEPA process, pursuant to 36 CFR 800.8(a), including the use of NEPA documents and public and stakeholder meetings to meet the section 106 requirements. The NHPA specifically applies to any agency undertaking that may affect historic properties. Pursuant to 36 CFR 800.16(1)(1), historic properties includes: ''any prehistoric or historic district, site, building, structure or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. The term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.''

In fulfilling its responsibility under the NHPA and NEPA, NOAA intends to identify consulting parties; identify historic properties and assess the effects of the undertaking on such properties; initiate formal consultation with the State Historic Preservation Officer, the Advisory Council of Historic Preservation, and other consulting parties; involve the public in accordance with NOAA's NEPA procedures, and develop in consultation with identified consulting parties alternatives and proposed measures that might avoid, minimize or mitigate any adverse effects on historic properties and describe them in any environmental assessment or draft environmental impact statement.

Authority: 16 U.S.C. 1431 et seq.; 16 U.S.C. 470.

Dated: July 30, 2012.

Daniel J. Basta,

Director for the Office of National Marine Sanctuaries.

[FR Doc. 2012–19105 Filed 8–6–12; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM12–3–000]

Revisions to Electric Quarterly Report Filing Process; Availability of Draft XML Schema

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is making available on its Web site (*http://www.ferc.gov*) a draft of the XML schema that is being developed for use in filing Electric Quarterly Reports as proposed in the Commission's June 21, 2012 Notice of Proposed Rulemaking, 77 FR 39447 (July 3, 2012). Please refer to the Supplementary Information Section below for details.

DATES: The draft XML Schema is now available at the links mentioned below.

FOR FURTHER INFORMATION CONTACT: Christina Switzer, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426, (202) 502–6379.

SUPPLEMENTARY INFORMATION: Take notice that the Federal Energy Regulatory Commission is making available on its Web site (*http://www.ferc.gov*) a draft of the XML schema that is being developed for use in filing Electric Quarterly Reports as proposed in the Commission's June 21, 2012 Notice of Proposed Rulemaking. The XML schema is still in development, but is being made available as a draft so that interested parties may view the XML schema prior to submitting comments on the proposed rule. The link to the XML schema can be found at both the Events Calendar Web page at, *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=6411&CalType=&CalendarID=116&Date=&View=Listview,* and on the main EQR Web page at, *http://www.ferc.gov/docs-filing/eqr.asp.*

Dated: July 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19106 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–136491–09]

RIN 1545–BI91

Utility Allowances Submetering

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that amend the utility allowance regulations concerning the low-income housing tax credit. The proposed regulations update the utility allowance regulations to clarify that utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid by the tenant directly to the utility company. The proposed regulations affect owners of low-income housing projects that claim the credit, the tenants in those low-income housing projects, and the State and local housing credit agencies that administer the credit. This document also contains a notice of a public hearing on these proposed regulations.

DATES: Comments must be received by October 9, 2012. Outlines of topics to be discussed at the public hearing scheduled for Tuesday, November 27, 2012, must be received by October 9, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–136491–09), Room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–136491–09), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *www.regulations.gov* (IRS REG–136491–09). The public hearing will be held in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David Selig, at (202) 622–3040; concerning submissions of comments, the hearing, or to be placed on the building access list to attend the hearing, Oluwafunmilayo Taylor, at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to the low-income housing credit under section 42 of the Internal Revenue Code. Section 42(a) provides that, for purposes of section 38, the amount of the low-income housing credit determined under section 42 for any taxable year in the credit period is an amount equal to the applicable percentage of the qualified basis of each qualified low-income building. A qualified low-income building is defined in section 42(c)(2) as any building that is part of a qualified low-income housing project at all times during a statutorily prescribed period.

A qualified low-income housing project is defined in section 42(g)(1) as any project for residential rental housing if the project meets one of the following tests elected by the taxpayer: (1) At least 20 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 50 percent or less of area median gross income; or (2) at least 40 percent of the residential units in the project are rent-restricted and occupied by individuals whose income is 60 percent or less of area median gross income. If a taxpayer does not meet the elected test, the project is not eligible for the section 42 credit.

To qualify as a rent-restricted unit within the meaning of section 42(g), the gross rent for the unit must not exceed 30 percent of the applicable income limitation. If any utilities are paid directly by the tenant, section 42(g)(2)(B)(ii) requires the inclusion in gross rent of a utility allowance determined by the Secretary, after taking into account the procedures under section 8 of the United States Housing Act of 1937.

On March 3, 1994, the Treasury Department and the IRS published in the **Federal Register** a Treasury Decision containing final regulations under section 42 (59 FR 10067). Among these regulations was § 1.42–10, which provided guidance regarding the proper role of utility allowances in determining gross rent under section 42(g)(2)(B)(i) for rent-restricted units. On July 29, 2008, the Treasury Department and the IRS published in the **Federal Register** amendments to § 1.42–10 (73 FR 43863).

If gross rent includes a utility allowance, § 1.42–10(b), as amended, provides rules for determining the applicable utility allowance depending upon whether (1) the building receives rental assistance from the Rural Housing Service (RHS) (''RHS-assisted building''), (2) the building has any tenant that receives RHS rental assistance payments (''RHS tenant assistance''), (3) the rents and utility allowances of the building are reviewed by the Department of Housing and Urban Development (HUD) (''HUD-regulated building''), or (4) the building is not described in (1), (2), or (3) (''other building''). For an RHS-assisted building and a building with RHS tenant assistance, § 1.42–10(b)(1) and (b)(2) provides that the applicable utility allowance is the applicable RHS utility allowance. For a HUD-regulated building, § 1.42–10(b)(3) provides that the applicable utility allowance is the applicable HUD utility allowance. In other buildings, for all rent-restricted units occupied by tenants receiving HUD tenant assistance, § 1.42–10(b)(4)(i) provides that the applicable utility allowance is the applicable Public Housing Authority (PHA) utility allowance established for the Section 8 Existing Housing Program. For all other tenants in rent-restricted units in other buildings, § 1.42–10(b)(4)(ii) provides that the applicable utility allowance is the applicable PHA utility allowance under § 1.42–10(b)(4)(ii)(A), a local utility company estimate under § 1.42–10(b)(4)(ii)(B), an estimate from the State or local housing credit agency that has jurisdiction over the building under § 1.42–10(b)(4)(ii)(C), the HUD Utility Schedule Model under § 1.42–10(b)(4)(ii)(D), or an energy consumption model under § 1.42–10(b)(4)(ii)(E).

After the 2008 amendment of the 1994 final regulations, commentators requested clarification about how the regulations apply to submetering arrangements. Some buildings in qualified low-income housing projects are submetered. Submetering measures tenants' actual utility consumption, and tenants pay for the utilities they use. A submetering system typically includes a master meter, which is owned or controlled by the utility company, with overall utility consumption billed to the building owner. In a submetered system, building owners (or their agents) use unit-based meters to measure utility consumption and prepare a bill for each residential unit based on actual consumption. The building owners (or their agents) retain records of utility consumption in each unit, and tenants receive documentation of utility costs as specified in the lease.

Notice 2009–44 (2009–21 IRB 1037) (see § 601.601(d)(2)(ii)(*b*)) was issued to clarify that, for purposes of § 1.42–10(a), utility costs paid by a tenant based on actual consumption in a submetered rent-restricted unit are treated as paid

by the tenant directly to the utility company, and not by or through the owner of the building. Notice 2009–44 provides that, for RHS-assisted buildings under § 1.42–10(b)(1), buildings with RHS tenant assistance under § 1.42–10(b)(2), HUD-regulated buildings under § 1.42–10(b)(3), and rent-restricted units in other buildings occupied by tenants receiving HUD rental assistance under § 1.42–10(b)(4)(i), the applicable RHS or HUD rules apply.

For all other tenants in rent-restricted units in other buildings under § 1.42–10(b)(4)(ii), Notice 2009–44 provides that the utility rates charged to tenants in each submetered rent-restricted unit must be limited to the utility company rates incurred by the building owners (or their agents). Notice 2009–44 also provides that, if building owners (or their agents) charge tenants a reasonable fee for the administrative costs of submetering, then the fee is not considered gross rent under section 42(g)(2). The fee must not exceed an aggregate amount per unit of 5 dollars per month unless State law provides otherwise. If the costs for sewerage are based on the tenants' actual water consumption determined with a submetering system and the sewerage costs are on a combined water and sewerage bill, then the tenants' sewerage costs are treated as paid directly by the tenants for purposes of the utility allowances regulations.

Even though Notice 2009–44 provides that the fee for the administrative costs of submetering is not considered gross rent under section 42(g)(2), the fee must be included in the gross income of the building owner under section 61.

Notice 2009–44 states that the utility allowance regulations would be amended to incorporate the guidance set forth in the notice and requested comments on the provisions of the notice and issues resulting from the notice. Comments were received in response to Notice 2009–44, and the comments were taken into consideration in developing these proposed regulations. The proposed regulations generally incorporate the guidance in Notice 2009–44 with additional modifications as explained in more detail below. Additional comments are invited on the issues discussed in this preamble or on other issues related to utility submetering. See § 601.601(d)(2)(ii)(*b*).

Summary of Comments on Notice 2009–44 and Explanation of Provisions

A commentator requested that ratio utility billing systems (commonly known as RUBS) be treated like submetering. Unlike submetering, RUBS use a formula that allocates a property's utility bill among its units based on the units' relative floor space, number of occupants, or some other quantitative measure, but not actual use by the unit. The IRS and the Treasury Department believe it is appropriate to treat a tenant's payment of a utility through a building owner (or its agent) as a direct payment to the utility only to the extent the tenant's utility cost is based on the unit's actual consumption. Therefore, the proposed regulations do not permit utility allowances for RUBS.

A commentator recommended that the regulations exclude or restrict ''quasi-usage'' allocation systems in buildings with a master chiller or boiler where the tenant's use of utilities is partly determined on an assumption not relating to actual use (such as the number of times a tenant turns on the system). Under Notice 2009–44 and these proposed regulations, if a submetering arrangement is not based on a unit's actual consumption of a utility, then the gross rent for that unit cannot include a utility allowance for that particular utility.

A commentator inquired as to the format and length of time records of resident utility consumption should be maintained. Existing rules address record retention. Section 1.42–10(d) provides that the building owner must retain any utility consumption estimates and supporting data as part of the taxpayer's records for purposes of § 1.6001–1(a).

A commentator suggested that the regulations should limit use of a PHA utility allowance for non-Section 8 units that are submetered. The commentator reasoned that the PHA utility allowance does not reflect actual utility consumption in the building, resulting in a low allowance in some cases. In the past, other commentators have stated that PHA utility allowances generally are too high because they are based on older buildings with higher utility costs compared to newly constructed or renovated low-income housing projects. The IRS and the Treasury Department have determined that, if building owners do not wish to expend resources to obtain utility allowances under one of the methods in § 1.42–10(b)(4)(ii)(B), (b)(4)(ii)(C), (b)(4)(ii)(D), or (b)(4)(ii)(E), it is reasonable that they be permitted to use PHA utility allowances for units not subject to § 1.42–10(b)(1), (b)(2), (b)(3), or (b)(4)(i).

Commentators also requested clarification on other rules contained in the § 1.42–10 final regulations. A commentator asked whether State housing agencies are allowed to disapprove of certain methods for determining utility allowances listed in § 1.42–10(b)(4)(ii). Existing rules address the role of State housing agencies in determining utility allowances. Thus, depending on the particular method under § 1.42–10(b)(4)(ii), State housing agencies may require certain information before a method can be used, or they may disapprove use of a method. For example, § 1.42–10(b)(4)(ii)(C) provides that a building owner may obtain a utility estimate for each unit in the building from the agency that has jurisdiction over the building ''provided the Agency agrees to provide the estimate.'' That is, State housing agencies are not required to provide a utility estimate under § 1.42–10(b)(4)(ii)(C). Also, § 1.42–10(b)(4)(ii)(E) provides that, under the energy consumption model, utility consumption estimates must be calculated by ''either a properly licensed engineer or a qualified professional approved by the Agency that has jurisdiction over the building.'' Thus, State housing agencies are not required to provide the approval described in § 1.42–10(b)(4)(ii)(E). Comments are requested on whether approval by the agency with jurisdiction over the building should be necessary for both properly licensed engineers and qualified professionals or only for qualified professionals that are not properly licensed engineers.

A commentator asserted that there is confusion concerning mixed-financed properties, which may be subject to multiple Federal programs using different utility allowances. The commentator requested clarification on which methods may be used in buildings with multiple programs. If a building receives assistance from RHS or if any tenant in a building receives RHS rental assistance payments, then the applicable utility allowance for all rent-restricted units in the building is the utility allowance determined under the method prescribed by the RHS for the building (whether or not the building or its tenants receive other state or federal assistance). If neither a building nor any tenant in the building receives RHS housing assistance and the building is a HUD-regulated building, then the applicable utility allowance for all rent-restricted units in the building is the applicable HUD utility allowance. If a building is neither an RHS-assisted nor a HUD-regulated building, no tenant in the building receives RHS tenant assistance, and tenants in a rent-restricted unit in the building receive HUD rental assistance payments, then

the applicable utility allowance for that unit is the applicable PHA utility allowance. For all other rent-restricted units not subject to any of the methods in § 1.42–10(b)(1), (b)(2), (b)(3), or (b)(4)(i), the building owner may use the applicable PHA utility allowance or one of the building methods in § 1.42–10(b)(4)(ii)(B), (b)(4)(ii)(C), (b)(4)(ii)(D), or (b)(4)(ii)(E) for calculating utility allowances for all rent-restricted units in the building.

The proposed regulations modify the requirements in Notice 2009–44 in the following manner: First, if two or more utilities such as electricity and water are treated as submetered under the proposed regulations, then the building owner (or its agent or other party acting on behalf of the building owner) must separately state the amount billed to the tenants for each submetered utility.

Second, if a building owner imposes an administrative fee on a unit's tenants for the costs of administering a submetering arrangement, then the fee generally is not included in gross rent for purposes of section 42(g)(2). The exclusion from gross rent does not apply to any amount by which the aggregate monthly fee for all of a unit's utilities under one or more submetering arrangements exceeds the lesser of the following: (A) Five dollars per month or (B) The owner's actual monthly costs paid or incurred for administering the arrangement (whether internal costs or amounts paid to third parties).

For this purpose, the owner's actual costs include internal costs (such as amounts paid to employees) and external costs (such as amounts paid to third-party service providers) for administering the submetering arrangement, as well as that month's portion of costs that relate to the submetering equipment and that are not included in the building's eligible basis under section 42(d). The goal of these restrictions is to disallow any exclusion from gross rent beyond the extent to which a fee represents a reasonable reimbursement to the owner for the owner's otherwise unreimbursed actual costs for administering the submetering arrangement. The IRS and the Treasury Department request comments on whether or not rules are needed to address the building owner's determination of actual costs when a utility company administers a submetering arrangement on behalf of the building owner and includes in the utility rate an amount for its services that is not separately stated.

Third, the proposed regulations remove the requirement in Notice 2009–44 that the administrative fee must not exceed an aggregate amount per unit of 5 dollars per month (unless State law provides otherwise). Instead of that prohibition, the proposed regulations merely require inclusion in gross rent for any amounts charged in excess of the lesser of five dollars or actual administrative costs.

The proposed regulations also amend § 1.42–10(b)(4)(ii)(A). Section 1.42–10(b)(4)(i) provides rules for determining the utility allowance of rent-restricted units occupied by tenants receiving HUD rental assistance. Section 1.42–10(b)(4)(ii)(A) provides that, if none of the rules of § 1.42–10(b)(1), (b)(2), (b)(3), and (b)(4)(i) apply to any rent-restricted units in a building, then the utility allowance for the units may be determined under § 1.42–10(b)(4)(ii)(B), (b)(4)(ii)(C), (b)(4)(ii)(D), or (b)(4)(ii)(E). Some commentators have interpreted § 1.42–10(b)(4)(ii)(A) to mean that, if a tenant receiving HUD rental assistance occupies a rent-restricted unit in a building, then the methods described in § 1.42–10(b)(4)(ii)(B), (b)(4)(ii)(C), (b)(4)(ii)(D), and (b)(4)(ii)(E) are not available for determining utility allowances for any other rent-restricted units in the same building. This result was not intended. The proposed regulations amend § 1.42–10(b)(4)(ii)(A) to clarify that for all rent-restricted units not subject to the rules of § 1.42–10(b)(1), (b)(2), (b)(3), and (b)(4)(i) for determining the appropriate utility allowance for a rent-restricted unit, the owner may choose one of the options under § 1.42–10(b)(4)(ii)(B), (b)(4)(ii)(C), (b)(4)(ii)(D), and (b)(4)(ii)(E) or the applicable PHA utility allowance for determining the utility allowance for those rent-restricted units.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS prescribed in this preamble under the **ADDRESSES** heading. The IRS and the Treasury Department request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request.

A public hearing has been scheduled for Tuesday, November 27, 2012, at 10 a.m. in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 9, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is David Selig, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.42–10 is amended by:

1. Adding a sentence after the first sentence of paragraph (a).

2. Revising the first sentence of paragraph (b)(4)(ii)(A).

3. Adding paragraph (e).

The additions and revision read as follows:

§ 1.42–10 Utility allowances.

(a) * * * For purposes of the preceding sentence, if the cost of a particular utility for a residential unit is paid pursuant to an actual-consumption submetering arrangement within the meaning of paragraph (e)(1) of this section, then that cost is treated as being paid directly by the tenant(s) and not by or through the owner of the building. * * *

* * * * *

(b) * * *

(4) * * *

(ii) * * *

(A) * * * If none of the rules of paragraphs (b)(1), (b)(2), (b)(3), and (b)(4)(i) of this section apply to determine the appropriate utility allowance for a rent-restricted unit, then the appropriate utility allowance for the unit is the applicable PHA utility allowance. * * *

* * * * *

(e) *Actual-consumption submetering arrangements*—(1) *Definition.* For purposes of this section, an actual-consumption submetering arrangement for a utility in a residential unit possesses all of the following attributes:

(i) The building owner (or its agent or other party acting on behalf of the building owner) pays the utility provider for the particular utility consumed by the tenants in the unit;

(ii) The tenants in the unit are billed for, and pay the building owner (or its agent or other party acting on behalf of the building owner) for, the unit's consumption of the particular utility;

(iii) The billed amount reflects the unit's actual consumption of the particular utility. In the case of sewerage charges, however, if the unit's sewerage charges are combined on the bill with water charges and the sewerage charges are determined based on the actual water consumption of the unit, then the bill is treated as reflecting the actual sewerage consumption of the unit; and

(iv) The utility rate charged to the tenants of the unit does not exceed the utility company rate incurred by the building owner for that particular utility.

(2) *Special rules*—(i) *Fees.* If the owner charges a unit's tenants an administrative fee for the owner's actual monthly costs of administering an actual-consumption submetering arrangement, then the fee is not considered gross rent for purposes of section 42(g)(2). The preceding sentence, however, does not apply unless the fee is computed in the same manner for every unit receiving the same submetered utility service, nor does it apply to any amount by which the aggregate monthly fee or fees for all of the unit's utilities under one or more actual-consumption submetering arrangements exceed the lesser of—

(A) Five dollars per month; or

(B) The owner's actual monthly costs paid or incurred for administering the arrangement.

(ii) *Actual costs.* For purposes of paragraph (e)(2)(i)(B) of this section, the owner's actual costs of administering an actual-consumption submetering arrangement include amounts paid to employees, independent contractors, and service providers for administering the submetering arrangement and allocable costs that relate to submetering equipment and that are not included in the building's eligible basis under section 42(d).

Par. 3. Section 1.42–12 is amended by adding paragraph (a)(5) to read as follows:

§ 1.42–12 Effective dates and transitional rules.

(a) * * *

(5) *Submetered buildings.* The second sentence in § 1.42–10(a), the first sentence in § 1.42–10(b)(4)(ii)(A), and § 1.42–10(e) apply to utility allowances determined on or after the date the final regulations are published in the **Federal Register**. Until the date the final regulations are published in the **Federal Register**, taxpayers may rely on Notice 2009–44 (2009–21 IRB 1037; May 26, 2009) (see § 601.601(d)(2)(ii)(*b*) of this chapter) for taxable years beginning on or after July 29, 2008.

* * * * *

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2012–19179 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0930; FRL–9711–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Demonstration for the 1997 8-Hour Ozone National Ambient Air Quality Standard for the Philadelphia-Wilmington-Atlantic City Moderate Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the attainment demonstration portion of the attainment plan submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) as a State Implementation Plan (SIP) revision that demonstrates attainment of the 1997 8-hour ozone national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE, moderate nonattainment area (Philadelphia Area) by the applicable attainment date of June 2011. EPA has determined that Delaware's SIP revision meets the applicable requirements of the Clean Air Act (CAA). This action is being taken in accordance with the CAA.

DATES: Written comments must be received on or before September 6, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0930 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2008–0930, Donna Mastro, Acting Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2008–0930. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any

personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following is provided to aid in locating information in this preamble.

I. What action is EPA proposing to take?
II. What is the background for EPA's proposed action?
III. What are the CAA requirements for a moderate 8-hour ozone nonattainment area?
IV. What is included in Delaware's SIP submittal?
V. What is EPA's review of Delaware's modeled attainment demonstration and weight of evidence analysis for the Philadelphia area?
VI. Proposed Action
VII. Statutory and Executive Order Reviews

I. What action is EPA proposing to take?

EPA is proposing to approve the attainment demonstration element of a SIP revision submitted by DNREC to EPA on June 13, 2007. The June 13, 2007 SIP revision consisted of Delaware's attainment plan for the 1997 8-hour ozone NAAQS for the Philadelphia Area. The ozone attainment plan submitted on June 13, 2007 included the attainment demonstration for the Philadelphia Area and its associated motor vehicle emission budgets (MVEBs) used for transportation conformity purposes in all three Delaware counties (New Castle, Kent and Sussex Counties). The Delaware attainment plan also included a 2002 base year emissions inventory, an analysis of the reasonably available control measures/reasonably available control technology (RACM/RACT), the 2008 rate of progress (ROP) plan and its associated MVEBs, and contingency measures. The ROP plan and its MVEBs, 2002 base year emissions inventory, RACM/RACT analysis, and contingency measures (elements of the June 13, 2007 attainment plan) were approved on April 8, 2010 (75 FR 17763). Therefore, in this action, EPA is only proposing to approve the attainment demonstration for the 1997 8-hour ozone NAAQS for the Philadelphia Area.

In a separate and concurrent process, EPA is conducting a process to find adequate the MVEBs for New Castle, Kent, and Sussex Counties which are associated with the Delaware attainment demonstration for the Philadelphia Area. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for New Castle, Kent and Sussex Counties in the June 13, 2007 SIP revision's attainment demonstration for the Philadelphia Area. That notice will inform the public of the availability of the Delaware SIP revision on DNREC's Web site. Interested members of the public could access Delaware's June 13, 2007 SIP revision on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2008–0930. Following EPA's public comment period, responses to any comments received will be addressed.

EPA has determined that Delaware's attainment demonstration meets the applicable requirements of the CAA because it demonstrates attainment by the applicable date of June 15, 2011.[1] EPA's analysis and findings are discussed in this proposed rulemaking. In addition, a technical support document (TSD) for this proposal entitled ''Technical Support Document for the Modeling and Weight of Evidence Portions of the State of Delaware's Ozone State Implementation Plan,'' dated May 2, 2012 (referred to herein as the Attainment TSD) is available on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2008–0930. The Attainment TSD provides additional explanation on EPA's analysis supporting this proposed approval of the attainment demonstration.

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

On June 13, 2007, DNREC submitted a comprehensive SIP revision to meet the requirements for an attainment plan for the 1997 8-hour ozone NAAQS for the Philadelphia Area. On May 8, 2009 (74 FR 21599), EPA proposed to disapprove the ozone attainment demonstration element of the June 13, 2007 attainment plan of the comprehensive SIP revision. EPA proposed to disapprove the attainment demonstration of the 1997 8-hour NAAQS for the Philadelphia Area because EPA determined that the photochemical modeling did not demonstrate attainment, and the weight of evidence analysis used to support the attainment demonstration did not provide sufficient evidence that the Philadelphia Area would attain the 1997 8-hour ozone NAAQS by the June 2010 deadline for the ozone nonattainment areas classified as moderate. On December 9, 2011 (76 FR 76929), EPA withdrew the May 8, 2009 proposed disapproval of the attainment demonstration for the Philadelphia Area based on ambient air quality monitoring data demonstrating attainment.

Moderate areas are required to attain the 1997 8-hour ozone NAAQS by no later than six years after designation. Therefore, the Philadelphia Area was to attain by June 15, 2010. *See* 40 CFR 51.903 and 69 FR 23951 (April 30,

[1] As explained in detail in Section II, EPA approved on January 21, 2011 a one-year extension of the Philadelphia Area's attainment date from June 2010 to June 2011. 76 FR 3840 (Jan. 21, 2011).

2004). However, the Philadelphia Area qualified for a one year extension of its attainment date, based on the complete, certified ambient air quality data for the 2009 ozone season. *See* 40 CFR 51.907. On January 21, 2011 (76 FR 3840), EPA approved a one year extension of the Philadelphia Area's attainment date from June 15, 2010 to June 15, 2011, based in part on air quality data recorded during the 2009 ozone season.

On March 26, 2012 (77 FR 17341), EPA published two determinations regarding the 1997 8-hour ozone NAAQS for the Philadelphia Area. First, EPA made a clean data determination that the Philadelphia Area had attained the 1997 8-hour ozone NAAQS. This determination was based upon complete, quality assured, and certified ambient air monitoring data that showed the Philadelphia Area had monitored attainment of the 1997 8-hour ozone NAAQS for the 2008–2010 monitoring period. Ambient air monitoring data for the 2009–2011 monitoring period is consistent with continued attainment. Second, pursuant to section 181(b)(2)(A) of the CAA, EPA made a determination of attainment that the Philadelphia Area had attained the 1997 8-hour ozone NAAQS by its attainment date of June 15, 2011.

III. What are the CAA requirements for a moderate 8-hour ozone nonattainment area?

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 parts per million (ppm) averaged over an 8-hour time frame. EPA set the 1997 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 1997 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 1997 8-hour ozone standard. These actions became effective on June 15, 2004. In addition, on April 30, 2004 (69 FR 23951), EPA promulgated its Phase 1 Implementation Rule which provided how areas designated nonattainment for the 1997 8-hour ozone standard would be classified. Among those nonattainment areas is the Philadelphia Area, which includes all three counties in Delaware, five counties in eastern Pennsylvania, one county in Maryland, and eight counties in southern New Jersey. Therefore, the Philadelphia Area includes New Castle, Kent and Sussex Counties in Delaware. EPA's Phase 2 Implementation Rule published on November 29, 2005 (70 FR 71612) specifies that states must submit attainment demonstrations for their nonattainment areas to EPA by no later than three years from the effective date of designation, that is, by June 15, 2007. *See* 40 CFR 51.908(a).

Pursuant to the Phase 1 Implementation Rule, an area was classified under subpart 2 of Title I of the CAA based on its 8-hour design value if it had a 1-hour design value at or above 0.12 ppm. Based on this criterion, the Philadelphia Area was classified under subpart 2 as a moderate nonattainment area. The Phase 2 Implementation Rule addressed the control obligations that apply to areas classified under subpart 2. Among other things, the Phase 1 and 2 Implementation Rules outline the required SIP elements and deadlines for those various requirements in areas designated as moderate nonattainment.

IV. What is included in Delaware's SIP submittal?

On June 13, 2007, Delaware submitted a comprehensive attainment plan as a SIP revision for the 1997 8-hour ozone NAAQS. The SIP revision included an attainment demonstration with MVEBs, the ROP plan with MVEBs, a RACM/RACT analysis, the 2002 base year emissions inventory, and contingency measures. The attainment demonstration of the June 13, 2007 SIP submittal is the only subject of this proposed rulemaking. In a separate and concurrent process, EPA is proposing an adequacy determination for the 2009 MVEBs associated with the ozone attainment demonstration for all three counties of Delaware. The other elements of the June 13, 2007 SIP submittal were approved by EPA on April 8, 2010 (75 FR 17863).

V. What is EPA's review of Delaware's modeled attainment demonstration and weight of evidence analysis for the Philadelphia area?

Section 110(a)(2)(K) of the CAA requires states to prepare air quality modeling to show how they will meet ambient air quality standards. EPA determined that areas classified as moderate or above must use photochemical grid modeling or any other analytical method determined by the Administrator to be at least as effective to demonstrate attainment of the ozone health-based standard by the required attainment date (November 29, 2005, 70 FR 71612, and 40 CFR 51.908). On April 30, 2004 (69 FR 23951 and 40 CFR 51.903), EPA specified how areas would be classified with regard to the 8-hour ozone standard set by EPA in 1997. On April 30, 2004 (69 FR 23858), EPA followed these procedures and classified the Philadelphia Area as moderate, and the nonattainment area was required to attain the 1997 8-hour ozone standard by June 2010. Because the attainment date was June 2010 for moderate areas, states had to achieve emission reductions by the ozone season of 2009 in order for ozone concentrations to be reduced and show attainment during the last complete ozone season before the 2010 deadline.

A. EPA Guidance for Using Models To Determine Attainment

EPA's photochemical modeling guidance is found at *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone,* $PM_{2.5}$, and *Regional Haze,* EPA–454/B–07–002, April 2007. The photochemical modeling guidance is divided into two parts. One part describes how to use a photochemical grid model for ozone to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

A description of how the attainment demonstration from the June 13, 2007 SIP revision addresses this EPA modeling guidance for a modeled attainment demonstration can be found in the Attainment TSD, available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2008–0930.

In the June 13, 2007 SIP revision, the photochemical grid model used projected emissions for 2009, including emission changes due to regulations Delaware and its neighboring states were planning to implement and expected growth by the 2009 ozone season. Meteorological conditions from 2002, the same as the base year modeling, were used in the projection modeling for 2009. Using the base case meteorology allows the effect of changes in states' emissions to be determined

without being influenced by yearly fluctuations in meteorology and is consistent with EPA guidance.

The attainment test used in the Philadelphia Area modeling demonstration involved the application of model-based relative response factors (RRFs) to base year design values at each monitor to produce projected future year design values (2009). The projected 2009 design values represent design values that should result from emission controls Delaware and other states planned to have in place in 2009. As discussed in the Attainment TSD, the 2009 design values should be less than or equal to 84 parts per billion (ppb) at all monitoring stations to meet the attainment test. The SIP modeling predicts that in 2009, the Philadelphia Area will not pass the attainment test since design values are projected to be over the 84 ppb standard.

In summary, the basic photochemical grid modeling presented in the Delaware SIP revision meets EPA's guidelines and when used with the methods recommended in EPA's modeling guidance, is acceptable to EPA. However, when EPA's attainment test is applied to the modeling results, the 2009 ozone design value is predicted to be 91 ppb in the Philadelphia Area. Thus, based on EPA's modeled attainment test, the Philadelphia Area has not demonstrated that it will reach attainment of the 1997 8-hour ozone standard in the attainment year with the modeled emission reduction strategies committed to by Delaware and the neighboring states in the Ozone Transport Region (OTR). Therefore, a weight of evidence (WOE) analysis was used by Delaware and reviewed by EPA to demonstrate attainment of the 1997 8-hour ozone standard in the Philadelphia Area.

B. Weight of Evidence Demonstration

EPA's modeling guidance describes how to use a photochemical grid model and additional analytical methods to complete a WOE analysis to estimate if emissions control strategies will lead to attainment of the 1997 8-hour ozone NAAQS. A WOE analysis is a supporting analysis that helps to determine if the results of the photochemical modeling system are correctly (or not correctly) predicting future air quality.

The WOE analysis presented in the Delaware SIP revision describes the analyses performed, databases used, key assumptions and outcomes of each analysis, and why the evidence, viewed as a whole, supports a conclusion that the Philadelphia Area will attain the NAAQS despite the model prediction that some monitors' future design values exceed the 1997 8-hour ozone NAAQS.

EPA's review of the WOE analysis in the Attainment TSD included the following: (1) A comparison of model-predicted 2009 ozone design values to monitored design values for 2006–2011; (2) an analysis of recent ozone trends in the Philadelphia Area; and (3) alternative methods for calculating the 2009 ozone design value. As discussed in detail in the Attainment TSD, the 2009 model over predicted ozone design values for 2006–2011 for most cases. Further, in the Attainment TSD, EPA's analysis concurs with Delaware's analysis of significant declining trends in the Philadelphia Area ozone design values. The Attainment TSD concluded that additional emissions reductions have continued to occur due mostly to local controls in each nonattainment area and to a few reductions in major sources due to initiatives in the OTR. The Attainment TSD noted that monitored ozone design values for each of the Philadelphia Area monitors continued to decline and to show attainment in 2010 and 2011.

As discussed in detail in the Attainment TSD, Delaware's attainment demonstration also asserted an alternative baseline concentration could be used to demonstrate attainment. However, EPA determined in the Attainment TSD that the modeling would still show nonattainment even with this alternative baseline value. Likewise, EPA determined in the Attainment TSD that Delaware's recalculation of 2009 modeled ozone design values with a relative response factor in Delaware's June 13, 2007 SIP revision reduced the modeled 2009 ozone design values slightly but the model still over predicts the actual monitored 2009 design values. In conclusion, in the Attainment TSD, EPA determined with the benefit of 2009 monitored design values that the model in Delaware's June 13, 2007 SIP revision over predicts actual concentrations even when model adjustments are made as discussed herein to attempt to account for model over prediction.

EPA has determined that the Delaware photochemical grid modeling results predict a 2009 projected design value well above the 1997 8-hour ozone NAAQS for the Philadelphia Area. However, after taking into account WOE arguments regarding model over prediction of the 2009 monitored design values and recent ozone design value trends, which show attainment of the standard by 2010, EPA determined that the Delaware SIP has demonstrated attainment of the ozone standard by the extended attainment date of June 2011 as discussed in detail in the Attainment TSD.

VI. Proposed Action

EPA is proposing to approve the 1997 8-hour ozone NAAQS attainment demonstration, included in Delaware's June 13, 2007 attainment plan SIP revision, as demonstrating attainment for the Philadelphia Area by the applicable attainment date of June 15, 2011. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VII. Statutory and Executive Order Reviews

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

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the 1997 8-hour ozone attainment demonstration for the Philadelphia Area submitted by Delaware on June 13, 2007, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: July 26, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–19173 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[EPA–R06–RCRA–2012–0471; FRL9701–6]

Oklahoma: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled ''Approved State Hazardous Waste Management Programs'', Oklahoma's authorized hazardous waste program. The EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that the EPA will enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conversation and Recovery Act (RCRA).

DATES: Send written comments by September 6, 2012.

ADDRESSES: Send written comments to Alima Patterson, Region 6 Regional Authorization Coordinator, or Julia Banks, Codification Coordinator, State/Tribal Oversight Section (6PD–O), Multimedia Planning and Permitting Division at the address shown below. You can examine copies of the materials that form the basis for this authorization and incorporation by reference during normal business hours at the following location: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone number (214) 665–6533 or (214) 665–8178. You may also submit comments electronically or through hand delivery/courier; please follow the detailed instructions in the **ADDRESSES** section of the direct final rule which is located in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533 or Julia Banks (214) 665–8178.

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the direct final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the direct final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time. For additional information, please see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: July 5, 2012.

Samuel Coleman,

Acting Regional Administrator, EPA Region 6.

[FR Doc. 2012–19140 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1178]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On February 16, 2011, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Bolivar County, Mississippi, and Incorporated Areas. Specifically, it addresses the following flooding sources: Jones Bayou, Mississippi River, and Porter Bayou.

DATES: Comments are to be submitted on or before November 5, 2012.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1178, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064 or (email) *Luis.Rodriguez3@fema.dhs.gov.*

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

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that

the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 76 FR 8965 in the February 16, 2011, issue of the **Federal Register,** FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Bolivar County, Mississippi, and Incorporated Areas'' addressed the following flooding sources: Jones Bayou, Mississippi River, and Porter Bayou. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for Jones Bayou. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Bolivar County, Mississippi, and Incorporated Areas				
Jones Bayou	Approximately 0.5 mile downstream of Tower Road	+134	+135	City of Cleveland, Unincorporated Areas of Bolivar County.
	Approximately 1,146 feet upstream of West Rosemary Road.	+137	+138	
Mississippi River	Approximately 5.5 miles upstream of the Arkansas River confluence.	None	+161	City of Rosedale.
	Approximately 8.1 miles upstream of the Arkansas River confluence.	None	+162	
Porter Bayou	Approximately 0.8 mile downstream of State Route 448.	None	+127	City of Shaw.
	Approximately 0.7 mile downstream of State Route 448.	None	+127	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Cleveland
Maps are available for inspection at the Public Works Department, 1089 Old Highway 61 North, Cleveland, MS 38732.

City of Rosedale
Maps are available for inspection at City Hall, 304 Court Street, Rosedale, MS 38769.

City of Shaw
Maps are available for inspection at City Hall, 101 Faison Street, Shaw, MS 38773.

Unincorporated Areas of Bolivar County
Maps are available for inspection at the Bolivar County Administrator Office, 200 South Court Street, Cleveland, MS 38732.

Dated: July 18, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–19223 Filed 8–6–12; 8:45 am]

BILLING CODE 9110–12–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1606, 1618, and 1623

Termination, Limited Reductions in Funding, and Debarment Procedures; Recompetition; Enforcement; Suspension Procedures

AGENCY: Legal Services Corporation.

ACTION: Further Notice of Proposed Rulemaking.

SUMMARY: This Further Notice of Proposed Rulemaking (FNPRM) proposes modifications to the January 31, 2012, NPRM regarding amendments to the Legal Services Corporation's regulations on termination procedures, enforcement, and suspension procedures. LSC seeks comments limited to the substantively new materials as indicated by the questions in the **SUPPLEMENTARY INFORMATION**.

DATES: Comments on the FNPRM are due September 6, 2012.

ADDRESSES: Written comments may be submitted by mail, fax, or email to Mark

Freedman, Senior Assistant General Counsel, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street NW., Washington, DC 20007; 202–295–1623 (phone); 202–337–6519 (fax); *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION:

Introduction

The Legal Services Corporation (LSC) Act (the Act) provides general authority to the Corporation ''to insure the compliance of recipients and their employees with the provisions of [the Act] and the rules, regulations, and guidelines promulgated pursuant to [the Act].'' [1] On January 31, 2012, LSC published in the **Federal Register** at 77 FR 4749 a NPRM proposing changes to LSC's enforcement mechanisms to add a lesser reduction in funding option and extend the time for suspensions from 30 to 90 days. The NPRM provided history and background that is not repeated herein.

Nineteen comments were submitted. The comments are available in the open rulemaking section of LSC's Web site at *www.lsc.gov.*

http://www.lsc.gov/about/regulations-rules/open-rulemaking.

On June 18, 2012, the Operations and Regulations Committee (Committee) of the LSC Board of Directors (Board) met to discuss the comments. Only the comment of the Office of Inspector General (OIG) supported the proposal as written, although the OIG recommends a rule providing for suspensions to remain in place until corrective actions are taken, and the OIG questioned whether the proposed language regarding imposing immediate special grant conditions was unduly restricted. Seventeen of the other comments opposed the proposed changes. Those comments include ones from LSC recipients, coalitions of legal aid programs, the National Legal Aid and Defender Association (NLADA), and the New York State Bar Association Committee on Legal Aid. The American Bar Association Standing Committee on Legal Aid and Indigent Defendants (SCLAID) did not oppose the rulemaking, but joined with the other seventeen comments in recommended changes to the proposed language if LSC proceeds with rulemaking. These comments had a number of common themes. Fifteen of the comments were two or three pages. The ABA, NLADA, and Colorado Legal Services provided more extensive comments (five to seven pages). The OIG's comments in support of the rule were sixteen pages in length. This further notice of proposed rulemaking (FNPRM) provides revisions to the proposed language for further comment. The final rule will include a discussion of all of the comments received on both the NPRM and the FNPRM.

On July 27, 2012, the Committee met again to discuss the comments and LSC Management's recommendations. The Committee voted to recommend to the Board publication of these further revisions to the proposal based on consideration of the comments and recommendations of Management. On July 27, 2012, the Board voted to publish this FNPRM for public comment on the specific items identified below. In addition to this FNPRM, LSC is publishing on its Web site redlined versions of the regulations showing each change. Those documents are available in the Open Rulemaking section of *www.lsc.gov.*

http://www.lsc.gov/about/regulations-rules/open-rulemaking.

LSC's principal regulation discussing general enforcement authority and procedures is the Enforcement Procedures regulation at 45 CFR part 1618. In accordance with the requirements of Part 1618, LSC uses a variety of enforcement tools, formal and informal, to ensure compliance. Among these are informal consultations and compliance training, on-site Case Service Report/Case Management System reviews, the imposition of Required Corrective Actions (RCAs), and the imposition of Special Grant Conditions (SGCs) at the beginning or renewal of a grant. Several additional enforcement tools are provided for in LSC-adopted regulations and are available to the Corporation to address significant non-compliance by a recipient. In particular, LSC has adopted suspension procedures (45 CFR part 1623) and questioned-cost procedures (45 CFR part 1630). LSC has also adopted grant termination procedures (45 CFR part 1606) that provide for the termination of funding in whole or in part in cases of a recipient's substantial noncompliance with LSC statutory or regulatory requirements and other policies, instructions, or grant terms and conditions. Under the grant-termination provisions, a reduction of five percent or more of a recipient's funding is considered a termination and can be implemented only in compliance with the termination procedures.[2] Reductions of funding of less than five percent are not considered terminations. In order to reduce a recipient's funding by less than five percent without using the 1606 termination procedures, additional procedures have to be established by rulemaking.[3] LSC has not yet adopted regulations establishing such standards and procedures. LSC also has the authority under Part 1606 to debar recipients from eligibility to receive future grants.

The majority of LSC recipients are in substantial compliance with LSC requirements most of the time. When non-compliance occurs, recipients almost always work diligently and cooperatively with LSC staff to come promptly into compliance, but there have been exceptions. LSC is now considering adding enforcement tools to increase LSC's flexibility in addressing compliance issues.

In light of its experience with the existing enforcement mechanisms, discussed more fully in the NPRM, LSC is proposing to amend its regulations at 45 CFR parts 1606, 1618, and 1623 to adopt standards and procedures for limited reductions in funding, to allow for the imposition of SGCs during a grant year, and to amend the maximum suspension period from 30 to 90 days. LSC is not modifying the proposed changes to Part 1623 as set out in the NPRM; no further comments on Part 1623 are requested. The proposed changes and the modifications to those changes in this FNPRM are discussed in greater detail below.

Amending Part 1606 To Include Standards and Procedures for Limited Reductions in Funding

LSC proposed adding to Part 1606 a new definition for lesser reductions in funding and a new § 1606.15 to provide procedures for imposing them. The proposed procedures were based on the suspension procedures in Part 1623, which provide a significant opportunity for recipient input and due process without being unduly complex. Those proposed procedures would have permitted the recipient to request an informal conference regarding the proposed reduction in funding. There were no further avenues of appeal.

Many comments raised the concern that the proposed procedures were inadequate for lesser reductions in funding because they lacked an appeal of the informal conference and did not include review by an impartial person. Suspensions withhold funds from a

[1] LSC Act, section 1006(b)(1)(A); 42 U.S.C. 2996e(b)(1)(A).

[2] 45 CFR 1606.2(d).

[3] 45 CFR 1606.2(d)(2)(v).

recipient with the expectation that the funds will be provided when the suspension ends. In contrast, terminations, disallowed costs, and lesser reductions in funding all involve a nonrecoverable loss of funding for the recipient. For terminations of five percent or greater, the recipient has a right to appeal a determination to an impartial hearing officer appointed by the LSC President. The hearing officer's decision is then reviewed by the LSC President, who makes the final decision.[4] For disallowed costs under Part 1630, the recipient has a right to appeal a disallowed cost decision to the LSC President. The President may act on the appeal only if he or she has not ''had prior involvement in the consideration of the disallowed cost * * *.''[5] Otherwise, ''the President shall designate another senior Corporation employee who has not had prior involvement to review the recipient's appeal.''[6]

LSC agrees that some appeal is appropriate for lesser reductions. That appeal should also provide for review by someone who was not involved in the prior LSC decisions regarding the preliminary and final determinations. The proposed language below would add an appeal to the LSC President, who would decide the matter unless he or she was involved in those prior decisions. Alternately, the LSC President can appoint another LSC senior employee who was not involved in those prior decisions.

The comments also raised a number of questions regarding the proposed definitions and procedures. In reviewing the comments, LSC determined that a separate set of procedures for lesser reductions creates unnecessary confusion in the rule. This revision uses the existing Part 1606 procedures for preliminary determinations and informal hearings. Appeals of terminations and debarments would then continue to have the existing process and rights. Appeals of lesser reductions would go directly to the LSC President.

In the proposed § 1606.15(c), the NPRM cross-referenced the § 1606.3(b) criteria for substantial violations and used those criteria for lesser reductions. The proposed language below eliminates the new § 1606.15 and moves the § 1606.3(b) criteria to a new definition of ''substantial violations'' for use throughout Part 1606. This approach is designed to improve the structure of the rule. No changes are made to the language, and no substantive changes are intended by this restructuring.

Some deadlines have been adjusted for uniformity in the rule.

Questions on Which Comments Are Sought

Q1: Comments are sought on the question whether the lesser reduction procedures are better handled as proposed in the NPRM or as proposed herein.

Q2: Comments are sought on the changes to the procedures affecting lesser reductions. No further comments are sought regarding the underlying question of the decision to adopt a lesser reductions option or the use of the existing § 1606.3(b) criteria for lesser reductions, which is unchanged from the NPRM. Those comments on the NPRM are already in the rulemaking record. LSC will respond fully to all comments, including those regarding the rationale for the rulemaking, in the preamble to any Final Rule, should one be published.

Q3: There are no substantive changes to the rules for terminations or debarments. Comments are sought on the question whether any of these proposed changes to the structure of the rule would result in substantive changes affecting terminations or debarment. No other comments regarding the existing rules for terminations or debarments are sought.

Q4: There are new definitions added for clarity. Comments are sought on the new definitions but not on definitions that are moved without change from other sections of the existing regulation or from the NPRM proposed language.

Q5: Comments are sought on the proposed final appeal process.

Section-by-Section Analysis of Part 1606

Section 1606.1 Purpose

The NPRM did not amend this section. The proposed language below amends paragraph (b) to add to the purpose of the rule lesser reductions in funding. It also states that the procedures provided are proportional to the proposed action rather than uniform for all actions. This takes the place of § 1606.15(1) in the NPRM.

Section 1606.2 Definitions

The NPRM added a definition of limited reduction in funding as a new paragraph (c). The proposed language below renumbers the following paragraphs. It also adds language from paragraph (d)(1) for terminations regarding whether a lesser reduction will affect funding beyond the current grant year. That addition makes clear that the two options function the same in this regard. No substantive changes are made to the definition.

New paragraphs (f), (g), and (h) are added to relocate definitions of violations, substantial violations, and substantial noncompliance. No substantive changes are made to these terms. They are moved from § § 1606.3(a)(1), (b), and (c) into the definitions section so that they can be easily referenced for all of the available actions in the rule. This eliminates the cross-reference to these terms in § 1606.15(b) of the NPRM. It also responds to some of the comments by making clear that the threshold for a substantial violation is the same for terminations and for lesser reductions.

New paragraph (i) adds a definition of the ''Corporation'' for purposes of taking actions under the rule, which permits elimination of the ''designated employee'' under § 1606.6(a). For purposes of making decisions regarding terminations, debarments, or lesser reductions, the Corporation must act through someone at the level of a deputy director or higher. This change addresses concerns expressed by comments about low-level employees making decisions to reduce funding. It also adds internal consistency to the rule instead of referring to the Corporation in some places and to the designated employee in others. This definition is a change to the NPRM and to the existing rule, although in practice LSC does not make decisions of this magnitude through anyone below the level of a deputy director.

New paragraph (j) defines when materials are considered received for purposes of this part. This is added for clarity. It is intended to make clear that physical delivery with confirmation from the delivery service is always sufficient. Alternate modes of delivery, such as email or fax, are acceptable, but they require confirmation in writing by a person at the recipient. Automated ''confirmations'' from fax machines or email systems do not guarantee that the document was in fact seen by a person at the receiving end.

New paragraph (k) defines days through reference to the rules for computing time in the Federal Rules for Civil Procedure, with an exception for excluding weekends and legal holidays for computing business days. This is added for clarity. In 2009, the Federal rules eliminated the use of a business days rule for periods of ten days or fewer and lengthened some of the shorter deadlines accordingly. LSC is keeping this distinction here because,

[4] 45 CFR 1606.8–.10.

[5] 45 CFR 1630.7(f).

[6] *Id.*

unlike the Federal rules, so many of the deadlines are 10 days or fewer. The revised sections of the rule specify time in calendar days or business days. References to days in other sections of the rule should be treated as calendar days, unless specified otherwise.

Section 1606.3 Grounds for a Termination or a Lesser Reduction in Funding

The proposed grounds for lesser reductions in the NPRM at §§ 1606.15(a) and (b) have been moved into this section, which is renamed accordingly. The definition of a substantial violation has been moved from this section into the new definitions in § 1606.2. As discussed above, no substantive changes are intended, and this restructuring should add clarity to the rule.

Section 1606.4 Grounds for Debarment

There are no changes to this section and it is not reprinted in this notice. LSC considered moving the definition of ''good cause'' from this section to the definitions for structural consistency. LSC did not do so because the definition applies only to debarments; moving it would not add clarity and might add confusion to the rule.

Section 1606.5 Procedures

This section is renamed to make it applicable to all actions under the rule, not only to terminations and debarments. The existing language is renumbered as paragraph (a). Paragraph (b) is added for situations involving lesser reductions in funding. It requires that LSC designate a senior LSC employee who will be able to meet the § 1606.10(d) requirements for handling a final review of a lesser reduction in funding.

Section 1606.6 Preliminary Determination

In the NPRM, § 1606.15(d) provided requirements for notices of preliminary and final determinations for lesser reductions that were worded slightly differently than this section, but they appeared to be substantively identical. The NPRM language is eliminated and merged in paragraph (a) with the existing language for preliminary determinations in this section to provide a process applicable to terminations, debarments, and lesser reductions. Specific references to procedural rights in other sections are replaced with a general reference to procedural rights. No substantive changes are intended by these changes to paragraph (a).

The references to a ''designated employee'' are eliminated in favor of a definition of the Corporation for decision-making purposes in § 1606.2(i), as discussed above.

Language is added to paragraph (b) to affirmatively require LSC to provide the recipient with the final determination if there is no further review. This ensures that there is no confusion in situations in which the recipient does not respond to the preliminary determination. Paragraph (b) is also modified to state that LSC has the discretion to make the preliminary determination final when there is no request for a review. This change is intended to ensure that LSC retains the discretion to consider factors that come to light after issuing the preliminary determination. For example, a recipient might be in such turmoil that it fails to request review, but the local bar association requests that LSC forestall issuing a final determination. Under the existing rule and the NPRM, LSC might not have that discretion.

Section 1606.7 Informal Conference and Review of Written Materials

The NPRM provided in § 1606.15(e), (f), and (g) procedures for an informal conference to review a proposed lesser reduction in funding. The NPRM used the language of Part 1623 as the basis for the informal conference review of a proposed lesser reduction in funding. The proposed language was substantively similar to the § 1606.7 informal conference for terminations and debarments. To simplify the rule, the proposed parallel provisions in § 1606.15 are eliminated in favor of using the existing § 1606.7 procedures.

No substantive changes are made to this section with the exception of the addition of an option of a paper review for terminations and debarments and the increase of some time limits from the existing rule and the NPRM. The current rule for terminations and debarments provides for an informal conference. Part 1623 also provides for an informal conference for review of proposed suspensions, but it adds an option of submission of written materials without a conference. The NPRM used the same language for lesser-reductions conferences. The revised language adds the option of a review of written materials for terminations and debarments as well as for lesser reductions. The NPRM provided that the informal conference would take place within five days of the recipient's request. This revision provides that LSC will notify the recipient within five business days of the time and place of the conference. This provides more scheduling flexibility.

Paragraph (b) provides the recipient with the right to request an in-person conference, but otherwise allows the conference to be held through alternative methods such as a teleconference. For an in-person meeting, some of the participants may attend through alternative methods. This is added to ensure that the recipient has the right to a face-to-face meeting, but it also makes clear that the recipient and LSC can reduce the cost and burden of the conference through alternative methods.

Paragraph (e) provides that the final determination must provide the same type of details as the preliminary determination. This is similar to the requirements of § 1606.9(b), which apply to recommended decisions by hearing officers.

Section 1606.8 Hearings for Terminations or Debarments

No substantive changes are made to this section. The title and paragraph (a) are updated to state that this section applies only to terminations and debarments. These hearings are not available for lesser reductions in funding. As discussed in the NPRM, the purpose of lesser reductions is to provide LSC with a means of taking financial action against a recipient in an amount of less than five percent, without the full hearing procedures required for terminations of five percent or greater.

Section 1606.9 Recommended Decisions for Terminations or Debarments

No substantive changes are made to this section. The title and paragraph (a) are updated to state that this section applies only to terminations and debarments. This section involves decisions after hearings under § 1606.8, which are not available for lesser reductions in funding.

Section 1606.10 Final Decision

This section is updated to add direct review by the LSC President of final determinations of lesser reductions in funding. Currently this section provides only for review by the LSC President of recommended decisions of impartial hearing officers under § 1606.9, which are not available for lesser reductions. The time limits of ten calendar days are expanded to ten business days to ensure there is sufficient time for the recipient to draft and deliver the request for review by the President, which ''shall state in detail the reasons for seeking review.'' [7] At the end of the year, the

[7] 45 CFR 1606.10(b).

holidays of December 25 and January 1 can reduce ten calendar days to only six business days.

Paragraph (c) adds a requirement that the recipient be able to obtain a copy of the written record on which the President based his or her decision. This requirement is based on a similar provision in § 1630.7(g) regarding disallowed costs reviews.

A new paragraph (d) is added providing for appeals of final determinations for lesser reductions in funding. The LSC President, or other senior LSC employee, will conduct the review and make a final decision regarding the proposed lesser reduction in funding. As discussed above, prior to the section-by-section analysis, the final review should be handled by someone who did not actively participate in making the decisions regarding the preliminary determination or the final determination. This requirement ensures that there is at least one level of review involving a fresh look at the situation, similar to the § 1606.8 requirements for terminations and the § 1630.7 requirements for disallowed costs.

Normally, this final review and decision would be handled by the President. LSC expects that the Vice President for Grants Management or the Director of the Office of Compliance and Enforcement will usually handle preliminary determinations, informal conferences, and final determinations for lesser reductions in funding. Nonetheless, these are significant actions that the President is likely to be kept informed about throughout the process. The President is not disqualified under paragraph (d) merely because he or she is briefed about the situation and options, asks questions, and did not object to the prior lesser reduction decisions and proceedings. Nor is he or she disqualified if the recipient or other parties contact him or her directly prior to a final appeal.

Paragraph (e) (renumbered) adds a requirement that a final decision reviewing a determination of a lesser reduction shall meet the specificity requirements of § 1606.6(a). This provides a parallel requirement to the existing requirement that final decisions reviewing a hearing officer's recommendation shall meet the specificity requirements of § 1606.9(b).

Section 1606.13 Interim and Termination Funding; Reprogramming

There are no changes to this section from the NPRM. They are repeated here in order to provide all of the revisions of Part 1606 proposed by both the NPRM and this FNPRM. No comments are sought on this section.

Section 1606.15 Limited Reductions of Funding

The NPRM proposed adding a new section. As discussed above, all of the proposed provisions are now incorporated into the existing provisions of this part. There is no proposed § 1606.15 in this FNPRM.

Amending Part 1618 To Permit the Imposition of Immediate Special Grant Conditions

The NPRM proposed amending Part 1618 to provide clear authority to impose special grant conditions in the middle of a grant, rather than only at renewal or competition. The OIG expressed concern that the Part 1618 threshold might unduly restrict the use of these immediate special grant conditions. The proposal has been revised to specify that immediate special grant conditions are available for corrective actions after LSC has determined that a violation exists. This enables LSC to convert corrective actions required by the Office of Compliance and Enforcement into special grant conditions immediately rather than waiting for the next grant renewal or award. This addition does not affect LSC's existing authority to impose special grant conditions during renewal, competition, or otherwise.

Additionally, during review of Part 1618 it became apparent that the language of Part 1618 is outdated. It has not been amended since 1976. Both Part 1606—Terminations and Part 1623—Suspensions refer to compliance with ''a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation.'' [8] These rules were extensively updated in 1998. Part 1618 refers only to violations of ''the Legal Services Corporation Act or the rules and regulations issued by the Corporation.'' [9] LSC proposes amending Part 1618 to conform to the language used in the other, later adopted, regulations to conform to existing practice.

Proposed § 1618.5(b) permits LSC to impose a lesser reduction in funding after ''attempts at informal resolution have been unsuccessful.'' Informal resolution includes remedial actions, preventive actions, and sanctions. So, for example, if a recipient has persistently and intentionally used LSC funds for grassroots lobbying, then LSC could ultimately proceed to termination or debarment. Section 1618.5(b) requires LSC to attempt to resolve the situations informally before beginning an enforcement action. LSC could demand that the recipient cease such activities, put in place measures to ensure that such activities do not recur, and accept a lesser reduction in funding as a sanction. If the recipient did not agree to all three actions during attempts at informal resolution, then LSC could proceed with suspension, termination, and/or a lesser reduction in funding. Furthermore, if attempts at informal resolution are unsuccessful, then LSC may proceed with actions that are more consequential than those pursued during those unsuccessful attempts. Thus, in this example, LSC could proceed with a termination of five percent or greater, even if it offered the recipient the option of resolving the matter through acceptance of a reduction in funding of less than five percent. There are no changes to the rule required for this application.

Question on Which Comments Are Sought

Q6: Comments are sought on the new proposed language for Part 1618.

Section-by-Section Analysis of Part 1618

Section 1618.1 Purpose

Reference to the requirements of the LSC Act are updated to refer to the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline, or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation. This conforms Part 1618 to Part 1606 and Part 1623.

Section 1618.2 Definitions

The existing definition of the term ''Act'' as referring to the LSC Act, rules, and regulations is removed because it was confusing and inconsistent with LSC's current governing laws, many of which appear in appropriations statutes and not the LSC Act, and with Part 1606 and Part 1623. A new paragraph (a) is added defining the term ''LSC requirements'' using the language from Part 1606 and Part 1623. A new paragraph (b) is added to make clear that a violation refers to a violation of the LSC requirements.

[8] 45 CFR 1606.1(a) and 1623.1(a).

[9] 45 CFR 1618.2.

Section 1618.3 Complaints

The reference to a violation of ''the LSC Act'' is replaced with reference to the new definition of a ''violation.''

Section 1618.4 Duties of Recipients

References to a violation of the LSC Act are replaced with references to the new definition of a violation. Paragraphs (a) and (b) are renumbered as (1) and (2) of a new paragraph (a). The former paragraph (b) is split into (a)(2) and (a)(3). These changes add clarity without substantive alterations to the rule. The new (a)(2) is amended to clarify that the recipient has the discretion to determine whether a violation by a recipient's employee merits a sanction imposed by the recipient on the employee under the circumstances. Some violations can be fully addressed by the recipient without any sanction. This is not meant to change the substantive requirements of this paragraph. Paragraph (c) is renumbered as paragraph (b). A new paragraph (c) is added to clarify that these requirements do not, by themselves, create substantive rights for recipient employees. A failure to consult with LSC under this section does not nullify a recipient's employment action. Rather, it is a matter between LSC and the recipient.

Section 1618.5 Duties of the Corporation

References to a violation of the LSC Act are replaced with references to the new definition of a violation. Paragraph (a) is amended to make clear that the Corporation's investigation may be limited to determining that the recipient is taking sufficient action. This is not a substantive change. Paragraph (c) is added regarding immediate special grant conditions. As discussed above, these would be available for any violation for which LSC has determined that corrective action is necessary. Currently LSC makes those determinations through normal procedures by the Office of Compliance and Enforcement. The thresholds in paragraph (b) for further actions such as suspensions or terminations would not apply to immediate special grant conditions.

List of Subjects

45 CFR Part 1606

Administrative practice and procedure, Grant program—law, Legal services.

45 CFR Parts 1618 and 1620

Grant programs—law, Legal services.

For reasons set forth above, and under the authority of 42 U.S.C. § 2996g(e), LSC proposes to amend 45 CFR chapter XVI as follows:

PART 1606—TERMINATION, LIMITED REDUCTION IN FUNDING, AND DEBARMENT PROCEDURES; RECOMPETITION

1. The authority citation for Part 1606 continues to read as follows:

Authority: 42 U.S.C. 2996e(b)(1) and 2996f(a)3; Pub. L. 105–199, 111 Stat. 2440, Secs. 501(b) and (c) and 504; Pub. L. 104–134, 110 Stat. 1321.

2. The heading for part 1606 is revised to read as set forth above.

3. Amend § 1606.1 by revising paragraph (b) to read as follows:

§ 1606.1 Purpose

* * * * *

(b) Provide timely and fair due process procedures, proportional to the proposed action, when the Corporation has made a preliminary decision to terminate a recipient's LSC grant or contract, to debar a recipient from receiving future LSC awards of financial assistance, or to impose a lesser reduction in funding; and

4. Amend § 1606.2 by redesignating paragraphs (c) and (d) as (d) and (e), revising new paragraph (e), and adding paragraphs (c) and (f) through (k) to read as follows:

§ 1606.2 Definitions.

* * * * *

(c) Limited reduction in funding means a reduction in funding of less than five percent of a recipient's current annual level of financial assistance imposed by the Corporation in accordance with the procedures and requirements of this part. A limited reduction in funding will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(d) Recipient means any grantee or contractor receiving financial assistance from the Corporation under section 1006(a)(1)(A) of the LSC Act.

(e)(1) Termination means that a recipient's level of financial assistance under its grant or contract with the Corporation will be reduced in whole or in part prior to the expiration of the term of a recipient's current grant or contract. A partial termination will affect only the recipient's current year's funding, unless the Corporation provides otherwise in the final termination decision.

(2) A termination does not include:

(i) A reduction of funding required by law, including a reduction in or rescission of the Corporation's appropriation that is apportioned among all recipients of the same class in proportion to their current level of funding;

(ii) A reduction or deduction of LSC support for a recipient under the Corporation's fund balance regulation at 45 CFR part 1628;

(iii) A recovery of disallowed costs under the Corporation's regulation on costs standards and procedures at 45 CFR part 1630;

(iv) A withholding of funds pursuant to the Corporation's Private Attorney Involvement rule at 45 CFR part 1614; or

(v) A limited reduction of funding as defined in this section.

(f) Substantial noncompliance means either a substantial violation, as defined in this section, or a substantial failure, as defined in this part at § 1606.3(a).

(g) Violation means a violation by the recipient of a provision of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, or a Corporation rule, regulation, guideline or instruction, or a term or condition of the recipient's grant or contract.

(h) Substantial violation means a violation that merits action under this part based on consideration of the following criteria by the Corporation:

(1) The number of restrictions or requirements violated;

(2) Whether the violation represents an instance of noncompliance with a substantive statutory or regulatory restriction or requirement, rather than an instance of noncompliance with a non-substantive technical or procedural requirement;

(3) The extent to which the violation is part of a pattern of noncompliance with LSC requirements or restrictions;

(4) The extent to which the recipient failed to take action to cure the violation when it became aware of the violation; and

(5) Whether the violation was knowing and willful.

(i) Corporation, when used to refer to decisions by the Legal Services Corporation, means that those decisions are made by an individual at the level of an office director, deputy director, or higher.

(j) Receipt of materials shall mean that the materials were sent to the normal address for physical mail, email, or fax transmission, and there is reliable secondary confirmation of delivery. For physical delivery, confirmation may be provided through tracking information from the delivery service. For other forms of delivery, confirmation may be provided through a document such as a confirmation email or a fax sent from an

authorized person at the recipient. Receipt of materials by the LSC recipient is sufficient for the running of applicable time periods. Proof of receipt by the Board Chair is not necessary unless delivery to the recipient itself cannot be reasonably accomplished.

(k) Days shall mean the number of actual days as determined by the rules for computing time in the Federal Rules of Civil Procedure, Rule 6, except that computation of business days shall exclude Saturdays, Sundays, and legal holidays (as defined in those rules).

5. Amend § 1606.3 by revising the heading of that section, revising paragraph (a)(1), redesignating paragraph (b) as (c), and revising newly redesignated paragraph (c) and adding new paragraph (b) to read as follows:

§ 1606.3 Grounds for a termination or a lesser reduction in funding.

(a) A grant or contract may be terminated when:

(1) There has been a substantial violation by the recipient, and the violation occurred less than 5 years prior to the date the recipient receives notice of the violation pursuant to § 1606.6(a); or

(2) There has been a substantial failure by the recipient to provide high quality, economical, and effective legal assistance, as measured by generally accepted professional standards, the provisions of the LSC Act, or a rule, regulation, including 45 CFR 1634.9(a)(2), or guidance issued by the Corporation.

(b) The Corporation may impose a limited reduction of funding when the Corporation determines that there has been a substantial violation by the recipient but that termination of the recipient's grant, in whole or in part, is not warranted.

(c) A determination of whether there has been a substantial violation for the purposes of this section, and the magnitude of any termination, in whole or in part, or any lesser reduction in funding, will be based on consideration of the criteria set forth in the definition of ''substantial violation'' in this part.

6. Amend § 1606.5 to revise the heading of that section, revise the language and redesignate it as paragraph (a), and add a new paragraph (b) to read as follows:

§ 1606.5 Procedures.

(a) Before a final action is taken under this part, the recipient will be provided notice and an opportunity to be heard as set out in this part.

(b) Prior to a preliminary determination involving a lesser reduction in funding, the Corporation shall designate either the President or another senior Corporation employee to conduct any final review that is requested pursuant to § 1606.10 of this part. The Corporation shall ensure that the person so designated has had no prior involvement in the preliminary and/or final determinations so as to meet the criterion set out in § 1606.10(d).

7. Amend § 1606.6 by revising paragraphs (a) and (b) to read as follows:

§ 1606.6 Preliminary determination.

(a) When the Corporation has made a preliminary determination that a recipient's grant or contract should be terminated, that a lesser reduction in funding shall be imposed, and/or that a recipient should be debarred, the Corporation shall issue a written notice to the recipient and the Chair of the recipient's governing body. The notice shall:

(1) State the grounds for the proposed action;

(2) Identify, with reasonable specificity, any facts or documents relied upon as justification for the proposed action;

(3) Inform the recipient of the proposed amount and effective date for the proposed action;

(4) Advise the recipient of its procedural rights for review of the proposed action under this part;

(5) Inform the recipient of its right to receive interim funding pursuant to § 1606.13; and

(6) Specify what, if any, corrective action the recipient can take to avoid the proposed action.

(b) If the recipient does not request review, as provided for in this part, then the preliminary determination shall become final, at LSC's discretion, after the relevant time limits have expired. The Corporation shall provide the recipient with the final decision, and no further appeal or review will be available under this part.

8. Amend § 1606.7 by revising the heading and paragraphs (a) through (e) and adding paragraph (f) to read as follows:

§ 1606.7 Informal conference, review of written materials, and final determination.

(a) A recipient may submit written materials in opposition to the preliminary determination and/or request an informal conference as follows:

(i) for terminations or debarments, within 30 calendar days of receipt of the preliminary determination; or

(ii) for lesser reductions in funding, within 10 business days of receipt of the preliminary determination.

(b) Within 5 business days of receipt of a request for a conference, the Corporation shall notify the recipient of the time and place the conference will be held, which shall be at the Corporation's discretion. Some or all of the participants in the conference may attend via telephone, unless the recipient requests an in-person meeting between the Corporation and at least one representative of the recipient. If the recipient requests an in-person meeting, then other participants may attend via telephone. Alternative means of participation other than the telephone are permissible at the sole discretion of LSC.

(c) The informal conference shall be conducted by the Corporation employee who issued the preliminary determination.

(d) At the informal conference, the Corporation and the recipient shall both have an opportunity to state their case, seek to narrow the issues, explore the possibilities of settlement or compromise, and submit written materials.

(e) If an informal meeting is conducted and/or written materials are submitted by the recipient, the Corporation shall consider any written materials submitted by the recipient in opposition to the limited reduction in funding and any oral presentation or written materials submitted by the recipient at an informal meeting. Based on the written materials and/or the informal conference, the Corporation may modify, withdraw, or affirm the preliminary determination through a final determination in writing, which shall be provided to the recipient within 15 calendar days of the conclusion of the informal conference. The final determination shall conform to the requirements of § 1606.6(a).

(f) If the recipient does not request further process, as provided for in this part, then, after the relevant time limits have expired, LSC shall notify the recipient that no further appeal or review will be available under this part and may proceed to implement the final determination as a final decision.

9. Amend § 1606.8 by revising the heading and paragraph (a) to read as follows:

§ 1606.8 Hearing for a termination or debarment.

(a) For terminations or debarments only, the recipient may make a written request for a hearing within 30 days of its receipt of the preliminary determination or within 15 days of receipt of the written determination issued by the designated employee after

the conclusion of the informal conference.

* * * * *

10. Amend § 1606.9 by revising the heading and paragraph (a) to read as follows:

§ 1606.9 Recommended decision for a terminations or debarment.

(a) For termination or debarment hearings under § 1606.8, within 20 calendar days after the conclusion of the hearing, the hearing officer shall issue a written recommended decision which may:

* * * * *

11. Amend § 1606.10 by revising the heading and paragraphs (a), (b), and (c), redesignating paragraphs (d) and (e) to (e) and (f), respectively, adding new paragraph (d) and revising newly designated paragraphs (e) and (f) to read as follows:

§ 1606.10 Final decision for a termination, debarment, or lesser reduction.

(a) If neither the Corporation nor the recipient requests review by the President, a final determination or a recommended decision shall become a final decision 10 business days after receipt by the recipient.

(b) The recipient or the Corporation may seek review by the President of a final determination or a recommended decision. A request shall be made in writing within 10 business days after receipt of the recommended decision by the party seeking review and shall state in detail the reasons for seeking review.

(c) The President's review shall be based solely on the information in the administrative record of the proceedings, including the appeal to the President, and any additional submissions, either oral or in writing, that the President may request. A recipient shall be given a copy of, and an opportunity to respond to, any additional submissions made to the President. All submissions and responses made to the President shall become part of the administrative record. Upon request, the Corporation shall provide a copy of the written record to the recipient.

(d) For a direct appeal of a final determination pursuant to § 1606.7, in which there is no hearing under § 1606.8, the President may not review the appeal if the President has had prior involvement in the preliminary and/or final determinations. If the President cannot review the appeal, or the President chooses not to do so, then the President shall designate another senior Corporation employee who has not had prior involvement in the preliminary and/or final determinations.

(e) As soon as practicable after receipt of the request for review of a recommended decision, but not later than 30 days after the request for review, the President or designee may adopt, modify, or reverse the recommended decision or final determination, or direct further consideration of the matter. In the event of modification or reversal of a recommended decision pursuant to § 1606.9, this decision shall conform to the requirements of § 1606.9(b). In the event of modification or reversal of a final determination pursuant to § 1606.7, the decision shall conform to the substantive requirements of § 1606.6(a).

(f) The decision of the President or designee under this section shall become final upon receipt by the recipient.

12. Amend § 1606.13 by revising paragraphs (a), (b), and (d) to read as follows:

(a) Pending the completion of termination or limited reduction in funding proceedings under this part, the Corporation shall provide the recipient with the level of financial assistance provided for under its current grant or contract with the Corporation.

(b) After a final decision has been made to terminate a recipient's grant or contract or to impose a limited reduction in funding, the recipient loses all rights to the terminated or reduced funds.

* * * * *

(d) Funds recovered by the Corporation pursuant to a termination or limited reduction in funding shall be used in the same service area from which they were recovered or will be reallocated by the Corporation for basic field purposes at its sole discretion.

PART 1618—ENFORCEMENT PROCEDURES

13. The authority citation for Part 1618 continues to read as follows:

Authority: Secs. 1007(a)(8); 1006(b)(6); 1006(b)(4) (42 U.S.C. 2996f(a)(8); 2996e(b)(6); 29963(b)(4)).

14. Revise § 1618.1 to read as follows:

§ 1618.1 Purpose.

In order to ensure uniform and consistent interpretation and application of the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms and conditions of the recipient's grant or contract with the Corporation, and to prevent a question of whether these requirements have been violated from becoming an ancillary issue in any case undertaken by a recipient, this part establishes a systematic procedure for enforcing compliance with them.

15. Amend § 1618.2 by revising the heading and adding paragraphs (a) and (b) to read as follows:

§ 1618.2 Definitions.

(a) *LSC requirements* means the provisions of the LSC Act, the Corporation's appropriations act or other law applicable to LSC funds, a Corporation rule, regulation, guideline or instruction, or the terms or conditions of the recipient's grant or contract with the Corporation.

(b) *Violation* means a violation by the recipient of the LSC requirements.

16. Revise § 1618.3 to read as follows:

§ 1618.3 Complaints.

A complaint of a violation by a recipient or an employee of a recipient may be made to the recipient, the State Advisory Council, or the Corporation.

17. Amend § 1618.4 by revising paragraphs (a) and (b), redesignating paragraph (c) to (b), revising new paragraph (b), and adding a new paragraph (c) to read as follows:

§ 1618.4 Duties of Recipients.

(a) A recipient shall:

(1) Advise its employees of their responsibilities under the LSC requirements;

(2) Establish procedures, consistent with the notice and hearing requirements of section 1011 of the LSC Act, for determining whether an employee has committed a violation and whether the violation merits a sanction based on consideration of the totality of the circumstances; and

(3) Establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(i) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(ii) Suspension and termination of employment; and

(iii) Other sanctions appropriate for enforcement of the LSC requirements.

(b) Before suspending or terminating the employment of any person for a violation, a recipient shall consult the Corporation to ensure that its interpretation of these requirements is consistent with Corporation policy.

(c) This section provides procedural requirements between the Corporation and recipients. It does not create rights for recipient employees.

18. Amend § 1618.5 by revising paragraphs (a) and (b) and adding paragraph (c) to read as follows:

§ 1618.5 Duties of the Corporation.

(a) Whenever the Corporation learns that there is reason to believe that a recipient or a recipient's employee may have committed a violation, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient. Such actions may be limited to determining if the recipient is sufficiently investigating and resolving the matter itself.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the LSC requirements, or, after notice, has failed to take appropriate remedial or disciplinary action to ensure compliance by its employees with the LSC requirements, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient, or impose a lesser reduction in funding, pursuant to the procedures set forth in parts 1623 and 1606, or may take other action to enforce compliance with the LSC requirements.

(c) Whenever the Corporation determines that a recipient has committed a violation, that corrective actions by the recipient are required to remedy the violation and/or prevent recurrence of the violation, and that imposition of special grant conditions are needed prior to the next grant renewal or competition for the service area, the Corporation may immediately impose Special Grant Conditions on the recipient to require completion of those corrective actions.

Victor M. Fortuno,

Vice President & General Counsel.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2012–0041; 4500030113]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petitions To List the Two Spring Mountains Dark Blue Butterflies and Morand's Checkerspot Butterfly as Endangered or Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding on petitions to list the Spring Mountains dark blue butterflies (*Euphilotes ancilla purpura* and *Euphilotes ancilla cryptica*) and Morand's checkerspot butterfly (*Euphydryas anicia morandi*) as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), and to designate critical habitat. Based on our review, we find that the petition requesting listing of the Morand's checkerspot butterfly does not present substantial information indicating that listing that species may be warranted. In addition, based on our review, we find that the petition requesting listing of the two Spring Mountains dark blue butterflies presents substantial scientific or commercial information indicating that listing these species may be warranted. Therefore, with the publication of this notice, we will initiate status reviews of the two Spring Mountains dark blue butterflies to determine whether listing is warranted. To ensure that these status reviews are comprehensive, we are requesting scientific and commercial data and other information regarding these two subspecies. Based on these status reviews, we will issue a 12-month finding on the petition, which will address whether the petitioned action is warranted, as provided in section 4(b)(3)(B) of the Act.

DATES: To allow us adequate time to conduct this review, we request that we receive information on or before October 9, 2012. The deadline for submitting an electronic comment using the Federal eRulemaking Portal (see **ADDRESSES** section, below) is 11:59 p.m. Eastern Time on this date. After October 9, 2012, you must submit information directly to the Division of Policy and Directives Management (see **ADDRESSES** section below). Please note that we might not be able to address or incorporate information that we receive after the above requested date.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the search box, enter FWS–R8–ES–2012–0041, which is the docket number for this action. You may submit a comment by clicking on ''Send a Comment or Submission.'' If your submission will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our information collection procedures. If you attach your submission as a separate document, our preferred file format is Microsoft Word. If you attach multiple documents (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R8–ES–2012–0041; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all information we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Request for Information section below for more details).

FOR FURTHER INFORMATION CONTACT: Edward D. Koch, Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno, Nevada 89502, by telephone 775–861–6300 or by facsimile 775–861–6301. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2012–0041. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours, at the Nevada Fish and Wildlife Office (see above for address).

SUPPLEMENTARY INFORMATION:

Request for Information

When we make a finding that a petition presents substantial information indicating that listing a species may be warranted, we are required to promptly initiate review of the status of the species (status review). For the status review to be complete and based on the best available scientific and commercial information, we request information on the two Spring Mountains dark blue butterflies from governmental agencies, Native American tribes, the scientific community, industry, and any other interested parties. We seek information on:

(1) The species' biology, range, and population trends, including:

(a) Habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) The factors that are the basis for making a listing determination for a species under section 4(a) of the Act (16 U.S.C. 1531 *et seq.*), which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

If, after the status review, we determine that listing either or both of the two Spring Mountains dark blue butterflies is warranted, we will propose critical habitat (see definition in section 3(5)(A) of the Act) under section 4 of the Act, to the maximum extent prudent and determinable at the time we propose to list the species. Therefore, we also request data and information on:

(1) What may constitute ''physical or biological features essential to the conservation of the species,'' within the geographical range currently occupied by the species;

(2) Where these features are currently found;

(3) Whether any of these features may require special management considerations or protection;

(4) Specific areas outside the geographical area occupied by the species that are ''essential for the conservation of the species''; and

(5) What, if any, critical habitat you think we should propose for designation if the species is proposed for listing, and why such habitat meets the requirements of section 4 of the Act.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your information concerning this status review by one of the methods listed in the **ADDRESSES** section. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this personal identifying information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Information and supporting documentation that we received and used in preparing this finding is available for you to review at *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Background

Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. We are to base this finding on information provided in the petition, supporting information submitted with the petition, and information otherwise available in our files. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish our notice of the finding promptly in the **Federal Register**.

Our standard for substantial scientific or commercial information within the Code of Federal Regulations (CFR) with regard to a 90-day petition finding is ''that amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted'' (50 CFR 424.14(b)). If we find that substantial scientific or commercial information was presented, we are required to promptly initiate a species status review, which we subsequently summarize in our 12-month finding.

Petition History

Two Spring Mountains Dark Blue Butterflies Petition

On October 6, 2011, we received a petition dated September 30, 2011, from Wild Earth Guardians, requesting that the two Spring Mountains dark blue butterflies (*Euphilotes ancilla purpura* and *Euphilotes ancilla cryptica*) be listed as endangered or threatened, and that critical habitat be designated under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a December 20, 2011, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we are currently required to complete a significant number of listing and critical habitat actions by the end of Fiscal Year 2016 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, and that we might conduct a review of the petition prior to that time should budget and workload permit. This finding addresses the petition.

Morand's Checkerspot Butterfly Petition

On November 1, 2011, we received a petition dated October 28, 2011, from Bruce M. Boyd, requesting that Morand's checkerspot butterfly (*Euphydryas anicia morandi*) be listed as endangered or threatened. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(a). In a November 16, 2011, letter to the petitioner, we responded that we reviewed the information presented in the petition and determined that issuing an emergency regulation temporarily listing the species under section 4(b)(7) of the Act was not warranted. We also stated that we are currently required to complete a significant number of listing and critical habitat actions in Fiscal Year 2016 pursuant to court orders, judicially approved settlement agreements, and other statutory deadlines, and that we would conduct a review of the petition once we secured funds for this action. This finding addresses the petition.

Previous Federal Action(s)

Two Spring Mountains Dark Blue Butterflies Petition

On November 21, 1991 (56 FR 58804), we added *Euphilotes enoptes* ssp. (dark blue butterfly) to our list of candidate species as a Category 2 candidate species. *Euphilotes enoptes* ssp. is currently recognized as *E. ancilla.* A Category 2 candidate species was a species for which we had information indicating that a proposal to list it as threatened or endangered under the Act may be appropriate, but for which additional information on biological vulnerability and threat was needed to support the preparation of a proposed rule. *Euphilotes enoptes* ssp. (dark blue butterfly) (=*E. ancilla* ssp.) was again included in our Category 2 candidate list on November 15, 1994 (59 FR 58982).

In the February 28, 1996, Candidate Notice of Review (CNOR) (61 FR 7595), we adopted a single category of candidate species defined as follows: ''Those species for which the Service has on file sufficient information on biological vulnerability and threat(s) to support issuance of a proposed rule to list but issuance of the proposed rule is precluded.'' In previous CNORs, species meeting this definition were known as Category 1 candidates for listing. Thus, the Service no longer considered Category 2 species as candidates, including *Euphilotes enoptes* ssp. (dark blue butterfly) (=*E. ancilla* ssp.), and did not include it in the 1996 list or any subsequent CNORs. The decision to stop considering Category 2 species as candidates was designed to reduce confusion about the status of these species and to clarify that we no longer regarded these species as candidates for listing.

Morand's Checkerspot Butterfly Petition

On January 6, 1989, we added Morand's checkerspot butterfly (*Euphydryas anicia morandi*) to our list of candidate species as a Category 2 candidate species (54 FR 554–579). Morand's checkerspot butterfly was again included in our Category 2 candidate list on November 21, 1991 (56 FR 58804), and in our Category 2 candidate list on November 15, 1994 (59 FR 58982). Morand's checkerspot butterfly was not included in the 1996 list or any subsequent CNORs.

Species Information

The three butterfly subspecies included in the two petitions and evaluated in this finding are invertebrates endemic to the Spring Mountains in Nevada. All three of the petitioned butterflies are from the phylum Arthropoda, class Insecta, order Lepidoptera. The two dark blue butterflies are members of the family Lycaenidae. The Morand's checkerspot butterfly is a member of the family Nymphalidae. In specific sections below, we have included a short summary of available population and life-history information for each subspecies, as provided in the petitions, their references, and our files.

The two Spring Mountains dark blue butterflies petition provides information regarding the subspecies ranking for *Euphilotes ancilla purpura* according to NatureServe (WildEarth Guardians 2011, p. 4). *Euphilotes ancilla purpura* is considered at the subspecies taxonomic level and is ranked imperiled at the subspecies and national levels, and imperiled/critically imperiled at the State level, whereas *E. a. cryptica* is not ranked by Natureserve (Natureserve, 2012). In addition, Natureserve considers Morand's checkerspot butterfly at the subspecies taxonomic level and ranks it as imperiled at the subspecies, national, and State levels (Natureserve, 2012). According to the NatureServe Web site, assessment of any species ''does not constitute a recommendation by NatureServe for listing [that species]'' under the Act (NatureServe 2012). In addition, NatureServe's assessment procedures include ''different criteria, evidence requirements, purposes and taxonomic coverage [from those of] government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide'' (NatureServe 2012).

Two Spring Mountains Dark Blue Butterflies

The taxonomy of the two Spring Mountains dark blue butterflies was recently changed, and this change has been accepted by local experts. Prior to 2008, both subspecies were grouped together as *Euphilotes ancilla purpura,* whereas after 2008, *E. a. purpura* was split into *E. a. purpura* and *E. a. cryptica.* Austin *et al.* (2008) notes the differences in phenology and host plants between the two Spring Mountains dark blue butterflies (*E. a. purpura* and *E. a. cryptica*) and describes them as two subspecies centered around these biological differences. Based upon the information in the petition and in our files discussed above, we accept the characterization of the two Spring Mountains dark blue butterflies as subspecies.

The two Spring Mountains dark blue butterflies (*Euphilotes ancilla purpura* and *E. a. cryptica*) are endemic to the Spring Mountains in southern Nevada; *E. a. purpura* only occurs in Clark County, whereas *E. a. cryptica* occurs in both Clark and Nye Counties (Austin *et al.* 2008, p. 151). Austin *et al.* (2008) describe the two dark blue butterflies as separate subspecies based on differences in phenology and host plants. For example, *E. a. purpura* uses *Eriogonum umbellatum* var. *juniporinum* (juniper buckwheat) as its larval host plant and has a flight season from early May to early July (Austin *et al.* 2008, p. 156). On the other hand, *E. a. cryptica* uses *Eriogonum umbellatum* var. *subaridum* (sulphur-flower buckwheat) as its larval host plant and has a flight season from mid-July to mid-August (Austin *et al.* 2008, p. 156). The two subspecies also differ in the length of their flight seasons, their frequencies of visitations to mud, and the length of different life stages (pupation, diapause, and emergence); however they look identical (Austin *et al.* 2008, p. 156). *Euphilotes ancilla purpura* is known only from the east slope of the Spring Mountains between Willow Creek and West Mud Spring and lower Macks Canyon near the northern end of the Spring Mountains in Clark County at an elevation range of 1,775–1,950 meters (m) (2,543–6,398 feet (ft)) (Austin *et al.* 2008, p. 158). *Euphilotes ancilla cryptica* is known from several sites on both slopes of the Spring Mountains in Nye and Clark Counties, Nevada, from Big Timber Spring to Potosi Mountain at an elevation range of 1,800–3,000 m (5,906–9,843 ft) (Austin *et al.* 2008, p. 158). The distributions of *E. a. purpura* and *E. a. cryptica* overlap in Clark County (Austin *et al.* 2008, p. 151).

Morand's Checkerspot Butterfly

Gunder (1928) first described Morand's checkerspot butterfly as a subspecies. Based upon the information in the petition and in our files discussed above, we accept the characterization of Morand's checkerspot butterfly as a subspecies.

Morand's checkerspot butterfly is endemic to the Spring Mountains in southern Nevada and occurs in Clark County. It is locally common in the meadows on the ridge to Mt. Charleston and above the ski area in Lee Canyon, and it generally occurs above 2,012 m (6,601 ft) in elevation (Austin and Austin 1980, p. 44). The flight period for Morand's checkerspot butterfly is from late June to July (Austin and Austin 1980, p. 44). The larval host plants for Morand's checkerspot butterfly are *Castilleja linariifolia* (narrow leaved paint brush), *Castilleja applegatei* ssp. *martini* (=*C. martinii* var. *clokeyi,* wavy leaved paint brush), *Penstemon eatonii* (scarlet bugler, firecracker penstemon), *P. leiophyllus* var. *keckii* (Charleston beardtongue), and *P. rostriflorus* (scarlet penstemon, beaked beard-tongue) (Weiss *et al.* 1995, p. 4; Niles and Leary 2007, p. 55–56; Austin and Leary 2008, p. 106–107). Morand's checkerspot butterfly appears in three distinct phenotypes (the observable properties of an organism) on the Spring Mountains (Weiss *et al.* 1995, p. 4).

Evaluation of Information for This Finding

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations at 50 CFR part 424 set forth the procedures for adding a species to, or removing a species from, the Federal Lists of Endangered and Threatened Wildlife and Plants. A species may be determined to be an endangered or threatened species due to one or more

of the five factors described in section 4(a)(1) of the Act:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the species responds to the factor in a way that causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant a threat it is. If the threat is significant, it may drive or contribute to the risk of extinction of the species such that the species may warrant listing as threatened or endangered as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively may not be sufficient to compel a finding that listing may be warranted. The information shall contain evidence sufficient to suggest that these factors may be operative threats that act on the species to the point that the species may meet the definition of threatened or endangered under the Act.

In making this 90-day finding, we evaluated whether information regarding threats to the two Spring Mountains dark blue butterflies and the Morand's checkerspot butterfly, as presented in the petition and other information available in our files, is substantial, thereby indicating that the petitioned actions may be warranted. Our evaluation of this information is presented below.

Two Spring Mountains Dark Blue Butterflies Petition

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petition states that both subspecies of dark blue butterfly are at risk from wildfire exacerbated by invasive weeds, habitat degradation from recreation, off-road vehicle use, and equestrian use (WildEarth Guardians 2011, p. 10; Austin *et al.* 2008, p. 158). Specifically, cheatgrass (*Bromus tectorum*) and red brome (*B. rubens*) are described as being present in the Spring Mountains National Recreation Area (SMNRA) and are known to alter natural fire regimes and convert landscapes to annual grasslands (WildEarth Guardians 2011, p. 10). In addition, the petition states that a fire fuels reduction project was approved by the Humboldt-Toiyabe National Forest in 2007 with targeted sites in *Euphilotes ancilla purpura* and *E. a. cryptica* locations (WildEarth Guardians 2011, p. 10). The fuels reduction project plan analyzed the potential impacts to *E. a. purpura,* concluding that it may impact *E. a. purpura,* but impacts to *E. a. cryptica* were not separately analyzed (WildEarth Guardians 2011, p. 10).

The petition also notes that ungulates may affect the two Spring Mountains dark blue butterflies (WildEarth Guardians 2011, p. 17). Specifically, the petition states that *Eriogonum* spp. are palatable to native ungulates and domestic livestock, and Austin *et al.* (2008, p. 153) found that ungulates heavily grazed *Eriogonum umbellatum subaridum* and severely reduced the number of flowers available to *Euphilotes* (WildEarth Guardians 2011, p. 17).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not present any specific supporting information that wildfire exacerbated by invasive weeds may be impacting the two Spring Mountains dark blue butterflies or is likely to in the future. The petition does not present specific information concerning past, present, or projected intensity of wildfire in or near areas occupied by the two Spring Mountains dark blue butterflies. The petition does not present specific information as to whether this potential threat has affected, is affecting, or is likely to affect the subspecies, their host plants, or nectar sources. The petition also does not report loss of populations or reductions in numbers of either of the subspecies as a result of wildfire exacerbated by invasive weeds. We have information in our files related to vegetation and fire history in the Spring Mountains (Hall 2006; Craig 2010); however, we have no information in our files about the impacts of wildfire upon either of the two Spring Mountains dark blue butterflies or their habitats.

The petition states that ungulates may affect the two Spring Mountains dark blue butterflies, and the petition cites Austin *et al.* (2008, p. 153) regarding ungulate grazing and its effect on *Eriogonum umbellatum subaridum* and *Euphilotes* (WildEarth Guardians 2011, p. 17). Austin *et al.* (2008, p. 153) states that ungulate grazing was heavy in 2002, ''severely reducing the number of flowers available to any *Euphilotes* present.'' However, the information in the petition and in our files does not provide specific supporting information that ungulate grazing may be affecting the two Spring Mountains dark blue butterflies now or in the future. The petition does not present specific information concerning past, present, or projected intensity of ungulate grazing in or near occupied or suitable locations. The petition does not present specific information as to whether this potential threat has affected, is affecting, or is likely to affect either of the two subspecies, their host plants, or their nectar sources, other than saying that ungulate grazing did occur in 2002 at one site. We have no information in our files related to ungulate grazing and its impacts to either of the two Spring Mountains dark blue butterflies or their habitats.

Information in our files confirms that the 2007 Spring Mountains Hazardous Fuels Reduction Project analyzed the potential impacts to *Euphilotes ancilla purpura,* concluding that the project ''may impact individuals, but is not likely to cause a trend to Federal listing or loss of viability of the subspecies'' (USDA 2007, p. 18). In addition, the project states that ''long-term benefits to larval host and nectaring plant populations may occur'' (USDA 2007, p. 18). These projects have been implemented, but no post-implementation assessment of impacts to these butterfly species has occurred.

Information in our files references a 2010 Blue Tree Trails Project to be conducted in Lee Canyon with the goal of ''diversifying the trail experience on the National Recreation Area by designating additional multiple-use trails to meet visitor needs for trails outside of Wilderness, at lower elevations for a year-round experience that are easier to navigate, and located to avoid adverse impacts to natural resources'' (USDA 2010, p. 1). The trails system is intended for nonmotorized recreation opportunities for equestrians, mountain bike users, and hikers, and includes improving 45 miles (mi) (72 kilometers (km)), rerouting 17 mi (27 km), and closing 8.5 mi (14 km) of trails, resulting in a trail system of approximately 53.5 mi (86 km) in length, constructed to meet United States Forest Service pack and saddle trail standards (USDA 2010, p. 1). The

Blue Tree Trails Project aimed to minimize the loss of individual sensitive plants and covered butterfly host plants, and minimize the loss of habitat (USDA 2010, Appendix C). The Blue Tree Trails Project analyzed the potential impacts to the species covered in the Spring Mountains Conservation Agreement and Clark County Multiple Species Habitat Conservation Plan; *Euphilotes enoptes* ssp. (Spring Mountains dark blue butterfly) was listed as a covered species in the 1998 Conservation Agreement. The Blue Tree Trails Project analysis determined that the project ''may impact individuals, but is not likely to cause a trend to federal listing or loss of viability'' (USDA 2010, p. 4).

Information in our files describes a 2011 Archery Range Restoration Project that is designed to ''correct and prevent soil compaction and erosion problems, restore and protect natural resource habitat, and eliminate unauthorized use of NFS lands'' (USDA 2011, p. 5). This project analyzed the impacts to the Spring Mountains dark blue butterfly (*Euphilotes ancilla purpura* and *E. a. cryptica*), and the analysis showed that the project may impact individuals, but is not likely to cause a trend to Federal listing or loss of viability of the two subspecies (USDA 2011, p. 3).

Information in our files reveals that three projects have taken place in areas that have the potential to impact the two Spring Mountains dark blue butterflies, however, there is no information in the petition or in our files regarding post-project conditions to indicate that any of these projects may have negatively impacted habitat for either of the two Spring Mountains dark blue butterflies such that the petitioned action may be warranted.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to a fuels reduction project, wildfire exacerbated by invasive weeds or ungulate grazing, or recreational activities. However, we will further evaluate all factors, including the present or threatened destruction, modification, or curtailment of their habitat or ranges, in our 12-month status review and finding for these subspecies.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition states that collection of the two Spring Mountains dark blue butterflies has taken place by scientists and amateur collectors for many years (WildEarth Guardians 2011, p. 16). In addition, the petitioner claims to have encountered an individual who illegally captured a protected butterfly species in the Spring Mountains range (WildEarth Guardians 2011, p. 16).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition states that collection of butterflies in the Spring Mountains has taken place for a long time and that illegal capture of Spring Mountains butterflies has occurred. However, the petition does not provide information that overutilization for commercial, recreational, scientific, or educational purposes has negatively impacted either of the two Spring Mountains dark blue butterflies. In addition, we have no information in our files related to overutilization for these two subspecies. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes. However, we will further evaluate all factors, including overutilization for commercial, recreational, scientific, or educational purposes, in our 12-month status review and finding for these subspecies.

C. Disease or Predation

Information Provided in the Petition

The petition notes that parasitism of *Euphilotes* larvae is expected, although there has been no evidence of parasitism of larvae in samples collected from the Spring Mountains (WildEarth Guardians 2011, p. 16). The petition states that parasitism of butterfly larvae by tachnid flies (Diptera) and braconid wasps (Hymenoptera) has been recorded at rates of 60 percent in California and Washington (WildEarth Guardians 2011, p. 16). The petition also notes that, generally, larvae and adult butterflies are preyed upon by many vertebrate and invertebrate wildlife (for example, birds, herptofauna, and other insects), but it is not known whether predation is a threat to the two Spring Mountains dark blue butterflies (WildEarth Guardians 2011, p. 16). The petition states that disease is not known to be a threat to the two Spring Mountains dark blue butterflies (WildEarth Guardians 2011, p. 16).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not present any specific supporting information to suggest that disease or predation are threats that may be impacting the two Spring Mountains dark blue butterflies or are likely to impact either of the subspecies in the future. Disease and predation are listed in the petition, but the petition does not associate either of these threats to actual locations in the Spring Mountains known to be occupied by either of the two Spring Mountains dark blue butterflies. The threats are generally listed in the petition, but there is no information on existing or probable impacts to either of the subspecies associated with these potential threats in the petition or in our files. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation. However, we will further evaluate all factors, including disease or predation, in our 12-month status review and finding for these subspecies.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition does not provide any information to suggest that an inadequacy of existing regulatory mechanisms may be a threat to the two Spring Mountains dark blue butterflies.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not provide information that an inadequacy of existing regulatory mechanisms has negatively impacted the two Spring Mountains dark blue butterflies. In addition, we have no information in our files related to the inadequacy of existing regulatory mechanisms for these two subspecies. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to an inadequacy of existing regulatory mechanisms. However, we will further evaluate all factors, including the inadequacy of existing regulatory mechanisms in our 12-month status review and finding for these subspecies.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition discusses drought and its potential effects on the two Spring Mountains dark blue butterflies. First, the petition states that drought may become even more common in the Great Basin as climate change alters future precipitation (WildEarth Guardians 2011, p. 16). Specifically, the petition references Austin *et al.* (2008) who states that exposed larval host plants (*Eriogonum umbellatum*) may dry out before blooming or seed production, and drought may kill host plants, especially at lower elevations or in marginal settings (WildEarth Guardians 2011, p. 17). Secondly, the petition states that drought may contribute to increased atmospheric CO_2 by reducing the amount of CO_2 that is annually taken up by terrestrial vegetation; this situation may favor invasive annual grasses, including cheatgrass (WildEarth Guardians 2011, p. 17). Third, the petition states that climate change could affect bloom phenology in butterfly host plants which could disrupt the butterfly's use of the plants (WildEarth Guardians 2011, p. 17). Fourth, the petition states that butterflies in the Great Basin that exist in small, isolated populations will not likely be able to shift to other habitats to adapt to climate change (WildEarth Guardians 2011, p. 18).

The petition states that hundreds of larval host plants were found dead, likely a result of drought and exposure, at a site that is considered a source for *Euphilotes ancilla purpura,* although no year was associated with this information in the petition (WildEarth Guardians 2011, p. 6). In addition, the petition claims that very few butterflies (approximately 20 individuals) were observed over six trips to this same site, representing perhaps 5 percent of annual peak numbers from the same location 10 years before (WildEarth Guardians 2011, p. 6).

The petition also discusses the biological vulnerability of the two Spring Mountains dark blue butterflies due to their limited distribution and apparently small and/or small number of populations (WildEarth Guardians 2011, p. 18). The petition cites Brook *et al.* (2008, p. 455) as evidence that population size matters and small populations are more likely to go extinct as a result of chance events (WildEarth Guardians 2011, p. 18). In addition, the petition notes that characteristic butterfly population fluctuations and short generation times, combined with small populations, can influence genetic diversity and long-term persistence (Britten *et al.* 2003, pp. 229, 233). The petition further asserts that *Euphilotes ancilla purpura* and *E. a. cryptica* apparently occur as small populations that may be more vulnerable to extirpation (WildEarth Guardians 2011, p. 18).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition states that very few butterflies (approximately 20 individuals) were observed during six trips to one location, representing perhaps 5 percent of the annual peak numbers at that location (likely *Euphilotes ancilla purpura*) compared with the same location 10 years before (WildEarth Guardians 2011, p. 6). However, the petition does not state the year in which these surveys took place. Overall, the petition provides little information related to the distribution, numbers of populations, size of populations, or population trends for the two Spring Mountains dark blue butterflies. The petition provides little to no specific information that indicates that biological vulnerability may be a threat to the two Spring Mountains dark blue butterflies.

Information in the literature and in our files on numbers of individuals reported during various years has most likely grouped all individuals of *E. a. purpura* and *E. a. cryptica* together in some years because the subspecies was not split into two subspecies until 2008 (Austin *et al.* 2008). It is therefore difficult to separate out the discussions of the distribution, abundance, number and size of populations, population trends, and threats by subspecies. For some data years, we are able to distinguish which subspecies was observed during the surveys based on the sample date (each subspecies has a different flight season so we were able to determine which subspecies was observed based on the date it was flying). In addition, survey methods were not identical between years and sampling efforts for all sites.

Information in our files reveals 9 observations of *Euphilotes ancilla purpura* in 1995, and 13 observations of *E. a. cryptica* in 1996 (Weiss *et al.* 1995, p. 21; Weiss *et al.* 1997, Map 2.1) (Table 1). In 1998, there was 1 observation of *E. a. purpura* and 28–60 individuals of *E. a. cryptica* (Boyd and Austin 1999, Tables 1–12). In 1999, records indicate observations of seven individuals which likely included both *E. a. purpura* and *E. a. cryptica* (Dewberry *et al.* 2002, p. Appendix 1). In 2000, researchers observed 9–13 *E. a. cryptica,* and *E. a. purpura* was observed but no numbers were given (Boyd and Austin 2001, p. 7). No *E. a. purpura* or *E. a. cryptica* were detected in 2002 (Dewberry *et al.* 2002, p. Appendix 1), and only a single *E. a. purpura* was seen in 2007 (Datasmiths 2007, p. 17). Two studies have recently been conducted on dark blue butterflies in the Spring Mountains. The first study observed a single *E. a. purpura* in 2010, and 12 *E. a. purpura* in 2011, although additional survey areas were included in 2011 (Pinyon 2010, p. 2; Pinyon 2011, p. 22). The second study observed 11 *E. a. cryptica* and no *E. a. purpura* in 2010 (Thompson *et al.* 2010, pp. 1–7). Service files contain a record of a phone conversation with species experts where they indicated that ''decent'' numbers of the early-flying population of dark blue butterflies (now considered *E. a. purpura*) were detected in 2006, whereas the late-flying population of the dark blue butterfly (now considered *E. a. cryptica*) was present only at Cold Creek in very low numbers (Service 2006, p. 2).

TABLE 1—OBSERVATIONS OF THE TWO SPRING MOUNTAINS DARK BLUE BUTTERFLIES BETWEEN 1995 AND 2011 FROM SERVICE FILES

Year	*Euphilotes ancilla purpura*	*Euphilotes ancilla cryptica*	*Either E. a. purpura* or *E. a. cryptica*
1995	9		
1996		13	
1998	1	28–60	
1999			7
2000	observed	9–13	

TABLE 1—OBSERVATIONS OF THE TWO SPRING MOUNTAINS DARK BLUE BUTTERFLIES BETWEEN 1995 AND 2011 FROM SERVICE FILES—Continued

Year	*Euphilotes ancilla purpura*	*Euphilotes ancilla cryptica*	*Either E. a. purpura* or *E. a. cryptica*
2002	0	0	
2007	1		
2010	1	11	
2011	12		

The information in our files presents butterfly observations from a number of years, but these observations represent varying survey efforts and various survey methodologies (Table 1). Therefore, it is not possible to compare the observation numbers in our files to the petitioner's claim that the population numbers have declined over time. While we lack specific survey information about population numbers or population declines for the two Spring Mountains dark blue butterflies at this time, the information that is available may represent a cause for concern about the population size and potential declining trend of these butterflies because they are endemic to the Spring Mountains, exist in small, isolated populations, are biologically vulnerable, and have limited distributions. Therefore, given the above concerns and the information in the petition indicating a potential decline in population numbers, we find that there is substantial information that the petitioned action may be warranted.

Based on the information in our files, recent projections of climate change in the Great Basin over the next century include: (1) Increased temperatures, with an increased frequency of extremely hot days in summer; (2) more variable weather patterns and more severe storms; (3) more winter precipitation in the form of rain, with potentially little change or decreases in summer precipitation; and (4) earlier, more rapid snowmelt (United States Environmental Protection Agency 1998, pp. 1–4; Chambers and Pellant 2008, pp. 29–33). It is difficult to predict local climate change impacts, due to substantial uncertainty in trends of hydrological variables, limitations in spatial and temporal coverage of monitoring networks, and differences in the spatial scales of global climate models and hydrological models (Bates *et al.* 2008, p. 3). Thus, while the information in the petition and our files indicates that climate change has the potential to affect vegetation and habitats used by butterflies in the Great Basin in the long term, there is much uncertainty regarding which habitat attributes could be affected, and the timing, magnitude, and rate of changes relevant to the two Spring Mountain dark blue butterflies. Therefore, the information in the petition and our files does not provide substantial information that the petitioned action may be warranted because neither the petition nor our files provides specific information regarding how climate change is likely to impact the two Spring Mountains dark blue butterflies in the future. Overall, the petition and the information in our files presents general information about potential impacts to the two Spring Mountains dark blue butterflies from climate change, and we will assess those impacts further in the status review.

General biological information in our files indicates that the combination of few populations, small ranges, and restricted habitats can make a species susceptible to extinction or extirpation from portions of its range due to random events such as fire, drought, disease, or other occurrences (Shaffer 1987, pp. 71–74; Meffe and Carroll 1994, pp. 190–197). We have limited information related to the overall abundance, distribution, number and size of populations, or population trends for the two Spring Mountains dark blue butterflies in our files. We do not have additional information in our files related to biological vulnerability as a threat to either of the two subspecies.

In summary, we find that the information provided in the petition, as well as other information in our files, presents substantial scientific or commercial information indicating that the petitioned action may be warranted due to other natural or manmade factors affecting its continued existence, especially given the low numbers of individuals observed of both subspecies and the petitioner's claim that the butterfly's (believed to be *Euphilotes ancilla purpura*) peak numbers are at 5 percent of the numbers from 10 years before. Because of the recent (2008) taxonomic change that split *E. a. purpura* into *E. a. purpura* and *E. a. cryptica,* we cannot determine with certainty to which subspecies much of the data and information in the petition refers. As a result, we cannot separate the effects and trend data between these two subspecies, and, therefore, without more information, we are assuming that any potential impacts and declining trends regarding either of these two subspecies actually applies to both subspecies. We will further evaluate all factors, including other natural or manmade factors affecting its continued existence, in our 12-month status review and finding for these subspecies.

Finding

Based on our review of the information in the petition and readily available in our files, we find that the petition presents substantial scientific or commercial information indicating that listing the two Spring Mountains dark blue butterflies (*Euphilotes ancilla purpura* and *E. a. cryptica*) throughout their ranges may be warranted. This finding is based on information provided under factor E (see above). We determine that the information provided under factors A, B, C, and D is not substantial.

Because we have found that the petition presents substantial information indicating that listing the two Spring Mountains dark blue butterflies (*Euphilotes ancilla purpura* and *E. a. cryptica*) may be warranted, we will initiate status reviews to determine whether listing the two Spring Mountains dark blue butterflies (*Euphilotes ancilla purpura* and *E. a. cryptica*) under the Act is warranted.

The ''substantial information'' standard for a 90-day finding, under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations, differs from the Act's ''best scientific and commercial data'' standard that applies to a status review to determine whether a petitioned action is warranted. A 90-day finding does not constitute a status review under the Act. In a 12-month finding, we will determine whether a petitioned action is warranted after we have completed a thorough status

review of the species, which is conducted following a substantial 90-day finding. Because the Act's standards for 90-day and 12-month findings are different, as described above, a substantial 90-day finding does not mean that the 12-month finding will result in a warranted finding.

Morand's Checkerspot Butterfly Petition

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Information Provided in the Petition

The petition states that Morand's checkerspot butterfly is recognized as a priority species by the United States Forest Service (USFS), and it is recognized as a species of concern in the Conservation Agreement for the SMNRA and in the Clark County Multiple Species Habitat Conservation Plan (Boyd 2011, p. 1). The petition also notes that the Nevada Natural Heritage Program is tracking the species (Boyd 2011, p. 1).

The petition lists several threats to the Morand's checkerspot butterfly including the proliferation of invasive plants (weeds), an elevated risk of wildland fires associated with invasive plants, and the loss of larval and adult resources caused by feral horses (Boyd 2011, p. 2). In addition, the petition discusses concern with the survey methods used, the qualifications of the surveyors, and the use of data.

The petition states that a fuels reduction project took place from 2007 to 2010 and drastically modified a site where Morand's checkerspot butterflies occurred (Boyd 2011, p. 4). In addition, the petition claims that hundreds of thousands of larval host plants and nectar plants were destroyed as a result of this fuels reduction project, and the butterfly was impacted by worker trampling, vehicle crushing, moving equipment, and the disposal of cut waste (Boyd 2011, p. 4).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not present any specific supporting information that invasive plants, wildland fires, and feral horses are threats that may be impacting Morand's checkerspot butterfly or are likely to impact the subspecies in the future. These threats are listed in the petition, but the petition does not associate any of these threats to actual locations known to be occupied by the subspecies. The threats are generally listed in the petition, but there is no information on existing or probable impacts to the subspecies associated with these potential threats in the petition or in our files. In addition, the petition discusses concern with the survey methods used, the qualifications of the surveyors, and the decipherability of data. Our files contain information indicating that qualified biologists have used accepted methodologies to conduct surveys (USDA 2007, pp. 1–7; Thompson *et al.* 2010, pp. 72–73).

Information in our files indicates that the 2007 Spring Mountains Hazardous Fuels Reduction Project analyzed the potential impacts to the Morand's checkerspot butterfly, concluding that the project ''may impact individuals, but is not likely to cause a trend to Federal listing or loss of viability of the subspecies'' (USDA 2007, p. 18). Even though the petition states that a Morand's checkerspot butterfly site was drastically modified, the petition does not provide specific information on the location of the site or evidence to show that the butterfly was affected by this project. There is no information in the petition or in our files to show that Morand's checkerspot butterfly numbers declined after the fuel reduction project or that butterflies were impacted as a result of this project.

In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to the present or threatened destruction, modification, or curtailment of its habitat or range.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Information Provided in the Petition

The petition does not provide any information to suggest that overutilization for commercial, recreational, scientific, or educational purposes may be a threat to the Morand's checkerspot butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not provide information that overutilization for commercial, recreational, scientific, or educational purposes has negatively impacted the Morand's checkerspot butterfly. In addition, we have no information in our files related to overutilization for this subspecies. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to overutilization for commercial, recreational, scientific, or educational purposes.

C. Disease or Predation

Information Provided in the Petition

The petition does not provide any information to suggest that disease or predation may be a threat to the Morand's checkerspot butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not provide information that disease or predation has negatively impacted the Morand's checkerspot butterfly. In addition, we have no information in our files related to disease or predation for this subspecies. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to disease or predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Information Provided in the Petition

The petition does not provide any information to suggest that an inadequacy of existing regulatory mechanisms may be a threat to the Morand's checkerspot butterfly.

Evaluation of Information Provided in the Petition and Available in Service Files

The petition does not provide information that an inadequacy of existing regulatory mechanisms has negatively impacted the Morand's checkerspot butterfly. In addition, we have no information in our files related to the inadequacy of existing regulatory mechanisms for this subspecies. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to an inadequacy of existing regulatory mechanisms.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Information Provided in the Petition

The petition claims that general declines in the numbers of all covered butterfly species (covered means that the species is included in the Conservation Agreement for the SMNRA

and in the Clark County Multiple Species Habitat Conservation Plan) in the Spring Mountains were evident in 2005 and that decreases in the numbers of Morand's checkerspot butterfly at some locations were identified by 2003 (Boyd 2011, p. 2). Specifically, the petition states that at one location, 104 individuals were recorded on a single survey day in 2001, whereas 65 were recorded in 2002, and 19 were recorded in 2003. The petition states that they believe the highest number recorded in 2010 was 11, but the petition states that this number is not verified (Boyd 2011, p. 2). At another location in 2002, many hundreds were seen on each of two visits, whereas none were found in 2007 during a single day survey. In addition, no pre-diapause larvae were found and no earlier post-diapause larval feeding on the host plants was seen during that same survey day (Boyd 2011, p. 2). At a third location in 2002, the petition states that 46 Morand's checkerspot butterflies were seen during a protocol survey and an additional 200–300 individuals were seen outside of the transect area, whereas the petition claims that only 1–3 individuals were recorded on a given day in 2010 in the same two areas (Boyd 2011, p. 2).

The petition lists drought as a threat to the Morand's checkerspot butterfly (Boyd 2011, p. 4).

Evaluation of Information Provided in the Petition and Available in Service Files

The petition claims that declines of Morand's checkerspot butterfly have occurred since 2003 as evidenced by declines in survey numbers at three unspecified locations (Boyd 2011, p. 2). Information in our files leads us to believe that two of these unspecified locations are Griffith Peak and Lee Canyon based on similarity of results reported in Dewberry *et al.* (2002, Appendix 1). Information in our files reveals that Morand's checkerspot butterfly surveys found 129 in 2010, and 1,040 in 2011 (Pinyon 2011, p. 22). In addition, Pinyon (2011, p. 23) states that Morand's checkerspot butterflies were observed throughout the survey period in all three areas surveyed in 2010 and 2011. The most observed in a single day in 2010 was 76, and the most observed in a single day in 2011 was 343 (Pinyon 2011, p. 23). Given that butterfly populations are highly dynamic, and butterfly distributions can be highly variable from year to year (Weiss *et al.* 1997, p. 2), the widely varying information in the petition and in our files does not provide evidence to show a declining trend in Morand's checkerspot butterflies since 2003, as claimed by the petition.

Drought is listed as a threat in the petition, but the petition does not provide any specific information that drought has negatively impacted the Morand's checkerspot butterfly, or is likely to impact the subspecies in the future. In addition, we have no information in our files related to drought as it relates to the effects of climate change for this subspecies. In summary, we find that the information provided in the petition, as well as other information in our files, does not present substantial scientific or commercial information indicating that the petitioned action may be warranted due to other natural or manmade factors affecting its continued existence.

Finding

Based on our review of the information in the petition and readily available in our files, we find that the petition does not present substantial scientific or commercial information to indicate that listing the Morand's checkerspot butterfly under the Act as endangered or threatened may be warranted at this time. We base this conclusion on finding no specific information on threats to the subspecies. Additionally, we have more recent information in our files that does not support the petitioner's claim that Morand's checkerspot butterfly has experienced a decrease in its numbers since 2003. The information does not suggest that threats are acting on the Morand's checkerspot butterfly such that the species may be endangered or become endangered now or in the foreseeable future. We make this finding under section 4(b)(3)(A) of the Act and 50 CFR 424.14(b) of our regulations.

Although we will not review the status of the species at this time, we encourage interested parties to continue to gather data that will assist with the conservation of the Morand's checkerspot butterfly. If you wish to provide information regarding the Morand's checkerspot butterfly, you may submit your information or materials to the Field Supervisor/Listing Coordinator, Nevada Fish and Wildlife Office (see **ADDRESSES**), at any time.

References Cited

A complete list of references cited is available on the Internet at *http://www.regulations.gov* and upon request from the Nevada Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this notice are the staff members of the Nevada Fish and Wildlife Office and the Pacific Southwest Regional Office.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: July 27, 2012.

Rowan W. Gould,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–19332 Filed 8–6–12; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R9–ES–2011–0003;FXES111309F2130D2–123–FF09E22000]

RIN 1018–AY42

Endangered and Threatened Wildlife and Plants; Reclassifying the Straight-Horned Markhor With Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and 12-month finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reclassify the straight-horned markhor (*Capra falconeri jerdoni*) from endangered to threatened under the Endangered Species Act of 1973, as amended. This proposed action is based on a review of the best available scientific and commercial data which indicates that the endangered designation no longer correctly reflects the status of the straight-horned markhor. This proposal constitutes our 12-month finding on the petition to reclassify this subspecies, serves as our 5-year review, and fulfills our obligations under a settlement agreement. We are also proposing a special rule concurrently. The effects of these regulations are to correctly reflect the status of the subspecies and encourage conservation of additional populations of the straight-horned markhor.

DATES: We will consider comments and information received or postmarked on or before October 9, 2012.

ADDRESSES: You may submit information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://*

www.regulations.gov. Search for FWS–R9–ES–2011–0003, which is the docket number for this rulemaking. On the search results page, under the Comment Period heading in the menu on the left side of your screen, check the box next to ''Open'' to locate this document. Please ensure you have found the correct document before submitting your comments. If your comments will fit in the provided comment box, please use this feature of *http://www.regulations.gov,* as it is most compatible with our comment review procedures. If you attach your comments as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R9–ES–2011–0003; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested under **SUPPLEMENTARY INFORMATION** for more information).

FOR FURTHER INFORMATION CONTACT: Janine Van Norman, Chief, Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703–358–2171; facsimile 703–358–1735. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

We are proposing to reclassify the straight-horned markhor from endangered to threatened under the Endangered Species Act of 1973, as amended (Act) due to recovery actions in the Torghar Hills of Pakistan. Conservation actions involving implementation of a trophy hunting conservation plan in 1985 have eliminated impacts from poaching in this population. Since 1985, the population has been steadily increasing and is considered the stronghold of the subspecies. In light of this substantial population growth in the Torghar Hills, we have determined that the subspecies no longer meets the definition of an ''endangered species'' under the Act; therefore, we find that reclassifying the subspecies in its entirety from endangered to threatened is warranted. Thus, in this action, we are issuing a proposed rule to reclassify the subspecies (*C. f. jerdoni*) as threatened under the Act.

We are also proposing a special rule that would allow for the import of sport-hunted straight-horned markhor trophies under certain conditions. This regulation would support and encourage conservation actions of the straight-horned markhor.

II. Major Provision of the Regulatory Action

If adopted as proposed, this action would reclassify the straight-horned markhor from endangered to threatened in the List of Endangered and Threatened Wildlife at 50 CFR 17.11(h), and would allow the import of sport-hunted straight-horned markhor trophies under certain conditions at 50 CFR 17.40. This action is authorized by the Act.

Background

Section 4(b)(3)(B) of the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific or commercial information that listing the species may be warranted, we make a finding within 12 months of the date of receipt of the petition (''12-month finding''). In this finding, we determine whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are endangered or threatened, and expeditious progress is being made to add or remove qualified species from the Federal Lists of Endangered and Threatened Wildlife and Plants. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring a subsequent finding to be made within 12 months. We must publish these 12-month findings in the **Federal Register**.

In this document, we announce that reclassifying the straight-horned markhor as threatened is warranted, and we propose to reclassify this subspecies as threatened in the Federal List of Endangered and Threatened Wildlife. Additionally, we are proposing a special rule under section 4(d) of the Act that, if adopted as proposed, would allow the import of straight-horned markhor trophies from conservation programs that meet certain criteria.

Prior to issuing a final rule on this proposed action, we will take into consideration all comments and any additional information we receive. Such information may lead to a final rule that differs from this proposal. All comments and recommendations, including names and addresses of commenters, will become part of the administrative record.

Petition History

On August 18, 2010, we received a petition dated August 17, 2010, from Conservation Force, on behalf Dallas Safari Club, Houston Safari Club, African Safari Club of Florida, The Conklin Foundation, Grand Slam Club/Ovis, Wild Sheep Foundation, Jerry Brenner, Steve Hornaday, Alan Sackman, and Barbara Lee Sackman, requesting the Service downlist the Torghar Hills population of the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*), in the Balochistan Province of Pakistan, from endangered to threatened under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required by 50 CFR 424.14(a). In a September 15, 2010, letter to Conservation Force, we acknowledged receipt of the petition.

Previous Federal Actions

On June 14, 1976, we published in the **Federal Register** a rule listing the straight-horned markhor, or the Suleiman markhor (*Capra falconeri jerdoni*), and the Kabul markhor (*C. f. megaceros*), as well as 157 other U.S. and foreign vertebrates and invertebrates, as endangered under the Act (41 FR 24062). All species were found to have declining numbers due to the present or threatened destruction, modification, or curtailment of their habitats or ranges; overutilization for commercial, sporting, scientific, or educational purposes; the inadequacy of existing regulatory mechanisms; or some combination of the three. However, the main concerns were the high commercial importance and the inadequacy of existing regulatory mechanisms to control international trade.

Later, the Suleiman markhor and the Kabul markhor were considered by some authorities to be the single subspecies *C. f. megaceros* (straight-horned markhor). These subspecies currently remain listed as separate entities under the Act.

On March 4, 1999, we received a petition from Sardar Naseer A. Tareen,

on behalf of the Society for Torghar Environmental Protection and the International Union for Conservation of Nature (IUCN) Central Asia Sustainable Use Specialist Group, requesting that the Suleiman markhor (*Capra falconeri jerdoni* or *C. f. megaceros*) population of the Torghar Hills region of the Balochistan Province, Pakistan, be reclassified from endangered to threatened under the Act. On September 23, 1999 (64 FR 51499), we published in the **Federal Register** a finding, in accordance with section 4(b)(3)(A) of the Act, that the petition had presented substantial information indicating that the requested reclassification may be warranted, and we initiated a status review. We opened a comment period, which closed January 21, 2000, to allow all interested parties to submit comments and information. A 12-month finding was never completed.

On June 2, 2011, we published in the **Federal Register** a finding that the petition received on August 18, 2010, from Conservation Force (discussed above under ''*Petition History*''), had presented substantial information indicating that the requested reclassification may be warranted, and we initiated a status review (76 FR 31903). We opened a comment period, which closed August 1, 2011.

On February 1, 2012, Conservation Force, Dallas Safari Club, and other organizations and individuals filed suit against the Service for failure to conduct a 5-year status review pursuant to section 4(c)(2)(A) under the Act (*Conservation Force, et al.* v. *Salazar,* Case No. 11 CV 02008 D. D. C.). On March 30, 2012, a settlement agreement was approved by the Court (11–CV–02008, D. D. C.), in which the Service agreed to submit to the **Federal Register** by July 31, 2012, a 12-month finding on the August 2010 petition. This 12-month finding also constitutes our 5-year review of the straight-horned markhor.

5-Year Review

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. A 5-year review is a periodic process conducted to ensure that the classification of a listed species is appropriate. Section 4(c)(2)(B) requires that we determine: (1) Whether a species no longer meets the definition of endangered or threatened and should be removed from the List (delisted); (2) whether a species more properly meets the definition of threatened and should be reclassified from endangered to threatened; or (3) whether a species more properly meets the definition of endangered and should be reclassified from threatened to endangered. Our determination is based on the best scientific and commercial data available at the time of the review. This 12-month finding serves as our 5-year review of this species.

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available. Therefore, we request comments or information from other concerned governmental agencies, the scientific community, or any other interested parties concerning this proposed rule. We particularly seek clarifying information concerning:

(1) Taxonomy. Specifically, we are interested in information relating to the correct classification of the *Capra falconeri* subspecies.

(2) Distribution, habitat selection, diet, and population abundance and trends of this subspecies.

(3) The effects of habitat loss and changing land uses on the distribution and abundance of this subspecies.

(4) The factors that are the basis for making a listing/delisting/downlisting determination for a species under section 4(a) of the Act, which are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

(5) Information on management programs for straight-horned markhor conservation, including mitigation measures related to conservation programs, and any other private, nongovernmental, or governmental conservation programs that benefit this species.

(6) Information on whether changing climatic conditions are affecting the subspecies or its habitat.

Please include sufficient information with your submission (such as full references) to allow us to verify any scientific or commercial information you include. Submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

Public Hearing

At this time, we do not have a public hearing scheduled for this proposed rule. The main purpose of most public hearings is to obtain public testimony or comment. In most cases, it is sufficient to submit comments through the Federal eRulemaking Portal, described above in the **ADDRESSES** section. If you would like to request a public hearing for this proposed rule, you must submit your request, in writing, to the person listed in the **FOR FURTHER INFORMATION CONTACT** section by September 21, 2012.

Species Information and Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants. Under section 4(a)(1) of the Act, a species may be determined to be endangered or threatened based on any of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

In considering whether a species may warrant listing under any of the five factors, we look beyond the species' exposure to a potential threat or aggregation of threats under any of the factors, and evaluate whether the species responds to those potential threats in a way that causes actual impact to the species. The identification of threats that might impact a species negatively may not be sufficient to compel a finding that the species warrants listing. The information must include evidence indicating that the threats are operative and, either singly or in aggregation, affects the status of the species. Threats are significant if they drive, or contribute to, the risk of extinction of the species, such that the species warrants listing as endangered or threatened, as those terms are defined in the Act.

The focus of this status review is the straight-horned markhor (*Capra falconeri jerdoni*). For most of the populations, there is no detailed information on distribution, population

estimates, or threats to the subspecies; information that is available is over 30 years old. However, the Torghar Hills population of the straight-horned markhor has been extensively studied since the mid-1980s due to the implementation of a conservation plan in this area. Therefore, this status review mainly consists of information related to this population. When possible, we have included general information on the status of the populations outside of the Torghar Hills. For these particular populations, which we lack information, we request additional information from the public during this proposed rule's comment period (see Information Requested, above).

Taxonomy

The markhor (*Capra falconeri*) is a species of wild goat belonging to the Family Bovidae and Subfamily Caprinae (sheep and goats) (Valdez 2008, unpaginated). When the markhor was first listed under the Act in 1975, seven subspecies of markhor were generally recognized: *Capra falconeri jerdoni* (straight-horned or Suleiman markhor), *C. f. megaceros* (Kabul markhor), *C. f. cashmirensis* (Kashmir markhor), *C. f. falconeri* (Aston markhor), *C. f. ognevi* (Uzbek markhor), *C. f. heptneri* (Tajik markhor), and *C. f. chialtanensis* (Chiltan markhor) (64 FR 51499, September 23, 1999; Roberts 1977, p. 196). In 1975, Schaller and Khan (1975, pp. 188, 191) recognized 3 subspecies of markhor based on horn shape and body characteristics: *C. f. jerdoni* and *C. f. megaceros* were combined into *C. f. megaceros* (straight-horned markhor); *C. f. cashmirensis* and *C. f. falconeri* were combined into *C. f. falconeri* (flare-horned markhor); and *C. f. ognevi* and *C. f. heptneri* were combined into *C. f. heptneri* (Heptner's markhor). Many authorities consider *C. f. chialtanensis* to be *Capra aegagrus chialtanensis* (Chiltan wild goat) (64 FR 51500, September 23, 1999).

In our June 2, 2011, 90-day petition finding, we requested information on the taxonomy of *C. f. jerdoni* and *C. f. megaceros* to determine if these constitute a single subspecies. We did not receive any information regarding the correct nomenclature that should be followed. During our status review, we did not find consistency in the use of *C. f. jerdoni* or *C. f. megaceros.* We found that papers published around the same time as each other often used both classifications to describe subspecies of markhor. Therefore, until it is clear, we will continue to recognize the distinct subspecies of *C. f. jerdoni* and *C. f. megaceros,* as they are currently listed under the Act, with the straight-horned markhor (*C. f. jerdoni*) being the focus of our status review. We are again requesting from the public additional information on the taxonomy of *Capra falconeri* to determine the proper nomenclature that should be followed (see Information Requested for details).

Species Description

Markhor are sturdy animals with strong, relatively short, thick legs and broad hooves. They are a reddish-grey color, with more buff tones in the summer and grey in the winter. The legs and belly are a cream color with a conspicuous dark brown pattern on the forepart of the shank interrupted by a white carpal patch. They also have a dark brown mid-dorsal stripe that extends from the shoulders to the base of the tail. The tail is short, is sparsely covered with long black hairs, but is naked underneath. Adult males have an extensive black beard followed by a shaggy mane of long hairs extending down the chest and from the fore part of the neck. There is also a crest of long black and dark brown hairs that hang like a mane down either side of the spine from the shoulders to the croup (Roberts 1977, p. 197). Horns are straight with an open, tight spiral resembling a corkscrew (Schaller and Khan 1975, p. 189).

Distribution

Historically, the straight-horned markhor inhabited the mountains of Pakistan and Afghanistan, just inside the Afghanistan border. Today, the straight-horned markhor is only found in the mountains of Balochistan Province, Pakistan; no markhor occur in Afghanistan. Although it is considered widely distributed, the straight-horned markhor has been reduced to small, scattered populations on all the mountain ranges immediately to the north and east of Quetta, including Murdar, Takhatu, Zarghun, Kaliphat, Phil Garh, and Suleiman. It is reported that the straight-horned markhor still survives in the Shingar Range on the border of Balochistan and South Waziristan. The greatest concentration is in the Torghar Hills of the Toba Kakar Range on the border with Afghanistan, within a community-based management program, the Torghar Conservation Project. This project area covers approximately 1,000 km^2 (386 mi^2) within the Torghar Hills (Frisina and Tareen 2009, pp. 142–143; Johnson 1994b, p. 16; Roberts 1977, p. 198; Schaller and Khan 1975, p. 196).

Limited information is available for populations throughout most of the straight-horned markhor's range. Many historical populations were extirpated due to over-hunting (Johnson 1994b, p. 5; Johnson 1994, p. 10). Schaller and Khan (1975, p. 196) estimated 150 in Takhatu, 20 to 30 in Kalifat, 20 in Zarghum, and 20 in Shinghar. Few were estimated to survive in the Murdar Range, and a remnant population may have existed near Loralei in the Gadabar Range. Roberts (1969 in Valdez, 2008, unpaginated) believed the number of markhor in the Toba Kakar range was fewer than 500. In 1984, Tareen estimated fewer than 200 remained in the Torghar Hills (Mitchell, 1989, p. 9). Overall, Schaller and Khan (1975, p. 196) estimated as few as 1,000 straight-horned markhor survived throughout the subspecies' range.

In general, markhor populations are reported as declining (Valdez 2008, unpaginated). Hess *et al.* (1997, p. 255), based on the general status of wildlife in Pakistan, concluded that the straight-horned markhor had likely not increased in recent years. Current estimates for populations of straight-horned markhor are lacking, with the exception of the population in the Torghar Hills of the Toba Kakar Range. This population has been extensively studied due to the implementation of a community-based management program. In addition, as part of the use of annual export quotas for markhor sport-hunted trophies granted to Pakistan at the 10th meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Pakistan submits annual surveys of markor populations, including populations within the Torghar Conservation Area (Resolution Conf. 10.15 (Rev. CoP 14); See discussion below under *Overutilization for commercial, recreational, scientific, or educational purposes*). Based on surveys conducted from 1985–1988, Mitchell (1989, p. 9) estimated 450 to 600 markhor inhabited the Torghar Hills. Regular surveys of the managed area have taken place since 1994, when Johnson (1994b, p. 12) estimated the population of markhor to be 695. Later surveys estimated the population to be 1,296 in 1997; 1,684 in 1999; 2,541 in 2005; and 3,158 in 2008 (Arshad and Khan 2009, p. 9; Shafique 2006, p. 6; Frisina 2000, p. 8; Frisina *et* al. 1998, p. 6). Although most of the mountain ranges in Balochistan have not been formally surveyed, Johnson (1994b, p. 16) concluded that Torghar was one of the last remaining strongholds for the subspecies.

Habitat

Straight-horned markhor are associated with extremely rugged terrain with precipitous cliffs, rocky caves, and bare rock surfaces interspersed with patches of arid, steppe vegetation. They can be found from 600 meters (m) (1,969 feet (ft)) up to 3,300 m (10,827 ft) in elevation (Woodford *et al.* 2004, p. 181; Mitchell 1989, p. 8; Johnson 1994b, p. 5).

The Torghar Hills, a chain of rugged sandstone ridges located within the Toba Kakar Range, lies in the Balochistan juniper and pistachio scrub forest and dry sub-tropical semi-evergreen forest (Woodford *et al.* 2004, pp. 178–179; Frisina 2000, p. 3). The higher elevations (2,000–3,300 m; 6,562–9,843 ft) have some Chilgoza pine (*Pinus gerardiana*) and juniper (*Juniperus macropoda* or *excelsa*). Rugged upland slopes have not experienced as much grazing pressure and still have bunchgrasses, forbs, wild almond trees (*Amygdalus brahnica*), *Ephedra* sp., *Artemisia* sp., and other shrubs, while lower slopes (1,000–2,000 m; 3,281–6,562 ft) have been denuded of trees. Widely scattered olive (*Olea cuspidate*), wild pistachio (*Pistacia khinjuk*), juniper, and ash (*Fraxinus xanthoxyloides*) are all that remain on the lower slope. Tamarisk (*Tamarix* sp.) and *Cargana* sp. occur along stream beds and drainage lines where water is available. Overgrazing has resulted in xerophytic scrub vegetation consisting of *Acacia, Artemisia, Haloxylon,* and *Rosa* (Woodford *et al.* 2004, p. 179; Ahmed *et al.* 2001, p. 3; Johnson 1994b, p. 3; Tareen 1990, p. 2; Mitchell 1989, p. 5).

The climate in Torghar varies considerably in temperature and precipitation by season. Summers are hot, with a mean temperature of 26 °C (79 °F), but temperatures often rise to 50 °C (122 °F). Winters are cold, with a mean temperature of 4 °C (39.2 °F), but temperatures sometimes fall to -15 °C (5 °F). Day and night temperatures also vary considerably. Annual precipitation is around 200 to 250 millimeters (mm) (7.9 to 9.8 inches (in)), which mainly falls in March and April. In winter, most precipitation occurs as snow. Violent thunderstorms and dust storms occur in summer, with rain occurring in July and August (Arshad and Khan 2009, p. 2; Woodford *et al.* 2004, p. 179; Ahmed *et al.* 2001, p. 2; Frisina *et al.* 1998, p. 3; Mitchell 1989, p. 4). Periodic droughts are common and may last for several years at a time (Frisina and Tareen 2009, p. 143).

Life History

Markhor are diurnal in feeding activity. They are most active in the early morning and late evening (Mitchell 1989, p. 8). Wild pistachios are a preferred food for straight-horned markhor (Johnson 1994, p. 12; Roberts 1977, p. 198), although in general they are known to feed on grasses and leaves, and twigs of bushes. Markhor seek water in the late afternoon; however, they may need to descend to valley bottoms for water, but only after darkness (Roberts 1977, p. 198). Markhor in the Torghar Hills are mostly sedentary, although extensive local movements may occur due to deteriorating grazing conditions or disturbance (Woodford *et al.* 2004, p. 181).

Markhor are gregarious, with females, their young, and immature males associating in small herds, but competition with domestic goat flocks may drive markhor populations to higher terrain and result in larger herds. Adult males live solitary lives, taking shelter under rock overhangs or natural caves. They only join the females and young during the rut, which for the straight-horned markhor peaks around mid-November and lasts about 2 weeks. Males may attach themselves to one particular territory or herd. Fighting between rival males also occurs during this time. Markhor reach sexual maturity around 3 years of age. Gestation lasts from 162 to 170 days. Females usually give birth to one young, but twins are not uncommon. For the first few days, the newborn will remain in a sheltered hollow. Mothers have been observed making a special characteristic call when approaching their young. A young markhor will remain with its mother until the rutting season or until the next young is born. After this, the female will drive the older young away if it approaches too closely. In the wild, it is possible that markhor can live up to 18 years of age, but perhaps few males live beyond 11 or 12 years (Ali 2008, p. 16; Mitchell 1989, p. 9; Roberts 1977, pp. 198–199).

Conservation Status

The markhor (*Capra falconeri*) is currently classified as ''endangered'' by the International Union for Conservation of Nature (IUCN) due to a low number of mature individuals (estimated at fewer than 2,500), a continuing rate of decline, and severely fragmented subpopulations all with fewer than 250 individuals (Valdez 2008, unpaginated). However, we note that this IUCN assessment is at the species level and appears to consider the combined status of 3 subspecies, as recognized by Schaller and Khan in 1975. Furthermore, given the basis of the ''endangered'' classification stated above, it appears that the status of the Torghar Hills population is not considered. Although the increasing population estimates of Torghar Hills are briefly referenced, the assessment does not appear to recognize the biological significance of these individuals in this portion of the range in relation to the subspecies. In a subspecies discussion on the population of straight-horned markhor (*C. f. megaceros*), the population status is listed as declining. Thus, it appears that the increasing Torghar Hills population is masked by the assumed decline of the remaining populations of the whole subspecies.

The straight-horned markhor is also listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). Species included in CITES' Appendix I are considered threatened with extinction which are or may be affected by trade, and international trade is permitted only under exceptional circumstances. Commercial trade in Appendix I specimens is generally precluded (see Factor D discussion, below). The straight-horned markhor is also listed on the Third Schedule of the 1974 Balochistan Wildlife Protection Act (Frisina and Tareen 2009, p. 145; Ahmed *et al.* 2001, p.5). The Third Schedule of this law is a list of protected animals that cannot be hunted, killed, or captured (BWPA 1977, p. 15).

A. Present or Threatened Destruction, Modification, or Curtailment of Habitat or Range

Across the range of the straight-horned markhor, populations have declined partly due to habitat modification, and habitat continues to be threatened due to drought and overgrazing of domestic livestock, deforestation from logging (which has occurred over hundreds of years), and collection of wood for building materials, fuel, charcoal, and food (WWF 2011, unpaginated; Valdez 2008, unpaginated; WWF 2008, unpaginated; Hess *et al.* 1997, p. 255; CITES 1997, p. 895).

Much of the land where straight-horned markhor occur is owned by local tribes whose subsistence is largely dependent on keeping large herds of primarily sheep and goats. Rangelands often support livestock beyond their carrying capacity, leading to overgrazing, a halt to natural regeneration, and subsequent desertification of native vegetation.

Overgrazing by domestic livestock is known to have resulted in the decline of wild ungulates and pushed their occurrence to range edges (WWF 2011, unpaginated; Frisina and Tareen 2009, pp. 145, 154; Valdez 2008, unpaginated; WWF 2008, unpaginated; Woodford *et al.* 2004, p. 180; Tareen 1990, p. 4; Mitchell 1989, pp. 4–5; Schaller and Khan 1975, p. 197).

On the tribal lands of the Torghar Hills, livestock grazing is a dominant land use. Lower slopes and valleys have been denuded of trees and continue to be degraded by the collection of fuel wood and heavy grazing (Ahmed *et al.* 2001, pp. 3, 8; Frisina *et al.* 1998, pp. 9–10). The demand on wood and forage resources along valley bottoms and lower slopes increases during a bi-annual migration of local and nearby tribes and their herds through the Torghar Hills (Woodford *et al.* 2004, p. 180; Ahmed *et al.* 2001, p. 4). Although markhor concentrate in the upland slopes, the lower slopes are utilized as foraging ground and may be important in supporting an increasing population of markhor.

The steeper, upland slopes and higher elevation areas of the Torghar Hills are key areas for this population of markhor. These areas are not easily accessible, and because they are so steep and rocky, there is little human settlement or grazing pressure. As a result, there is good quality habitat for markhor spread over large upland areas (Ahmed *et al.* 2001, pp. 3, 8; Frisina *et al.* 1998, p 10). However, grazing pressure may increase in these upland areas due to a combination of drought conditions and the tradition of keeping large herds of domestic livestock. Drought is more the norm than the exception in the Torghar Hills (Frisina *et al.* 2002, p. 15). As forage becomes limited in lower slopes and valleys, due to drought conditions and/or significant grazing pressure, domestic herds may move to higher elevations in search of forage (Frisina *et al.* 2002, p. 13).

In the Torghar Hills, locals have implemented a wildlife management plan, the Torghar Conservation Project (TCP), and created financial incentives for community-based conservation to combat years of drought, habitat loss, and substantial losses in their livestock herds. Specifically, the Torghar Hills tribal council recognized that protecting markhor and its habitat can generate greater income for the community, rather than relying solely on traditional livestock production.

The TCP began in 1985, and originally focused on the development of a game guard system to protect the markhor from poaching (see Factor B discussion, below) (Frisina and Tareen 2009, pp. 141–142; Woodford *et al.* 2004, p. 178; Frisina 2000, p. 1; Frisina *et al.* 1998, p. 1; Johnson 1994b, p. 2; Tareen 1990, p. 3). However, in 2000, tribesmen requested that the Society for Torghar Environmental Protection (STEP), the community-based, nongovernmental organization established to administer the TCP, integrate habitat management measures to protect markhor and create better habitat for both markhor and their domestic animals. A habitat management plan for both wildlife and domestic livestock was developed in 2001. The plan emphasizes range management, improved agriculture, and water storage projects to improve habitat conditions, reduce grazing pressure, eliminate the need for domestic herds to utilize upper slope areas, and, therefore, reduce interactions between domestic livestock and markhor around forage and water resources (Frisina and Tareen 2009, p. 152; Woodford *et al.* 2004, pp. 180, 184; Frisina *et al.* 2002, pp. 3, 8, 16; Ahmed *et al.* 2001, pp. 7, 11).

In addition to livestock management, STEP plans to plant woodlots of indigenous trees to meet the fuel wood and timber requirements of the local tribes and develop orchards and croplands. Agriculture is seen as an alternative to raising livestock and reducing grazing pressure (Frisina and Tareen 2009, p. 152; Ahmed *et al.* 2001, p. 11). STEP will also train locals in livestock management and agricultural practices (Frisina and Tareen 2009, p. 152).

Although we do not know the current status of the management plans described above, if implemented, natural resources would be managed for sustainable use, which would improve the condition of the habitat, and remove the risk of large domestic livestock herds moving into the higher elevation areas in search of forage. Improved management of livestock and improved agricultural practices would reduce grazing pressure and deforestation in the lower slopes and valleys of the Torghar Hills. Without implementation of the management plans, the habitat of the Torghar Hills will continue to be impacted by grazing pressure and deforestation.

Summary of Factor A

Habitat modification is thought to have partially contributed to the decline of the straight-horned markhor. We do not have information on the current extent of habitat modification or effects on the straight-horned markhor in much of its range. In general, habitat throughout the range of the straight-horned markhor is threatened by deforestation for logging, fuel, charcoal, and building materials and by overgrazing of domestic livestock. In the Torghar Hills, however, the topography of the upland slopes and high-elevation areas has minimized human influence and grazing pressure. The habitat in these areas is in good condition; however, in drought conditions, or if the number and size of domestic herds are not controlled, these areas may experience increased grazing pressure from domestic sheep and goats in search of additional forage. The lower slopes and valleys, which are utilized by markhor and may become more important in supporting an increasing population, have experienced heavy grazing pressure and deforestation for building materials and fuel.

Plans are in place by STEP to address habitat management and protection in the Torghar Hills. If implemented, these plans would reduce grazing pressure and deforestation in the lower slopes and valleys of the Torghar Hills, eliminate the need for herds to graze in upland slopes, and manage the natural resources for sustainable use. As part of this proposed rule, we are requesting information from the public about the efficacy of these plans and the effect they are having on improving markhor habitat.

Although we have minimum information on habitat modification in much of the range of the straight-horned markhor, habitat modification is thought to have partially contributed to the decline of the subspecies across its range and has been identified as a current threat to the straight-horned markhor. In the Torghar Hills, habitat modification is not currently a threat to the straight-horned markhor in the upland slopes, but may become a threat in the future if herds and rangelands are not properly managed. The lower slopes and valleys have been subject to heavy grazing pressure and deforestation. Without information to indicate whether the condition of the habitat in the rest of the range of the straight-horned markhor has improved or is being managed, we conclude that habitat modification remains a threat to the subspecies. Therefore, we find that habitat modification is a threat to the straight-horned markhor.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Tribes that live within the range of the straight-horned markhor have a long tradition of hunting on their land (Frisina and Tareen 2009, p. 146; Ahmed *et al.* 2001, p. 2). Prior to the beginning of the Soviet-Afghan War in

1979, few animals were hunted, as weapons were primitive and ammunition scarce and expensive (Ahmed *et al.* 2001, p. 2). However, after the beginning of the war, there was an influx of more sophisticated weapons, such as semi- and fully-automatic rifles, and cheap ammunition was more accessible. This, along with millions of refugees moving into the area, led to indiscriminate killing of wildlife throughout Pakistan and critically low populations of straight-horned markhor (Frisina and Tareen 2009, p. 145; Woodford *et al.* 2004, p. 181; Ahmed *et al.* 2001, pp. 2, 4; Johnson 1994b, p. 1).

In an effort to manage the diminishing wildlife populations, the National Council for Conservation of Wildlife (the Scientific and Management Authorities for CITES in Pakistan) implemented a 3-year ban on hunting of all big game species in Pakistan, including markhor, in 1988. In 1991, the ban was extended for another 3 years. However, the ban had little impact on the recovery of wildlife populations (Ahmed *et al.* 2001, p. 5). In 1999, the Federal Cabinet decided to reinstate the ban for the 2000–2001 hunting season. In 2000, community trophy hunting programs were exempted from this ban (Shackleton 2001, p. 14). We did not find information on whether a ban on hunting of big game species is currently in place.

The straight-horned markhor has been extirpated from much of its former range due to over-hunting (Johnson 1994b, p. 5; Johnson 1994, p. 10). There is no current information on the extent of poaching taking place in most of the subspecies' range. However, markhor populations significantly increased only in conservation areas managed for trophy hunting, and the only conservation plan being implemented for the straight-horned markhor is in the Torghar Hills (Government of Pakistan 2009, p. viii).

In the early 1980s, local tribal leaders became alarmed at the significant decline in the markhor population in the Torghar Hills (Frisina and Tareen 2009, p. 145; Ahmed *et al.* 2001, p. 4; Johnson 1994b, p. 1). At this time, the population had reached a critical level, estimated at fewer than 200 (Ahmed *et al.* 2001, p. 4; Johnson 1994b, p. 14; Mitchell, 1989, p. 9). The tribal leaders attributed the decline to an increase in poaching due to the significant increase in weapons in the area during the Afghan War (Frisina and Tareen 2009, p. 145; Johnson 1994b, p. 1). After unsuccessful attempts to receive assistance from the Balochistan Forest Department, they turned to wildlife biologists in the United States, including the U.S. Fish and Wildlife Service. Together, they developed the TCP, an innovative, community-based conservation program that allows for limited trophy hunting to conserve local populations of markhor, improve habitat for both markhor and domestic livestock, and improve the economic conditions for local tribes in Torghar (Frisina and Tareen 2009, p. 146; Woodford *et al.* 2004, p. 182; Ahmed *et al.* 2001, p. 4 Johnson 1994b, pp. 1–2).

In 1985, the TCP was launched and covered most of the Torghar area (approximately 1,000 square kilometers (386 square miles)). First, tribal leaders implemented a ban on all hunting activities by tribesmen in the Torghar Hills. Then, local tribesmen were hired as game guards to assist in population surveys and prevent poachers from entering the Torghar Hills. Guards were placed at points of entry into the protected area to inform migrating tribesmen of the hunting ban, who, in turn, agreed to the ban so as not to jeopardize their passage through the Torghar Hills. Support for the program, including salaries for the game guards, is raised through fees for limited trophy hunting of markhor within the TCP, mostly by foreign game hunters. Currently, markhor fees are $35,000 U.S. dollars, 80 percent of which goes to the TCP and the other 20 percent goes to the Pakistani government. In the beginning, 7 game guards were hired; currently, 82 game guards are employed. The number of markhor allowed to be hunted each year is based on surveys conducted by game guards and wildlife biologists (Frisina and Tareen 2009, pp. 142, 146–147; Ahmed *et al.* 2001, p. 5; Johnson 1994b, p. 3). Numbers of animals taken have ranged from 1 to 5 animals per hunting season, or less than the 1 or 2 percent of the total male population recommended by Harris (1993 in Woodford *et al.* 2004, p. 182) annually for trophy hunting (Frisina and Tareen 2009, pp. 146–147, 149; Ali 2008, p. 20; Woodford *et al.* 2004, p. 182; Johnson 1997, pp. 403–404). Because markhor have a polygynous mating system, reproduction rates have not been affected by the removal of a limited number of adult males (Woodford *et al.* 2004, p. 182), as evidenced by the continuing increase in the Torghar Hills population.

As a result of the TCP, poaching has essentially been eliminated in the Torghar Hills (Woodford *et al.* 2004, p. 182; Johnson 1994b, p. 3). Johnson (1994b, p. 15) attributed the markhor population growth (estimated to be fewer than 200 animals in the mid-1980s and is now (2012) estimated to be more than 3,000 animals) to the substantial reduction in mortality when uncontrolled hunting was stopped. The TCP is the oldest community-controlled program in Pakistan and has been so successful that tribal groups in other mountain ranges of Balochistan have expressed interest in setting up similar programs (Frisina and Tareen 2009, p. 147; Ahmed *et al.* 2001, p. 11).

Straight-horned markhor in the Torghar Hills, and other subspecies of markhor within community-managed conservation areas in Pakistan, may be legally hunted and exported. In 1997, at the 10th meeting of the Conference of the Parties to CITES, the Government of Pakistan submitted a proposal for approval of an annual export quota for sport-hunted markhor trophies to act as an incentive to communities to conserve markhor. During that same meeting, the Conference of the Parties approved an annual export quota of 6 sport-hunted markhor trophies for Pakistan (Resolution Conf. 10.15). Due to the success of conservation programs in Pakistan, CITES increased the annual export quota to 12 markhor in 2002, to further encourage community-based conservation (Ali 2008, p. 24; Resolution Conf. 10.15 (Rev. CoP 14)).

Data obtained from the United Nations Environment Programme—World Conservation Monitoring Center (UNEP–WCMC) CITES Trade Database show that, from July 1975, when the straight-horned markhor was listed in Appendix I, through 2010, a total of 47 specimens of this subspecies were reported to UNEP–WCMC as (gross) exports. Of those 47 specimens, 34 were trophies, and 13 were live animals. In analyzing these data, it appears that one record may be an over-count due to a slight difference in the manner in which the importing and exporting countries reported their trade. It is likely that the actual number of straight-horned markhor specimens in international trade during this period was 45, including 34 trophies and 11 live animals. Thirty-three of the trophies were reported as wild, and 1 was reported with the source unknown. Exports from range countries included: 33 trophies from Pakistan and 1 trophy from Afghanistan.

Because the straight-horned markhor is listed as an Appendix-I species under CITES, legal international trade is very limited. Because there has been very limited trade in straight-horned markhor, totaling 45 specimens over 36 years, we believe that international trade controlled via valid CITES permits is not a threat to the subspecies.

Summary of Factor B

Over-hunting is known to have devastated populations of straight-horned markhor to critically low populations throughout Pakistan. In conservation areas managed for trophy hunting, populations of ungulates have significantly increased. Due to the formation of the TCP, the subsequent ending of uncontrolled poaching, and the hunting of only a limited number of trophies in the Torghar Hills, the population has increased substantially since 1985. Consequently, we find that poaching and hunting are not threats to the straight-horned markhor population in the Torghar Hills. There are no other populations of straight-horned markhor under management plans. Although the Torghar Hills population is increasing, the other populations of straight-horned markhor are reported as declining. Given that the cessation of poaching in the Torghar Hills was a direct result of the TCP, and the other populations are not under a management plan, it seems likely that poaching remains a threat to the straight-horned markhor outside of the Torghar Hills. Based on the UNEP–WCMC CITES Trade Database, few straight-horned markhor have been reported in trade from 1975 to 2010. Therefore, we believe that international trade controlled via valid CITES permits is not a threat to this subspecies. Overall, we find that overutilization for commercial, recreational, scientific, or educational purposes is a threat to the straight-horned markhor, with the exception of the Torghar Hills population.

C. Disease or Predation

Disease

Information on diseases that occur in straight-horned markhor or the risk of disease transmission to straight-horned markhor is very limited. The information we obtained comes from studies and observations in the Torghar Hills. In this population, the potential for disease transmission comes from livestock-wildlife interactions due to overgrazing of large herds of livestock, drought conditions, and the migration of flocks through the Torghar Hills. Habitat management plans, if implemented, could reduce this risk. See discussion under *Present or threatened destruction, modification, or curtailment of habitat or range.*

Overlap between domestic livestock and markhor appears to be minimal (Frisina *et al.* 2002, p. 8; Mitchell 1989, p. 11), and currently, there is no evidence of disease transmission between livestock and markhor (Woodford *et al.* 2004, p. 184; Frisina *et al.* 2002, p. 13). However, Woodford *et al.* (2004, p. 183) identified disease transmission from domestic livestock as a future threat to the markhor of Torghar Hills. It appears that the risk of disease transmission is linked to future and continued habitat and livestock management. The risk of disease transmission is particularly severe with uncontrolled numbers of domestic livestock or during periods of drought. During these circumstances, resources are limited, interactions are more frequent around available water sources, and domestic herds may be forced to utilize upper slopes. Additionally, incidents of interaction may increase with larger domestic livestock herds and the expanding markhor population (Woodford *et al.* 2004, p. 183).

STEP has discussed the establishment of a community-based Animal Health Service, and the herdsmen within the TCP have agreed to this measure. As it is not feasible to vaccinate markhor in mountainous terrain, STEP will train and equip tribesmen to act as ''barefoot vets'' with the responsibility of traveling through the TCP vaccinating domestic sheep and goats, and administering appropriate anthelmintics (drugs that expel parasitic worms). However, veterinary care will only be effective if range and livestock management plans are implemented, resulting in smaller, healthier domestic livestock herds (Woodford *et al.* 2004, p. 185).

Although there is currently no evidence of disease transmission between livestock and markhor (Woodford *et al.* 2004, p. 184; Frisina *et al.* 2002, p. 13), if implemented, the plans developed by STEP to improve habitat for markhor will also improve livestock management and agriculture practices, will minimize interaction between domestic livestock and wildlife, and will therefore lower the risk of disease transmission. Coupled with the planned Animal Health Service, the risk of diseases being transferred from domestic livestock to markhor will be significantly reduced. However, at this time, we do not know the status of the habitat management plans or the Animal Health Service, or the effect that the actions have had on reducing the risk of disease to the straight-horned markhor.

In the rest of the straight-horned markhor's range, we have no information on the occurrence of disease or the risk of disease transmission from domestic sheep and goats. Over-grazing of domestic livestock has contributed to habitat loss in other mountain ranges, suggesting large livestock herds have also been maintained in these areas, but we do not have information on herd size or the likelihood of livestock-wildlife interactions. Given the extremely small population estimates of straight-horned markhor outside of the Torghar Hills, it may be that interactions are rare.

Predation

The main predators of all subspecies of markhor are Himalayan lynx (*Felis lynx*), snow leopards (*Uncia uncia*), wolves (*Canis lupus*), and Asian black bears (*Ursus tibetanus*). Golden eagles (*Aquila chrysaetos*) are also reported to prey on young markhor (Ali 2008, pp. 20–21). Although once abundant in the mountains of northern Balochistan, many big game species, like leopards and black bears, suffered severe declines due to overhunting. In the Torghar Hills, these species were extirpated or near extirpation by the mid-1980s. Today, the only potential predators that remain in the Torghar Hills are small populations of wolves (*Canis lupus*) and hyaenas (*Hyaena hyaena*) (Woodford *et al.* 2004, p. 181). We found no reports on predation of straight-horned markhor specifically or information indicating predation is a threat to this subspecies.

Summary of Factor C

Although livestock-wildlife interactions are minimal in the Torghar Hills, and currently there is no evidence of disease transmission between livestock and markhor, if habitat and livestock management are not implemented, the risk of disease transmission to markhor will increase. STEP has developed plans to address range management and reduce the risk of disease transmission, and has developed an Animal Health Service, which would further reduce the risk of disease in straight-horned markhor; however, we do not know the status of these plans and the effect they may have on reducing the risk of disease to straight-horned markhor. Therefore, we find that disease is a threat to the straight-horned markhor in the Torghar Hills. In the other mountains of the straight-horned markhor's range, we do not have information on the occurrence of disease, the size of domestic herds, the likelihood of livestock-wildlife interactions, or, therefore, the risk of disease transmission. We also found no information suggesting that disease is a threat to these populations of straight-horned markhor. However, the scattered populations of straight-horned markhor outside of Torghar Hills occur at low densities such that interactions with livestock are likely to be minimal. As a result, we find that disease is not a threat to the straight-horned markhor in the rest of its range.

Although predators of markhor have been identified, and some potential predators remain in the Torghar Hills, we do not have any information suggesting that predation is affecting the status of the straight-horned markhor; therefore we find that predation is not a threat to the straight-horned markhor.

D. Inadequacy of Existing Regulatory Mechanisms

Federal Laws

Both the federal and provincial governments of Pakistan are allowed to legislate on matters governing resources; however, the federal government does not legislate on natural resource conservation and use, except in cases of international trade and national security (Ahmed and Kazi 2008, pp. 13, 24). There is no federal law that establishes principles of wildlife conservation and use to be applied in all provinces. Additionally, there is no federal legislation that provides a framework for managing forests as ecosystems, to conserve them as habitat for wildlife, or to protect rare or threatened species (Ahmed and Kazi 2008, pp. 14, 36, 38). Federal laws do exist to govern the process of those institutions that affect natural resources to ensure orderly conduct and achievement of commercial objectives or the prospecting and exploitation of those resources for continued availability for future exploitation (Ahmed and Kazi 2008, pp. 13–14, 32, 36).

The British Glanders and Farcy Act of 1899, enacted when the area that is now modern-day Pakistan was under British rule, addresses communicable diseases within domestic livestock. This federal law allows steps to be taken to control the spread of disease among domestic animals. Specified precautionary measures also prevent the spread of disease to wild animals. However, the provisions apply to horses, camels, and mules, but not to sheep and goats (Aurangzaib and Pastakia 2008, pp. 57, 64).

In general, federal laws do not apply in Federally Administered Tribal Areas (FATAs), Provincially Administered Tribal Areas (PATAs), or the Northern Areas (Ahmed and Khazi 2008, pp. 13, 24). Balochistan does not have any FATAs, but has several PATAs. According to the Pakistan Constitution, PATAs in Balochistan include the Zhob District, where the Torghar Hills is located, and the Laralai District (Aurangzaib and Pastakia 2008, p. 23). However, even in areas where federal laws are applicable, laws related to natural resources do not address conservation or use, but focus on commercial objectives and future exploitation. Additionally, the federal law addressing the spread of communicable diseases within domestic livestock and to wild animals is not applicable to sheep and goats, and therefore, does not provide any protections to the straight-horned markhor. Therefore, there are no federal laws that provide protections adequate to ameliorate threats to the straight-horned markhor from habitat loss, poaching, or disease.

Provincial Laws

Legislating for natural resource protection, including the protection of wildlife and forests, is left primarily to provincial governments (Ahmed and Kazi 2008, p. 13; Aurangzaib and Pastakia 2008, pp. 6–8, 24). Balochistan has one wildlife act, the Balochistan Wildlife Protection Act of 1974 (BWPA) (Aurangzaib and Pastakia 2008, p. 28). Under this law, the straight-horned markhor is listed as a protected animal under the Third Schedule (BWPA 1977, p. 15). Species listed under this Schedule shall not be hunted, killed, or captured (Aurangzaib and Pastakia 2008, p. 58). Penalties for violations include a maximum of 2 years in prison and/or a fine of 1,000 rupees ($18.27 U.S. dollars). All second and subsequent violations are punishable with a 1-year prison term and/or a fine of 1,000 rupees ($18.27 U.S. dollars), plus confiscation of weapons, vehicles, and equipment used in the violation. The violator's hunting license is also revoked, and the violator is barred from obtaining a new hunting license for 10 years (Aurangzaib and Pastakia 2008, p. 60). Under the Second Schedule, possession, transfer, or export of markhor horns requires a certificate of lawful possession (BWPA 1977, p. 14). The First Schedule lists game animals that may only be hunted, killed, or captured by license (BWPA 1977, p. 11).

The BWPA does not provide specifically for conservation of wildlife, and the protections are weak due to broad exemptions. For example, the government retains the right to allow the killing or hunting of animals for scientific or public purposes (Frisina and Tareen 2009, p. 145; Aurangzaib and Pastakia 2008, pp. 28, 58; Ahmed *et al.* 2001, p. 5; Johnson 1997, p. 397).

The BWPA also allows for the designation of protected areas, such as national parks, sanctuaries, and game reserves, and prohibits certain activities within these areas (Aurangzaib and Pastakia 2008, p. 65). Sanctuaries are to serve as undisturbed breeding grounds for the protection of wildlife, but the purposes of national parks and game reserves are not specified. Although this law allows for the designation of protected areas, it does not specify criteria for designation (Aurangzaib and Pastakia 2008, pp. 65–66).

Within a sanctuary, or within 500 yards (1,500 ft) of its perimeter, hunting, killing, or capture of wild animals is prohibited. In those areas, it is also illegal to take up residence, cultivate land, damage vegetation, light fires, pollute water, or introduce livestock or allow domestic animals to graze (Aurangzaib and Pastakia 2008, pp. 65–66). Within a national park, or within a half-mile of its boundary, it is unlawful to hunt, kill, or capture wildlife. In those areas, clearing or breaking up of land for cultivation, mining, or other purposes; felling, tapping, damaging, or destroying plants and trees; and collecting or removing plants or trees is prohibited. The BWPA also prohibits acts like discharging a weapon, which may disturb an animal or interfere with breeding (Aurangzaib and Pastakia 2008, pp. 58, 67). These prohibitions, however, are subject to broad exemptions. Within a national park, exemptions may be granted for scientific purposes, betterment of the national park, or any other purpose. Vegetation may be destroyed in wildlife sanctuaries and game reserves for scientific purposes, aesthetic enjoyment, or the betterment of the sanctuary or reserve. Additionally, the government may allow the exploitation of forest produce (Aurangzaib and Pastakia 2008, pp. 45, 59).

In Balochistan, there are 2 national parks and over 20 wildlife sanctuaries and game reserves (Aurangzaib and Pastakia 2008, p. 65). The straight-horned markhor has been recorded in the Hazarganji Chiltan National Park (Wildlife of Pakistan 2002, unpaginated). We do not have information on the location of the wildlife sanctuaries or game reserves or if the straight-horned markhor occurs within any of these areas.

The Land Preservation Act of 1900 is a Punjab law that, by default, was applied to the newly created Balochistan province in 1970. This law allows the government to provide for the prevention of soil erosion and the conservation of sub-soil water. Activities such as clearing, breaking up, or cultivating land not ordinarily under cultivation; quarrying stone or burning lime; cutting trees or removing forest produce; setting fire to trees, timber, or forest produce; and herding or pasturing goats and sheep are prohibited. However, the government may permit inhabitants to carry out such activities (Aurangzaib and Pastakia 2008, p. 39).

In Balochistan, the forest sector is governed by the Forest Act of 1927, a federal statute that operates as provincial law. Other forest laws exist, but none covers all aspects of forest management (Aurangzaib and Pastakia 2008, p. 42). The Forest Act of 1927 allows for the creation of various classes of forests, the reservation of state-owned forest land, and for the provincial government to assume control of privately owned forest land and declare government-owned land to be a protected area. It also prohibits grazing, hunting, quarrying, or clearing for cultivation; removal of forest produce; or the felling or lopping of trees and branches in reserved or protected forests (Aurangzaib and Pastakia 2008, p. 46). In protected forests, cutting or damaging trees, quarrying, cultivation, and setting fires is punishable by up to 6 months in prison and or a fine of 500 rupees ($9.13 U.S. dollars) (Aurangzaib and Pastakia 2008, p. 46).

Special provisions are in place for juniper forests. It is illegal to fell or girdle a juniper tree, or to lop, tap, burn, damage, or strip bark from a juniper tree, regardless of whether the tree is standing, felled, or fallen. It is also illegal to remove a felled or fallen juniper tree or its parts for sale. Offenses related to juniper trees are punishable by imprisonment for 1 year and/or a fine of 5,000 rupees ($91.33 U.S. dollars). The Forest Act also allows the government to regulate privately owned forests under certain circumstances. In these cases, the government may prohibit grazing, setting fires, and clearing land for cultivation (Aurangzaib and Pastakia 2008, p. 46).

The Forest Act of 1927 does not provide for sustainable use, conservation, or the protection of endangered wildlife within forests. Legislation related to forests restricts subsistence use, but focuses on maximizing commercial exploitation. This may be because current laws date back to the early 20th century and reflect priorities of that time. Provincial amendments have done little to alter the focus of these laws. Enforcement of forest laws is lacking, and where enforcement is possible, penalties are not severe enough to serve as a deterrent to violators. Furthermore, these laws may be overridden by other laws in favor of development and commercial uses (Aurangzaib and Pastakia 2008, pp. 42–43).

There are some laws that provide protection to trees rather than forests. As described above, the BWPA prohibits the clearing of trees, although this protection only applies within protected areas. The Land Preservation Act restricts the felling of trees to prevent soil erosion (Aurangzaib and Pastakia 2008, p. 42).

Despite provincial laws, Pakistani authorities have not been able to slow the decline of important wildlife species, such as the markhor (Johnson 1997, p. 394). Enforcement is very difficult to achieve due to the remoteness of many areas, the political situation in remote areas, conflicting policies, lack of understanding of the need and importance of conservation, and economic constraints (Hess *et al.* 1997, p. 243). Additionally, like federal laws, provincial laws do not apply in FATAs, PATAs, or the Northern Areas (Ahmed and Khazi 2008, pp. 13, 24). According to the Pakistan Constitution, PATAs in Balochistan include the Zhob and Laralai districts (Aurangzaib and Pastakia 2008, p. 23). For a federal or provincial law to apply, the provincial governor must, with the approval of the president, issue a directive to that effect (Aurangzaib and Pastakia 2008, p. 24). The BWPA states specifically in section 1(2) that the law extends to all of Balochistan except for the tribal areas. Although we do not have specific information on whether the other laws described above were directed to tribal areas, it appears that many of the areas where the straight-horned markhor occur are not subject to these laws as they are located in the PATAs of the Zhob and Laralai districts. In areas where the laws may be applicable, it does not appear that provincial laws have provided adequate protection given the severe declines in straight-horned markhor caused by habitat loss and poaching, and given the threats the markhor continues to face from habitat loss, poaching, and disease.

International Laws

In 1975, the straight-horned markhor was listed in Appendix I of CITES. CITES is an international agreement between governments to protect plant and animal species listed in its Appendices from over-exploitation through international trade. There are currently 175 CITES Parties (member countries or signatories to the Convention). CITES Parties regulate the import, export, and reexport of live or dead plants or animals as well as parts and products of Appendix-listed plant and animal species, through a system of permits and certificates administered by the designated CITES Scientific and Management Authorities of each Party.

An Appendix-I listing includes species threatened with extinction which are or may be affected by trade; trade of these species is permitted only under exceptional circumstances. Commercial trade in Appendix-I specimens is generally precluded. Trade in Appendix-I species requires the issuance of both import and export permits. Import permits for Appendix-I species are issued only if findings are made that the import would be for purposes that are not detrimental to the survival of the species, the proposed recipient of a live specimen is suitably equipped to house and care for it, and that the specimen will not be used for primarily commercial purposes (CITES Article III(3)). Export permits for Appendix-I species are issued only if findings are made that the specimen was legally acquired; the trade is not detrimental to the survival of the species; any specimen will be prepared and shipped to minimize the risk of injury, damage to health or cruel treatment; and if the issuing authority is satisfied that an import permit has been granted for the specimen (CITES Article III(2)).

In the United States, CITES is implemented through the U.S. Endangered Species Act of 1973, as amended (Act). The Act designates the Secretary of the Interior (Secretary) as having the lead responsibility to implement CITES for the United States, with the functions of the Management and Scientific Authorities to be carried out by the Service.

Hunting and export of markhor trophies is allowed from community-managed conservation areas in Pakistan. See discussion above under *Overutilization for commercial, recreational, scientific, or educational purposes.* To encourage communities to conserve populations of markhor, the Conference of the Parties to CITES approved an annual export quota of 12 sport-hunted trophies of markhor to be taken through trophy-hunting programs. As discussed above under Factor B, due to the limited number of specimens reported in trade, we do not consider international trade to be a threat impacting this subspecies.

In addition to CITES, Pakistan is Party to other major multilateral treaties that address natural resource conservation and management (Ahmed and Khazi 2008, p. 31). Among these are the Convention on Biological Diversity, World Heritage Convention, and the Convention on Combating Desertification (Ahmed and Khazi 2008, pp. 14, 31). In becoming a Party to these treaties, Pakistan assumed obligations to implement the treaties' provisions, which in many cases requires legislation. However, Pakistan has no federal law to implement these obligations (Ahmed and Khazi 2008, pp. 14, 31; Aurangzaib and Pastakia 2008, p.

65). Provincial governments are responsible for legislating natural resources. Balochistan's single wildlife law, the BWPA, does not meet the country's obligations regarding conservation of biodiversity or trade in endangered species (Aurangzaib and Pastakia 2008, p. 58). Therefore, these treaties, in and of themselves, do not provide adequate protections to ameliorate threats faced by the straight-horned markhor.

Conservation Plans

Populations of ungulates in Pakistan have significantly increased under trophy hunting programs (Government of Pakistan 2009, p. viii). The only conservation program of any type for the straight-horned markhor is the TCP, which covers the Torghar Hills population. The population here has been under this conservation program since 1985. As previously described, the TCP began after local tribal leaders were concerned over the diminished markhor population.

The main cause of declines in markhor populations was thought to be uncontrolled poaching. The TCP effectively eliminated this threat and has allowed the straight-horned markhor population in the Torghar Hills to steadily increase. The TCP not only addresses the threat of hunting, but agriculture and range management plans have been recently developed to address habitat loss and disease (see discussions under Factors A and C, above). Therefore, we find that the TCP provides adequate protection to the markhor from poaching, but we do not yet have information indicating that it provides adequate protection against habitat loss and disease.

Summary of Factor D

Although the federal government of Pakistan could legislate on matters relating to natural resources, this matter is left to provincial governments. There are several provincial laws in place meant to give some protection to natural resources; however, they are subject to broad exemptions, allowing for overriding laws favoring development and commercial use. Given the threats faced by the straight-horned markhor from habitat loss, poaching, and disease, it appears that these regulatory mechanisms do not provide adequate protections to the subspecies. In the Torghar Hills, effective implementation and enforcement of the TCP has led to the cessation of poaching of markhor and a persistent growth in the markhor population; therefore, the TCP has provided adequate protection against poaching. Habitat modification and disease remain current and potential threats to the straight-horned markhor of the Torghar Hills. Management plans are being developed to address habitat loss and disease prevention; however, we do not know the status or effectiveness of these plans. Therefore, we find that, overall, inadequate regulatory mechanisms are a threat to the straight-horned markhor.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Consideration of ongoing and projected climate change is a component of our analyses to determine the appropriate status of the markhor under the Act. Described in general terms, ''climate change'' refers to a change in the state of the climate (whether due to natural variability, human activity, or both) that can be identified by changes in the mean or variability of its properties (e.g., temperature, precipitation) and that persists for an extended period, typically decades or longer (Intergovernmental Panel on Climate Change (IPCC) 2007, p. 30). Various types of changes in climate can have direct or indirect effects on species, and these may be positive or negative depending on the species and other relevant considerations, such as the effects of interactions with non-climate conditions (e.g., habitat fragmentation). We use our expert judgment to weigh relevant information, including uncertainty, in our consideration of various aspects of climate change that are relevant to the straight-horned markhor.

Since the beginning of the 20th century, Pakistan has experienced a consistent rising trend in mean surface temperatures (Farooqi *et al.* 2005, p. 13). Ahmed *et al.* (2010, pp. 17, 21) found that temperatures in January, a core winter month in Pakistan, increased over a 46-year time period (1961–2006) across Pakistan and especially in northwestern Balochistan. Projections through 2050 for Pakistan include increasing surface temperatures, increasing magnitude and frequency of extreme rainfall events, and strengthening monsoon circulation. Additionally, arid and semi-arid regions could experience severe droughts (Farooqi *et al.* 2005, pp. 16–18).

Drought is a common occurrence in Balochistan; as such, we do not know if climate change will affect markhor and their habitat. STEP has developed habitat and range management plans, which could help minimize effects of climate change by reducing the number of domestic livestock, decreasing habitat loss, and increasing water availability through water storage projects. Although we do not know the effectiveness of these plans under changing climatic conditions, we did not find any information that rising temperatures have had an effect on the status of the markhor such that climate change rises to the level of a threat, nor did we find any information indicating that climate change may become a threat to the straight-horned markhor.

Summary of Factor E

To date, Pakistan has experienced a warming trend, yet there is no information to indicate that the straight-horned markhor has been negatively affected. Although information indicates changes in the climate of Balochistan could affect mountain habitat, we do not have information on the extent of these changes or the projected response of straight-horned markhor. Drought is a common occurrence in Balochistan, and it is reasonable to assume that the markhor has evolved with varying degrees of drought.

We are not aware of any other scientific or commercial information that indicates other natural or manmade factors pose a threat to this subspecies. We also do not find that climate change is or may become a threat to the straight-horned markhor. As a result, we find that other natural or manmade factors are not threats to the straight-horned markhor.

Finding

As required by the Act, we conducted a review of the status of the species and considered the five factors in assessing whether the straight-horned markhor is endangered or threatened throughout all or a significant portion of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the straight-horned markhor. We reviewed the 1999 petition submitted by Tareen, the 2010 petition submitted by Jackson, information available in our files, and other available published and unpublished information.

The straight-horned markhor occurs in small, scattered populations in extremely rugged terrain of the mountains of Balochistan, including the Murdar, Takhatu, Zarghun, Kaliphat, Phil Garh, Suleiman, Shingar, and Toba Kakar ranges. In 1975, as few as 1,000 straight-horned markhor were estimated to survive throughout the subspecies' range. It is unlikely that the number of straight-horned markhor has increased in much of its range, and, in general, markhor populations are reported as

declining, but there is one exception, the Torghar Hills population in the Toba Kakar Range. Due to the implementation of a conservation plan, the Torghar Hills population has increased from fewer than 200 in the mid-1980s to 3,158 currently.

Throughout the range of the straight-horned markhor, deforestation for logging, livestock grazing, and collection for building materials, fuel, charcoal, and food threaten straight-horned markhor habitat.

Due to the formation of the TCP, the cessation of uncontrolled poaching, and the hunting of only a limited number of trophies in the Torghar Hills, the population has increased substantially since TCP's inception in 1985. We are not aware of other populations of straight-horned markhor under the same level of management. Given that the cessation of poaching in the Torghar Hills was a direct result of the TCP and we are unaware of any other portions of the subspecies' range that are subject to a management program that protects against uncontrolled hunting, we find that poaching remains a threat in the rest of the straight-horned markhor's range.

Disease has been identified as a future threat to the Torghar Hills population. The risk of disease transmission comes from forced interactions between livestock and markhor around limited forage and water resources, due either to drought conditions and/or overgrazing of large domestic herds of sheep and goats.

There are several provincial laws in place meant to give some protection to natural resources, but they are subject to broad exemptions, allowing for overriding laws favoring development and commercial use, and enforcement is lacking. However, in the Torghar Hills, the population of straight-horned markhor has been effectively managed by the TCP such that poaching is no longer a threat to this population and the population has increased. Given the success of the TCP in ameliorating threats faced by the straight-horned markhor from poaching, it appears that this regulatory mechanism for the Torghar Hills population of straight-horned markhor is providing adequate protection to the subspecies from poaching, which was once the markhor's greatest threat.

Lastly, Pakistan has experienced warming trends that are projected to continue, and could lead to more frequent and severe droughts. However, markhor have evolved within habitat that experiences frequent and sustained drought events. We do not have enough information to determine that climate change is a threat to the straight-horned markhor.

Section 3 of the Act defines an ''endangered species'' as ''any species which is in danger of extinction throughout all or a significant portion of its range,'' and a ''threatened species'' as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Some of the straight-horned markhor populations are small and declining. Threats to this subspecies from habitat loss, poaching, and disease still exist and will likely continue into the foreseeable future. At the same time, regulatory mechanisms are inadequate to ameliorate the negative effects of these threats on the subspecies. However, in the Torghar Hills, the greatest cause of the significant declines in markhor populations, poaching, has been virtually eliminated due to the implementation of the TCP. The population here has been increasing since the inception of the TCP and, today, is the stronghold of the subspecies. Due to the conservation measures and the incentives of the TCP, the straight-horned markhor has increased from approximately 1,000 markhor across its range to at least 3,158 individuals, which are represented by the Torghar Hills population. The success of this program has contributed greatly to the conservation of the subspecies by recovering the straight-horned markhor from the brink of extinction. This increase in abundance has contributed to the subspecies' overall resiliency such that it is less susceptible to the threats that we have identified. Additionally, information suggests that intermountain exchange or movement is occurring between the Torghar Hills and other mountain range areas, thereby providing a margin of safety for the species to withstand catastrophic events. See discussion under *Distinct Vertebrate Population Segment.* Thus, we find that threats identified under Factors A, B, C, and D, when combined with the increase in the straight-horned markhor population and the protective measures provided to the Torghar Hills population by the TCP, are not of sufficient imminence, intensity, or magnitude to indicate that the straight-horned markhor is presently in danger of extinction, and, therefore, the straight-horned markhor does not meet the definition of endangered under the Act. On the basis of the best scientific and commercial information, we find that the straight-horned markhor meets the definition of a ''threatened species'' under the Act, and we are proposing to list the straight-horned markhor as threatened throughout its range.

Distinct Vertebrate Population Segment

Section 3(16) of the Act defines ''species'' to include any species or subspecies of fish and wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). Under the Service's ''Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act'' (61 FR 4722, February 7, 1996), three elements are considered in the decision concerning the establishment and classification of a possible distinct population segment (DPS). These elements, which are applied similarly for additions to or removals from the Federal List of Endangered and Threatened Wildlife, include:

(1) The discreteness of a population in relation to the remainder of the species to which it belongs;

(2) The significance of the population segment to the species to which it belongs; and

(3) The population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification (i.e., is the population segment endangered or threatened?).

Discreteness

Under the DPS policy, a population segment of a vertebrate taxon may be considered discrete if it satisfies either one of the following conditions:

(1) It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.

(2) It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act.

We reviewed available information to determine whether any population, including the Torghar Hills population, of the straight-horned markhor meets the first discreteness condition of our 1996 DPS policy. We found no evidence that any population was markedly separated from other markhor populations as a consequence of physical, physiological, ecological, or behavioral factors. Additionally, we are not aware of measures of genetic or morphological discontinuity that provide evidence of marked separation.

With respect to Torghar Hills, the boundaries are unclear and appear to grade into other ranges within the Toba Kakar Mountains. Additionally, Johnson (1994b, p. 15) noted that if the Torghar Hills population reaches carrying capacity, it could become a source of emigrants for other mountain ranges in the area and that intermountain movement is probably already taking place. Since that publication, the Torghar Hills population has increased from 695 markhor to 3,158, indicating a greater likelihood that intermountain movement of markhor is taking place. We currently do not know the extent, if any, that markhor are moving from the Torghar Hills into other mountain ranges; however, it appears that they could. Movement may require markhor to cross unsuitable habitat (e.g., the TCP is surrounded by less severe topography and valleys typically not preferred by markhor), but there is no reason that they could not cross, especially if carrying capacity is met and there is a need to emigrate to other suitable areas in adjacent ranges. Therefore, without evidence of marked separation, we determine that none of the populations of the straight-horned markhor meet the first discreteness condition of the 1996 DPS policy.

We next evaluate whether any of the straight-horned markhor populations meet the second discreteness condition of our 1996 DPS policy. A population segment may be considered discrete if it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the Act. Straight-horned markhor are only found in Pakistan and do not cross international boundaries; therefore, none of the populations of the straight-horned markhor meet the second discreteness condition of the 1996 DPS policy.

We determine, based on a review of the best available information, that none of the populations of the straight-horned markhor, including the Torghar Hills population, meet the discreteness conditions of the 1996 DPS policy. Because we found that the straight-horned markhor populations do not meet the discreteness element under the Service's DPS policy, we need not conduct an evaluation of significance under that policy. We conclude that none of the straight-horned markhor populations qualify as a DPS under the Act.

Significant Portion of the Range

Having determined that the straight-horned markhor meets the definition of threatened throughout its range, we must next consider whether the straight-horned markhor is in danger of extinction within a significant portion of its range.

The Act defines ''endangered species'' as any species which is ''in danger of extinction throughout all or a significant portion of its range,'' and ''threatened species'' as any species which is ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The phrase ''significant portion of its range'' (SPR) is not defined by the statute, and we have never addressed in our regulations either: (1) The consequences of a determination that a species is either endangered or likely to become so throughout a significant portion of its range, but not throughout all of its range; or (2) what qualifies a portion of a range as ''significant.''

For the purposes of this finding, we interpret the phrase ''significant portion of its range'' in the Act's definitions of ''endangered species'' and ''threatened species'' to provide an independent basis for listing; thus there are two situations (or factual bases) under which a species would qualify for listing: a species may be endangered or threatened throughout all of its range; or a species may be endangered or threatened in only a significant portion of its range. If a species is in danger of extinction throughout an SPR, then that species is an ''endangered species.'' The same analysis applies to ''threatened species.'' Based on this interpretation and supported by existing case law, the consequence of finding that a species is endangered or threatened in only a significant portion of its range is that the entire species will be listed as endangered or threatened, respectively, and the Act's protections will be applied across the species' entire range.

We conclude, for the purposes of this finding, that interpreting the SPR phrase as providing an independent basis for listing is the best interpretation of the Act because it is consistent with the purposes and the plain meaning of the key definitions of the Act; it does not conflict with established past agency practice, as no consistent, long-term agency practice has been established; and it is consistent with the judicial opinions that have most closely examined this issue. Having concluded that the phrase ''significant portion of its range'' provides an independent basis for listing and protecting the entire species, we next turn to the meaning of ''significant'' to determine the threshold for when such an independent basis for listing exists.

Although there are potentially many ways to determine whether a portion of a species' range is ''significant,'' we conclude, for the purposes of this finding, that the significance of the portion of the range should be determined based on its biological contribution to the conservation of the species. For this reason, we describe the threshold for ''significant'' in terms of an increase in the risk of extinction for the species. We conclude that a biologically based definition of ''significant'' best conforms to the purposes of the Act, is consistent with judicial interpretations, and best ensures species' conservation. Thus, for the purposes of this finding, and as explained further below, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction.

We evaluate biological significance based on the principles of conservation biology using the concepts of redundancy, resiliency, and representation. *Resiliency* describes the characteristics of a species and its habitat that allow it to recover from periodic disturbance. *Redundancy* (having multiple populations distributed across the landscape) may be needed to provide a margin of safety for the species to withstand catastrophic events. *Representation* (the range of variation found in a species) ensures that the species' adaptive capabilities are conserved. Redundancy, resiliency, and representation are not independent of each other, and some characteristic of a species or area may contribute to all three. For example, distribution across a wide variety of habitat types is an indicator of representation, but it may also indicate a broad geographic distribution contributing to redundancy (decreasing the chance that any one event affects the entire species), and the likelihood that some habitat types are less susceptible to certain threats, contributing to resiliency (the ability of the species to recover from disturbance). None of these concepts is intended to be mutually exclusive, and a portion of a species' range may be determined to be ''significant'' due to its contributions under any one or more of these concepts.

For the purposes of this finding, we determine whether a portion qualifies as ''significant'' by asking whether *without that portion,* the representation, redundancy, or resiliency of the species would be so impaired that the species

would have an increased vulnerability to threats to the point that the overall species would be in danger of extinction (i.e., would be ''endangered''). Conversely, we would not consider the portion of the range at issue to be ''significant'' if there is sufficient resiliency, redundancy, and representation elsewhere in the species' range that the species would not be in danger of extinction throughout its range if the population in that portion of the range in question became extirpated (extinct locally).

We recognize that this definition of ''significant'' (a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction) establishes a threshold that is relatively high. On the one hand, given that the consequences of finding a species to be endangered or threatened in an SPR would be listing the species throughout its entire range, it is important to use a threshold for ''significant'' that is robust. It would not be meaningful or appropriate to establish a very low threshold whereby a portion of the range can be considered ''significant'' even if only a negligible increase in extinction risk would result from its loss. Because nearly any portion of a species' range can be said to contribute some increment to a species' viability, use of such a low threshold would require us to impose restrictions and expend conservation resources disproportionately to conservation benefit: Listing would be rangewide, even if only a portion of the range of minor conservation importance to the species is imperiled. On the other hand, it would be inappropriate to establish a threshold for ''significant'' that is too high. This would be the case if the standard were, for example, that a portion of the range can be considered ''significant'' only if threats in that portion result in the entire species' being currently endangered or threatened. Such a high bar would not give the SPR phrase independent meaning, as the Ninth Circuit held in *Defenders of Wildlife* v. *Norton,* 258 F.3d 1136 (9th Cir. 2001).

The definition of ''significant'' used in this finding carefully balances these concerns. By setting a relatively high threshold, we minimize the degree to which restrictions will be imposed or resources expended that do not contribute substantially to species conservation. But we have not set the threshold so high that the phrase ''in a significant portion of its range'' loses independent meaning. Specifically, we have not set the threshold as high as it was under the interpretation presented by the Service in the *Defenders* litigation. Under that interpretation, the portion of the range would have to be so important that current imperilment there would mean that the species would be currently imperiled everywhere. Under the definition of ''significant'' used in this finding, the portion of the range need not rise to such an exceptionally high level of biological significance. (We recognize that if the species is imperiled in a portion that rises to that level of biological significance, then we should conclude that the species is in fact imperiled throughout all of its range, and that we would not need to rely on the SPR language for such a listing.) Rather, under this interpretation we ask whether the species would be endangered everywhere without that portion, *i.e.,* if that portion were completely extirpated. In other words, the portion of the range need not be so important that even the species being in danger of extinction in that portion would be sufficient to cause the species in the remainder of the range to be endangered; rather, the *complete extirpation* (in a hypothetical future) of the species in that portion would be required to cause the species in the remainder of the range to be endangered.

The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that have no reasonable potential to be significant or to analyzing portions of the range in which there is no reasonable potential for the species to be endangered or threatened. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be ''significant,'' and (2) the species may be in danger of extinction there or likely to become so within the foreseeable future. Depending on the biology of the species, its range, and the threats it faces, it might be more efficient for us to address the significance question first or the status question first. Thus, if we determine that a portion of the range is not ''significant,'' we do not need to determine whether the species is endangered or threatened there; if we determine that the species is not endangered or threatened in a portion of its range, we do not need to determine if that portion is ''significant.'' In practice, a key part of the determination that a species is in danger of extinction in a significant portion of its range is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats to the species occurs only in portions of the species' range that clearly would not meet the biologically based definition of ''significant,'' such portions will not warrant further consideration.

After reviewing the potential threats throughout the range of the straight-horned markhor, we find that threats appear to be affecting the subspecies in the portion of the range outside of the Torghar Hills more severely, particularly with respect to poaching. Applying the process described above for determining whether this subspecies is endangered in a significant portion of its range, we consider significance first to determine if this portion of the straight-horned markhor's range warrants further consideration.

As stated above, a portion of the range of a species is ''significant'' if its contribution to the viability of the species is so important that without that portion, the species would be in danger of extinction rangewide. We find that if there was a loss of the straight-horned markhor populations outside of the Torghar Hills, the remaining population in the Torghar Hills would not be in danger of extinction. The Torghar Hills population, under the management of the TCP, has been steadily increasing since the inception of the TCP in 1985. Poaching, the greatest cause of substantial markhor declines, has been virtually eliminated in the Torghar Hills. Given the level of the abundance within Torghar Hills as a result of management under the TCP, we find that this population would be large enough to persist in the face of threats associated with habitat destruction, disease, and inadequate regulatory mechanisms, despite the hypothetical loss of the range outside of Torghar Hills. In contrast, based on the information available, the populations outside of Torghar Hills are small and fragmented. We have no information to suggest that habitat for populations outside of Torghar Hills is optimal, and, instead, the information suggests that these populations likely exist on tribal lands that are subject to overgrazing by domestic livestock, which is the dominant land use and the primary means of subsistence for local tribes. Therefore, the portion of the range outside of the Torghar Hills does not meet the definition of ''significant'' and does not warrant further consideration.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and encourages and results in conservation actions by Federal and State governments, private agencies and groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. However, given that the straight-horned markhor is not native to the United States, we are not designating critical habitat for this species under section 4 of the Act.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered species and to provide assistance for such programs in the form of personnel and the training of personnel.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. These prohibitions, at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to ''take'' (take includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or to attempt any of these) within the United States or upon the high seas; import or export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any endangered or threatened wildlife species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 for endangered species and 17.32 for threatened species. For endangered wildlife, a permit may be issued for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. For threatened species, a permit may be issued for the same activities, as well as zoological exhibition, education, and special purposes consistent with the Act.

Special Rule

Section 4(d) of the Act states that the Secretary may, by regulation, extend to threatened species prohibitions provided for endangered species under section 9 of the Act. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated. For threatened species, section 4(d) of the Act gives the Secretary discretion to specify the prohibitions and any exceptions to those prohibitions that are appropriate for the species, and provisions that are necessary and advisable to provide for the conservation of the species. A special rule allows us to include provisions that are tailored to the specific conservation needs of the threatened species and which may be more or less restrictive than the general provisions at 50 CFR 17.31.

The Service recognizes that there is a reasonable argument for the proposition that controlled sport hunting (i.e., noncommercial) may provide economic incentives that contribute to the conservation of certain wildlife populations. These incentives may be direct, such as generating funding for essential conservation measures through licensing fees. They may also be indirect, such as focusing governmental attention on the need to protect species of economic value.

Well-managed conservation programs, including those that incorporate sport hunting, can significantly contribute to the conservation of wildlife, improve wildlife populations, and greatly enhance the livelihoods of the local people. The primary objective of a well-managed trophy-hunting program is not hunting, but the conservation of large mammals (Shackleton 2001, p. 7). The key lies in ensuring a sufficient number of mature males remain in the population to maintain normal reproduction rates. For species with polygynous mating systems, removing some of the males from a population does not necessarily affect the growth rate of the population. If a fraction of the mature males (approximately 2 percent) are removed, normal reproduction can be maintained and any long-term genetic impacts from removing ''genetically superior'' individuals from a population can be minimized (Shackleton 2001, p. 10).

Many hunters are willing to pay relatively large fees for the privilege to hunt. If the money is used to conserve the species that is the focus of the conservation program, the program may be sustainable. Additionally, habitat restoration may also be achieved. Incorporating the needs of the local people creates an incentive to conserve wildlife and ensures the success of the program (Shackleton 2001, pp. 7, 10).

In recognizing the potential of conservation programs, including those based on sport hunting, we are proposing a special rule to allow the import of sport-hunted markhor trophies taken from established conservation programs without a threatened species permit issued under 50 CFR 17.32, provided that certain criteria are met. Importation of a personal sport-hunted straight-horned markhor may be authorized by the Director of the U.S. Fish and Wildlife Service (Director) without a threatened species permit if the trophy is taken from a conservation program that meets the following criteria: (1) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport-hunting and the populations are stable or increasing; (2) regulating authorities have the capacity to obtain sound data on populations; (3) the conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species, and the funds derived from sport hunting are applied toward benefits to the community and the species; (4) regulating authorities have the legal and practical capacity to provide for the long-term survival of the populations; (5) regulating authorities can determine that the trophies have in fact been legally taken from the populations under an established conservation program. The Director may, consistent with the purposes of the Act, authorize by publication of a notice in the **Federal Register** the importation of personal sport-hunted straight-horned markhor, taken legally from the established conservation program after the date of such notice, without a threatened species permit, provided that the applicable provisions of 50 CFR part 23 have been met.

As discussed above under Factors B and D, hunting of markhor is allowed

through a Pakistani government exemption, and export of markhor in Pakistan is allowed only from community-managed conservation areas in accordance with CITES provisions. To encourage communities to conserve populations of markhor, the Conference of the Parties to CITES granted Pakistan an annual export quota of 12 markhor sport-hunted trophies taken through community-based programs. CITES Resolution Conf. 10.15 (Rev. CoP 14) recommends that CITES Authorities in the State of import approve permits of sport-hunted markhor trophies from Pakistan if they meet the terms of the Resolution. This proposed special rule, if made final, would similarly facilitate support for these conservation programs. Therefore, we find this special rule would provide necessary and advisable conservation measures that are needed for this subspecies.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' that was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analysis. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and the data that are the basis for our conclusions regarding the proposal to reclassify the straight-horned markhor as threatened under the Act and to promulgate the proposed special rule.

We will consider all comments and information we receive during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, our final decision may differ from this proposal.

Required Determinations

Clarity of Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that we do not need to prepare an environmental assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted under section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new information collections or recordkeeping requirements for which Office of Management and Budget (OMB) approval is required under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

References Cited

A list of all references cited in this document is available at *http://www.regulations.gov* at Docket No. FWS–R9–ES–2011–0003, or upon request from the U.S. Fish and Wildlife Service, Endangered Species Program, Branch of Foreign Species (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are staff members of the Branch of Foreign Species, Endangered Species Program, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for ''Markhor, straight-horned'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS	.....	.....	.....		.....	.....	.....
*	*	*	*	*	*		*
Markhor, straight-horned.	*Capra falconeri jerdoni.*	Afghanistan, Pakistan.	Entire	T	15	NA	17.40(r)
*	*	*	*	*	*		*

3. Amend § 17.40 by adding a new paragraph (r) to read as follows:

§ 17.40 Special rules—mammals.

* * * * *

(r) Straight-horned Markhor (*Capra falconeri jerdoni*).

(1) *General requirements.* Except as noted in paragraph (r)(2) of this section, all prohibitions of § 17.31 of this part and exemptions of § 17.32 of this part apply to this subspecies.

(2) *What are the criteria under which a personal sport-hunted trophy may qualify for import without a permit under § 17.32 of this part?* If, upon receiving information on an established conservation program for straight-horned markhor:

(i) Populations of straight-horned markhor within the conservation program's areas can be shown to be sufficiently large to sustain sport hunting and are stable or increasing;

(ii) Regulating authorities have the capacity to obtain sound data on populations;

(iii) The conservation program can demonstrate a benefit to both the communities surrounding or within the area managed by the conservation program and the species; and the funds derived from sport hunting are applied toward benefits to the community and the species;

(iv) Regulating authorities have the legal and practical capacity to provide for the long-term survival of the populations; and

(v) Regulating authorities can determine that the sport-hunted trophies have in fact been legally taken from the populations under an established conservation program, the Director may, consistent with the purposes of the Act, authorize by publication of a notice in the **Federal Register** the importation of personal sport-hunted straight-horned markhor, taken legally from the established program after the date of such notice, without a Threatened Species permit pursuant to § 17.32 of this part, provided that the applicable provisions of 50 CFR part 23 have been met.

* * * * *

Dated: July 26, 2012.

Thomas O. Melius,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2012–19071 Filed 8–6–12; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 77, No. 152

Tuesday, August 7, 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

Food Safety and Inspection Service

[Docket No. FSIS–2012–0030]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service.

ACTION: Notice of Reestablishment of the U.S. Department of Agriculture National Advisory Committee on Meat and Poultry Inspection.

SUMMARY: The U.S. Department of Agriculture intends to reestablish the National Advisory Committee on Meat and Poultry Inspection. The purpose of the Committee is to provide advice to the Secretary of Agriculture concerning State and Federal programs with respect to meat, poultry, and processed egg products inspection, food safety, and other matters that fall with the scope of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA).

FOR FURTHER INFORMATION CONTACT: Ms. Sally Fernandez, Program Specialist, Office of Outreach, Employee Education and Training, Food Safety and Inspection Service (FSIS), telephone (202) 690–6524; Fax (202) 690–6519; email *sally.fernandez@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to reestablish the National Advisory Committee on Meat and Poultry Inspection for two years. The Committee provides advice and recommendations to the Secretary on meat and poultry inspection programs, pursuant to sections 7(c), 24, 301(a)(3), and 301(c) of the Federal Meat Inspection Act, 21 U.S.C. 607(c), 624, 645, 661(a)(3), and 661(c), and to sections 5(a)(3), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act, 21 U.S.C. 454(a)(3), 454(c), 457(b), and 460(e).

A copy of the current charter and other information about the committee can be found at *http://www.fsis.usda.gov/About_FSIS/NACMPI_Charter/index.asp*.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/*.

Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

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To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Done at Washington, DC, on August 2, 2012.

Alfred V. Almanza,

Administrator.

[FR Doc. 2012–19311 Filed 8–6–12; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Kenai Peninsula-Anchorage Borough Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Kenai Peninsula-Anchorage Borough Resource Advisory Committee will meet in Girdwood, Alaska. 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 for the monitoring of current projects. If authorized by the meeting time, RAC members will review new projects and make recommendations to the Forest Service.

DATES: The meeting will be held on September 15, 2012, 10:00 a.m.

ADDRESSES: The meeting will be held at Begich Boggs Visitor Center, 800 Portage Lake Loop, Portage, Alaska. If you are not able to meet in person, you can still participate via teleconference, by calling in at (888) 858–2144, then enter access code 1331636. Written comments may be submitted as described under Supplementary Information. 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 Glacier Ranger District, 145 Forest Station Road, Girdwood, AK 99587. Please call ahead

to (907) 783–3242 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Bobbie Jo Skibo, RAC Coordinator, Seward Ranger District, (907) 288–7739, TTY/Voice: (907) 743–9475, *bskibo@fs.fed.us.* 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. Please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed For Further Information.

SUPPLEMENTARY INFORMATION: The following business will be conducted: Monitoring of current projects and reviewing and recommending new projects if authorized by the meeting time. For more information: *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf.* 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. The agenda will include time for people to make oral statements of three minutes or less after RAC discussion of each proposal. Written comments must be sent to Glacier Ranger District, Tim Charnon, District Ranger, P.O. Box 129, Girdwood, AK 99587, or by email to *tcharnon@fs.fed.us,* or via facsimile to (907) 783–2094.

A summary of the meeting will be posted at *https://fsplaces.fs.fed.us/fsfiles/unit/wo/secure_rural_schools.nsf* within 21 days of the meeting.

Dated: July 30, 2012.

Terri Marceron,

Forest Supervisor.

[FR Doc. 2012–19246 Filed 8–6–12; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved 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 request revision and extension of a currently approved information collection, the Agricultural Labor Survey. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by October 9, 2012 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0109, by any of the following methods:

- *Email: OMBofficer@nass.usda.gov.* Include docket number 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 5336 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: Agricultural Labor Survey.

OMB Control Number: 0535–0109.

Expiration Date of Approval: November 30, 2012.

Type of Request: Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides quarterly statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the H–2A Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act. NASS intends to request that the survey be approved for another 3 years.

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, Public Law 104–13 (44 U.S.C. 3501, et seq.) and Office of Management and Budget regulations at 5 CFR part 1320.

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. 33362.

Estimate of Burden: This information collection comprises three individual surveys, two of which are conducted semi-annually and one which is conducted annually, for an estimated total be around 48,000 responses. The public reporting burden for this information collection is estimated to average 5 to 15 minutes per response.

Respondents: Farms and businesses.

Estimated Number of Respondents: 11,600.

Estimated Total Annual Burden on Respondents: 6,600 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

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, August 1, 2012.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2012–19249 Filed 8–6–12; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–964]

Seamless Refined Copper Pipe and Tube From the People's Republic of China: Preliminary Results of the First Antidumping Duty Administrative Review, and Intent To Rescind in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is conducting the first administrative review of the antidumping duty order on seamless refined copper pipe and tube (''copper pipe and tube'') from the People's Republic of China (''PRC'') for the period November 22, 2010, through October 31, 2011. The Department has preliminarily determined that sales have been made below normal value (''NV'') by the mandatory respondent examined in this administrative review. If these preliminary results are adopted in our final results of this review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries of subject merchandise during the period of review (''POR'').

DATES: *Effective Date:* August 7, 2012.

FOR FURTHER INFORMATION CONTACT: Zev Primor, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4114.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners [1] and certain PRC exporters, in accordance with 19 CFR 351.213(b), during the anniversary month of November to conduct a review of copper pipe and tube exporters from the PRC. On December 30, 2011, the Department initiated this review with respect to all requested companies.[2]

On February 6, 2012, Petitioners withdrew their request for an administrative review for Golden Dragon Holding (Hong Kong) International Co., Ltd., Golden Dragon Precise Copper Tube Group, Inc., Hong Kong GD Trading Co., Ltd., Luvata Alltop (Zhongshan) Ltd., Luvata Tube (Zhongshan) Ltd., Ningbo Jintian Copper Tube Co., Ltd., Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd. However, Golden Dragon Precise Copper Tube Group, Inc. (''Golden Dragon'') requested a review of itself and did not withdraw its request.

Respondent Selection

Section 777A(c)(1) of the Tariff Act of 1930, as amended (the ''Act''), directs the Department to calculate individual weighted-average dumping margins for each known exporter or producer of the subject merchandise.[3] However, section 777A(c)(2) of the Act gives the Department discretion to limit its examination to a reasonable number of exporters or producers because of their large number, if it is not practicable to examine all exporters or producers for which the review is initiated.

On January 17, 2012, the Department released CBP data for entries of the subject merchandise during the POR under administrative protective order (''APO'') to all interested parties having access to materials released under APO and invited comments regarding the CBP data and respondent selection. The Department received comments regarding respondent selection on January 23, 2012. On February 24, 2012, the Department selected Golden Dragon as the sole mandatory respondent for individual examination in this review.[4]

Questionnaires

On February 27, 2012, the Department issued its initial non-market economy (''NME'') antidumping duty questionnaire to the mandatory respondent Golden Dragon. Golden Dragon timely responded to the Department's initial and subsequent supplemental questionnaires between March 2012 and June 2012.

Period of Review

The POR is November 22, 2010, through October 31, 2011.

Scope of the Order

For the purpose of the order, the products covered are all seamless circular refined copper pipes and tubes, including redraw hollows, greater than or equal to 6 inches (152.4 millimeters ''mm'') in length and measuring less than 12.130 inches (308.102 mm) (actual) in outside diameter (''OD''), regardless of wall thickness, bore (*e.g.,* smooth, enhanced with inner grooves or ridges), manufacturing process (*e.g.,* hot finished, cold-drawn, annealed), outer surface (*e.g.,* plain or enhanced with grooves, ridges, fins, or gills), end finish (*e.g.,* plain end, swaged end, flared end, expanded end, crimped end, threaded), coating (*e.g.,* plastic, paint), insulation, attachments (*e.g.,* plain, capped, plugged, with compression or other fitting), or physical configuration (*e.g.,* straight, coiled, bent, wound on spools).

The scope of the order covers, but is not limited to, seamless refined copper pipe and tube produced or comparable to the American Society for Testing and Materials (''ASTM'') ASTM–B42, ASTM–B68, ASTM–B75, ASTM–B88, ASTM–B88M, ASTM–B188, ASTM–B251, ASTM–B251M, ASTM–B280, ASTM–B302, ASTM–B306, ASTM–359, ASTM–B743, ASTM–B819, and ASTM–B903 specifications and meeting the physical parameters described therein. Also included within the scope of the order are all sets of covered products, including ''line sets'' of seamless refined copper tubes (with or without fittings or insulation) suitable for connecting an outdoor air conditioner or heat pump to an indoor evaporator unit. The phrase ''all sets of covered products'' denotes any combination of items put up for sale that is comprised of merchandise subject to the scope.

''Refined copper'' is defined as: (1) Metal containing at least 99.85 percent by weight of copper; or (2) metal containing at least 97.5 percent by weight of copper, provided that the content by weight of any other element does not exceed the following limits:

Element	Limiting content percent by weight
Ag—Silver	0.25
As—Arsenic	0.5
Cd—Cadmium	1.3
Cr—Chromium	1.4
Mg—Magnesium	0.8
Pb—Lead	1.5
S—Sulfur	0.7
Sn—Tin	0.8
Te—Tellurium	0.8
Zn—Zinc	1.0
Zr—Zirconium	0.3
Other elements (each)	0.3

Excluded from the scope of the order are all seamless circular hollows of

[1] Cerro Flow Products, LLC, Wieland Copper Products, LLC, Mueller Copper Tube Products, Inc., and Mueller Copper Tube Company, Inc. (collectively, ''Petitioners'').

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 76 FR 82268, 82273–74 (December 30, 2011) (''*Initiation Notice*'').

[3] *See also* 19 CFR 351.204(c) regarding respondent selection, in general.

[4] *See* Memorandum to Abdelali Elouaradia, AD/CVD Operations, Office 4, from Patrick O'Conner, International Trade Compliance Analyst, Office 4, regarding ''Respondent Selection in the 1st Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China,'' dated February 24, 2012.

refined copper less than 12 inches in length whose OD (actual) exceeds its length. The products subject to the order are currently classifiable under subheadings 7411.10.1030 and 7411.10.1090 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Products subject to the order may also enter under HTSUS subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Intent To Rescind the Review in Part

Petitioners timely requested an administrative review for Golden Dragon Holding (Hong Kong) International Co., Ltd., Hong Kong GD Trading Co., Ltd., Luvata Alltop (Zhongshan) Ltd., Luvata Tube (Zhongshan) Ltd., Ningbo Jintian Copper Tube Co., Ltd., Sinochem Ningbo Import & Export Co., Ltd., Sinochem Ningbo Ltd., Zhejiang Jiahe Pipes Inc., and Zhejiang Naile Copper Co., Ltd., companies which do not have a separate rate, and then timely withdrew their requests for review of the above-mentioned companies.[5] Because these companies have not established their eligibility for a separate rate, they will continue to be considered part of the PRC-wide entity. Although the PRC-wide entity is not under review for these preliminary results, the possibility exists that the PRC-wide entity could be under review for the final results of this administrative review. Therefore, we are not rescinding this review with respect to these companies at this time, but we intend to rescind this review with respect to these companies in the final results if the PRC-wide entity is not reviewed.

Non-Market Economy Status

In the original investigation, the Department treated the PRC as an NME.[6] Moreover, in accordance with section 771(18)(C)(i) of the Act, the designation of a country as an NME remains in effect until it is revoked by the Department. As such, the Department continues to treat the PRC as an NME in this proceeding.

Surrogate Country

Section 773(c)(1) of the Act directs the Department to base NV, in most cases, on the NME producer's factors of production (''FOP'') valued in a surrogate market-economy (''ME'') country or countries considered appropriate by the Department. The Department will value FOPs, in accordance with section 773(c)(4) of the Act, by using ''to the extent possible, the prices or costs of factors of production in one or more market economy countries that are—(A) at a level of economic development comparable to that of the nonmarket economy country, and (B) significant producers of comparable merchandise.'' Further, pursuant to 19 CFR 351.408(c)(2), the Department will normally value FOPs in a single surrogate country.

Economic Comparability

The Department identified Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine as countries equally comparable to the PRC in terms of economic development.[7] Consistent with its practice, as reflected in the Policy Bulletin, the Department found that Colombia, Indonesia, Peru, the Philippines, South Africa, Thailand, and Ukraine are countries that are at a level of economic development comparable to that of the PRC and, therefore, satisfy the first criterion of section 773(c)(4) of the Act.[8]

Significant Producer of Comparable Merchandise

In order to identify which countries export merchandise comparable to the merchandise under consideration, we reviewed export data submitted by Golden Dragon and Petitioners, along with Global Trade Atlas (''GTA'') data generated by the Department. After reviewing this export data, we have determined that Thailand is a significant producer of subject merchandise in significant quantities.

Data Availability

When evaluating surrogate value (''SV'') data, the Department considers several factors, including whether the SVs are publicly available, contemporaneous with the POR, representative of a broad market average, tax and duty-exclusive, and specific to the inputs being valued.[9] The record of this proceeding includes Thai SV data for copper cathodes, which is the primary raw material component in the production of subject merchandise.[10] In addition, the record contains two Thai financial statements, *i.e.,* Kobelco & Materials Copper Tube (Thailand) Co., Ltd (''Kobelco'') and Furukawa Metal (Thailand) Public Company Limited (''Furukawa''). However, given that Kobelco's financial statements were not fully translated, the Department has decided to use the Furukawa's audited financial statements, a producer of identical merchandise from Thailand. After thoroughly reviewing these data, the Department has determined that the Thai import data are more complete, with respect to the primary direct raw material input as well as to all other inputs. Therefore, based on the above data considerations, we consider Thailand to have the best available information for use as the primary surrogate country in this administrative review. In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of this administrative review, interested parties may submit publicly available information to value the FOPs within 20 days after the date of publication of these preliminary results.

Separate Rates

In proceedings involving NME countries, it is the Department's practice to begin with a rebuttable presumption that all companies within the NME country are subject to government control and thus should be assessed a single antidumping duty rate.[11] In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME reviews.[12] It is the Department's policy to assign all

[5] *See* Petitioners' letter entitled, ''Seamless Refined Copper Pipe and Tube From the People's Republic of China: Withdrawal of Request for Antidumping Administrative Reviews, dated February 6, 2012.

[6] *See Seamless Refined Copper Pipe and Tube From the People' s Republic of China: Final Determination of Sales at Less Than Fair Value* (''*LTFV Final Determination''*), 75 FR 60725, 60727 (October 1, 2010).

[7] *See* Memorandum regarding ''Request for a List of Surrogate Countries for an Administrative Review of the Antidumping Duty Order on Seamless Refined Copper Pipe and Tube (''CPT'') From the People's Republic of China (''China''), dated April 2, 2012.

[8] *See* Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process (March 1, 2004) (''Policy Bulletin''); Memorandum from Maisha Cryor, International Trade Compliance Analyst, AD/CVD Operations, Office 4, to Abdelali Elouaradia, Director, AD/CVD Operations, Office 4, ''First Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube From the People's Republic of China: Selection of a Surrogate Country'' (August 1, 2012) (''Surrogate Country Memorandum'') at 2.

[9] *See* Policy Bulletin; Surrogate Country Memorandum at 6.

[10] *See* Section D Response at 2; *see also* Golden Dragon's SV Comments and Petitioners' Supplemental SV Comments.

[11] *See, e.g., Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[12] *See Initiation Notice,* 76 FR at 88269.

exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can affirmatively demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[13] Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* government control over export activities.[14] The Department analyzes each entity's export independence under a test first articulated in *Sparklers* and as further developed in *Silicon Carbide*.[15] However, if the Department determines that a company is wholly foreign-owned or located in an ME, then a separate rate analysis is not necessary to determine whether it is independent from government control.[16]

The Department received a separate rate certification from Hong Kong Hailiang Metal Trading Limited, Zhejiang Hailiang Co., Ltd., and Shanghai Hailiang Copper Co., Ltd. (collectively ''Hailiang'').[17] Additionally, the Department received completed responses to the Section A portion of the NME questionnaire from Golden Dragon which contained information pertaining to Golden Dragon's eligibility for a separate rate.[18]

Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Golden Dragon and Hailiang, the separate rate applicants in this administrative review, stated that they are either joint ventures between Chinese and foreign companies or are wholly Chinese-owned companies.[19] In accordance with its practice, the Department has analyzed whether the separate-rate applicants have demonstrated the absence of *de jure* and *de facto* governmental control over their respective export activities.

a. Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.[20] The evidence provided by Golden Dragon and Hailiang supports a preliminary finding of an absence of *de jure* government control based on the following: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) there are applicable legislative enactments decentralizing control of the companies; and (3) there are formal measures by the government decentralizing control of companies.[21]

b. Absence of De Facto Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* government control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a government agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.[22] The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control which would preclude the Department from assigning separate rates. The evidence provided by Golden Dragon and Hailiang supports a preliminary finding of an absence of *de facto* government control based on the following: (1) The companies set their own export prices independent of the government and without the approval of a government authority; (2) the companies have authority to negotiate and sign contracts and other agreements; (3) the companies have autonomy from the government in making decisions regarding the selection of management; and (4) there is no restriction on any of the companies' use of export revenue.[23] Therefore, the Department preliminarily finds that Golden Dragon and Hailiang have established that they qualify for a separate rate under the criteria established by *Silicon Carbide* and *Sparklers*.

Rate for Respondents Not Individually Examined

The statute and the Department's regulations do not address the establishment of a rate to be applied to individual respondents not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents which we did not examine in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference that we are not to calculate an all-others rate using rates which are zero, *de minimis* or based entirely on facts available. Accordingly, the Department's usual practice has been to average the weighted-average dumping margins for the selected companies, excluding rates that are zero, *de minimis,* or based entirely on facts available.[24] Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis,* or based entirely on facts available, we may use ''any reasonable method'' for assigning the all-others rate, including ''averaging the estimated weighted-average dumping margins determined for the exporters and producers individually investigated.''

In previous administrative reviews, the Department has determined that a ''reasonable method'' to use when the rates for the respondents selected for individual examination are zero, *de minimis,* or based entirely on facts available, is to apply to those respondents not selected for individual examination (and eligible for a separate rate in an NME review) the average of the most recently-determined weighted-

[13] *See id.*

[14] *See id.*

[15] *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''); and *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*'').

[16] *See, e.g., Final Results of Antidumping Duty Administrative Review: Petroleum Wax Candles From the People's Republic of China,* 72 FR 52355, 52356 (September 13, 2007).

[17] *See* Separate Rate Certification of Hong Kong Hailiang Metal Trading Limited, dated March 6, 2012 (''Hailiang SRC Response'').

[18] *See* Golden Dragon's Section A Questionnaire Response, dated March 28, 2012.

[19] *See* Golden Dragon's Section A Questionnaire Response at A–1—A–2 and Hailiang SRC Response at 4.

[20] *See Sparklers,* 56 FR at 20589.

[21] *See* Golden Dragon's Section A Questionnaire Response at A–4—A–6 and Hailiang SRC Response at 7–8.

[22] *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995).

[23] Golden Dragon's Section A Questionnaire Response at A–6—A–10 and Hailiang SRC Response at 8–10.

[24] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

average dumping margins that are not zero, *de minimis,* or based entirely on facts available. These rates may be from the investigation, a prior administrative review, or a new shipper review.[25] If any such non-selected respondent had its own calculated rate that is contemporaneous with or more recent than such prior determined rates, however, the Department has applied such individual rate to the non-selected respondent in the instant review, including when that rate is zero, *de minimis.*[26]

In this administrative review, there is one non-selected respondent, Hailiang, which is under review and is eligible for a separate rate. Hailiang received its own calculated rate that is contemporaneous with or more recent than the most recent rates determined for other respondents that are not zero, *de minimis,* or based entirely on facts available. Accordingly, we have concluded in this administrative review that a reasonable method for determining the rate for Hailiang is to apply its most recent, individually-calculated, rate. Pursuant to this method, we have assigned a rate of 60.85 percent to Hailiang, its weighted-average dumping margin in the antidumping investigation.[27] In assigning this separate rate, we did not impute the actions of other respondents to the behavior of Hailiang, but based this determination on record evidence that may be deemed reasonably reflective of the potential margin of dumping for Hailiang in this administrative review.

Date of Sale

Golden Dragon reported the invoice date as the date of sale because it claims that for its U.S. sales of subject merchandise made during the POR, the material terms of sale were established on the invoice date.[28] After evaluating Golden Dragon's claim in light of record evidence, the Department, in accordance with 19 CFR 351.401(i) and its long-standing practice of determining the date of sale,[29] preliminarily determines that the invoice date is the most appropriate date to use as Golden Dragon's date of sale.

Fair Value Comparisons

Pursuant to section 773(c) of the Act and 19 CFR 351.414(c)(1) and (d), the Department compared weighted-average export price or weighted-average constructed export price to the weighted-average NV, as described in the ''U.S. Price,'' and ''Normal Value'' sections below.[30]

U.S. Price

Export Price

We considered the U.S. prices of certain sales by Golden Dragon to be export price (''EP'') sales in accordance with section 772(a) of the Act, because these were the prices at which the subject merchandise was first sold before the date of importation by the exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States.

We calculated EP based on the price to unaffiliated purchaser(s) in the United States. We deducted movement expenses from the gross unit U.S. sales price in accordance with section 772(c)(2)(A) of the Act. These movement expenses include foreign inland freight from the plant to the port of exportation. For a detailed description of all adjustments, *see* Golden Dragon's Preliminary Analysis Memorandum.[31]

Constructed Export Price

In accordance with section 772(b) of the Act, constructed export price (''CEP'') is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. We considered sales made by Golden Dragon's U.S. affiliate in the United States to be CEP sales. We calculated CEP based on prices to unaffiliated purchasers in the United States. In accordance with sections 772(c)(2)(A) and 772(d)(1) and of the Act, where applicable, we made deductions from the starting price for movement expenses, and commissions, credit expenses, inventory carrying costs, warranty expenses, and indirect selling expenses which relate to commercial activity in the United States. Movement expenses included, where applicable, foreign inland freight from the plant to the port of exportation, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight from the port to the warehouse, U.S. freight from the warehouse to the customer, U.S. customs duty and U.S. warehousing expenses. In addition, we deducted CEP profit from U.S. price in accordance with sections 772(d)(3) and 772(f) of the Act. As a CEP adjustment and in accordance with section 773(a) of the Act, we calculated Golden Dragon's credit expenses and inventory carrying costs based on short-term interest rates. Because Golden Dragon did not incur short-term U.S. dollar borrowings during the POR, we based its interest rate on the short-term interest rate from the Federal Reserve. For those expenses that were provided by an ME provider and paid for in an ME currency, the Department used the reported expense. Due to the proprietary nature of certain adjustments to U.S. price, *see* Golden Dragon's Preliminary Analysis Memo, for a detailed description of all adjustments.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using an FOP methodology if: (1) The merchandise is exported from an NME country; and (2) the information does not permit the calculation of NV using home market prices, third country prices, or constructed value under section 773(a) of the Act. When determining NV in an NME context, the

[25] *See, e.g., Certain Frozen Warmwater Shrimp From the People's Republic of China: Preliminary Results and Preliminary Partial Rescission of Fifth Antidumping Duty Administrative Review,* 76 FR 8338, 8342 (February 14, 2011), unchanged in *Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 76 FR 51940 (August 19, 2011); *see also Administrative Review of Certain Frozen Warmwater Shrimp From the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review,* 75 FR 49460, 49463 (August 13, 2010), and *Amanda Foods (Vietnam) Ltd.* v. *United States,* 774 F. Supp. 2d 1286 (CIT 2011).

[26] *See, e.g., Freshwater Crawfish Tail Meat From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Rescission of Review in Part,* 77 FR 21529, 21530–31 (April 10, 2012).

[27] *See LTFV Final Determination,* 75 FR at 60729.

[28] *See* Golden Dragon's Section C Questionnaire Response at C–18.

[29] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand,* 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

[30] 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 Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (''*Final Modification for Reviews*''). In particular, the Department compared monthly weighted-average export prices (or constructed export prices) with monthly weighted-average normal values and granted offsets for non-dumped comparisons in the calculation of the weighted average dumping margin.

[31] *See* Memorandum from Zev Primor, Analyst, to Robert Bolling, Program Manager, Regarding Golden Dragon's Preliminary Results Analysis Memorandum, dated August 1, 2012 (''Golden Dragon Preliminary Analysis Memo'').

Department will base NV on FOPs because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under our normal methodologies. Under section 773(c)(3) of the Act, FOPs include but are not limited to: (1) Hours of labor required; (2) quantities of raw materials employed; and (3) representative capital costs. The Department used FOPs reported by Golden Dragon for materials, labor, packing and by-products.

Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on FOPs reported by Golden Dragon for the POR. In accordance with 19 CFR 351.408(c)(1), the Department will normally use publicly available information to find an appropriate SV to value each FOP, but when a producer sources an input from an ME and pays for it in an ME currency, the Department normally will value the factor using the actual price paid for the input.[32] To calculate NV, the Department multiplied the reported per-unit factor-consumption rates by publicly available SVs (except as discussed below). In selecting SVs, the Department considered the quality, specificity, and contemporaneity of the data.[33] As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to import SVs surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory, where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997).

For the preliminary results, except where noted below, we used data from the Thai import statistics in the GTA and other publicly available Thai sources in order to calculate SVs for Golden Dragon's FOPs (*i.e.,* direct materials, energy, and packing materials) and certain movement expenses. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, SVs which are non-export average values, most contemporaneous with the POR, product-specific, and tax-exclusive.[34] The record shows that Thai import statistics obtained through GTA are contemporaneous with the POR, product-specific, and tax-exclusive.[35] In those instances where we could not obtain publicly available information contemporaneous to the POR with which to value factors, we adjusted the SVs using, where appropriate, the Thai Producer Price Index (''PPI'') or Consumer Price Index (''CPI''), as published in the International Monetary Fund's *International Financial Statistics.*[36]

In accordance with legislative history, the Department continues to apply its long-standing practice of disregarding SVs if it has a reason to believe or suspect the source data may be subsidized.[37] In this regard, the Department has previously found that it is appropriate to disregard such import statistics from India, Indonesia, South Korea and Thailand because we have determined that these countries maintain broadly available, non-industry specific export subsidies.[38] Based on the existence of these subsidy programs that were generally available to all exporters and producers in these countries at the time of the POR, the Department finds that it is reasonable to infer that all exporters from India, Indonesia, South Korea and Thailand may have benefitted from these subsidies. Therefore, we have not used prices from India, Indonesia, South Korea and Thailand in calculating the import-based SVs.

Additionally, we disregarded prices from NME countries.[39] Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because we could not be certain that they were not from either an NME country or a country with generally available export subsidies.[40]

We valued truck freight expenses using a price list for domestic shipments from the Thailand Board of Investment. The rates were in effect prior to the POR, so we adjusted them to be contemporaneous with the POR, using PPI.[41]

On June 21, 2011, the Department revised its methodology for valuing the labor input in NME antidumping duty proceedings.[42] In *Labor Methodologies,* the Department determined that the best methodology to value the labor input is to use industry-specific labor rates from the primary surrogate country. Additionally, the Department determined that the best data source for industry-specific labor rates is Chapter 6A: Labor Cost in Manufacturing, from the International Labor Organization (''ILO'') Yearbook of Labor Statistics (''Yearbook'').

[32] *See* 19 CFR 351.408(c)(1); *see also Shakeproof Assembly Components Div of Ill Tool Works* v. *United States,* 268 F.3d 1376, 1382–83 (Fed. Cir. 2001) (affirming the Department's use of market-based prices to value certain FOPs).

[33] *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5.

[34] *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam,* 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warm water Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004).

[35] *See* Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from the People's Republic of China: Surrogate Value Memorandum (''Surrogate Value Memorandum'') at 2.

[36] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 74 FR 36656 (July 24, 2009).

[37] Omnibus Trade and Competitiveness Act of 1988, Conf. Report to Accompany H.R. 3, H.R. Rep. No. 576, 100th Cong., 2nd Sess. (1988) at 590.

[38] *See, e.g., Carbazole Violet Pigment 23 From India: Final Results of the Expedited Five-year (Sunset) Review of the Countervailing Duty Order,* 75 FR 13257 (March 19, 2010), and accompanying Issues and Decision Memorandum at 4–5; *Certain Cut-to-Length Carbon-Quality Steel Plate From Indonesia: Final Results of Expedited Sunset Review,* 70 FR 45692 (August 8, 2005), and accompanying Issues and Decision Memorandum at 4; *Corrosion-Resistant Carbon Steel Flat Products From the Republic of Korea: Final Results of Countervailing Duty Administrative Review,* 74 FR 2512 (January 15, 2009), and accompanying Issues and Decision Memorandum at 17, 19–20; *Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 50410 (October 3, 2001), and accompanying Issues and Decision Memorandum at 23.

[39] *See, e.g., Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 74 FR 9591, 9600 (March 5, 2009), unchanged in *Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 36656 (July 24, 2009) and *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Notice of Antidumping Duty Order,* 74 FR 46971 (September 14, 2009).

[40] *See id.*

[41] *See* Surrogate Value Memorandum at 6 and Exhibits 1 and 7.

[42] *See Antidumping Methodologies in Proceedings Involving Non-Market Economies: Valuing the Factor of Production: Labor,* 76 FR 36092 (June 21, 2011) (''*Labor Methodologies*'').

The Department valued labor using the methodology described in *Labor Methodologies.* Specifically, to value the respondents' labor the Department relied on data reported by Thailand to the ILO in Chapter 6A of the Yearbook for the total manufacturing wage data. Although the Department found that the two-digit description under ISIC–Revision 3.1 (''Manufacture of Machinery and Equipment NEC'') is the best available information on the record with which to value labor because it is specific to the industry being examined, and is, therefore, derived from industries that produce comparable merchandise, Thailand has not reported data specific to the two-digit description since 2000. However, Thailand did report total manufacturing wage data in 2005. Accordingly, relying on Chapter 6A of the Yearbook, the Department calculated the labor value using total labor data reported by Thailand to the ILO in 2005, in accordance with section 773(c)(4) of the Act.[43] Because these rates were in effect before the POR, we are adjusting the average value for inflation using CPI. A more detailed description of the wage rate calculation methodology is provided in the Surrogate Value Memorandum. The ILO data from Chapter 6A of the Yearbook, which was used to value labor, reflects all costs related to labor, including wages, and indirect labor costs such as benefits, housing, and training. The financial statements used to calculate the surrogate financial ratios do not include itemized details regarding the indirect labor costs incurred. Therefore, the Department has not made adjustments to the surrogate financial ratios.[44]

Because water was used by Golden Dragon in the production of seamless copper pipe and tube, the Department considers water to be a direct material input rather than overhead.[45] We valued water using data from the Metropolitan Waterworks Authority. We did not inflate this rate since it is contemporaneous with the POR.[46]

We valued brokerage and handling using a price list of export procedures necessary to export a standardized cargo of goods in Thailand. The price list is compiled based on a survey case study of the procedural requirements for trading a standard shipment of goods by ocean transport in Thailand as reported in ''Doing Business 2012: Thailand'' published by the World Bank.[47]

We valued marine insurance using a marine insurance rate offered by RJG Consultants. The rate is a percentage of the value of the shipment; thus we did not inflate or deflate the rate.[48]

We were unable to segregate and, therefore, were unable to exclude energy costs from the calculation of the surrogate financial ratios. Accordingly, for the preliminary results, we have disregarded the respondents' energy inputs (electricity) in the calculation of NV, in order to avoid double-counting energy costs that have necessarily been captured in the surrogate financial ratios.[49]

To value factory overhead, selling, general, and administrative expenses, and profit, we used audited financial statements for the year ending December 2011 of Furukawa Metal (Thailand) Public Company Limited, a producer of identical merchandise from Thailand.[50] The Department has not used for these preliminary results the financial statement from Kobelco & Materials Copper Tube (Thailand) Co., Ltd., that is on the record because that financial statement is incomplete and not fully translated.[51] The Department may consider other publicly available financial statements for the final results, as appropriate.

Golden Dragon reported that it recycles copper scrap and sells a small amount of copper slag and copper ash; therefore, the Department has granted a by-product offset for the quantities of Golden Dragon's reported by-products, valued using Thai GTA data.[52]

Currency Conversion

Where appropriate, the Department 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.

Preliminary Results of Review

The Department preliminarily determines that the following weighted-average dumping margins exist:

Exporter	Rate
Golden Dragon	0.00 (*de minimis*)
Hailiang	60.85

Disclosure

The Department intends to disclose calculations performed for these preliminary results to the parties within 10 days of the date of the public announcement of the results of this review in accordance with 19 CFR 351.224(b).

Comments

Interested parties may submit written comments no later than 30 days after the date of publication of these preliminary results of review.[53] Rebuttal comments must be limited to the issues raised in the written comments and may be filed no later than five days after the time limit for filing the case briefs.[54] 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, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Standard Time within 30 days after the date of publication of this notice.[55] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230, at a time and location to be determined.[56]

[43] *See Labor Methodologies,* 76 FR at 36094, n.11; *see also Small Diameter Graphite Electrodes From the People's Republic of China: Preliminary Results and Partial Rescission of Administrative Review,* 77 FR 13284, 13292–93 (March 6, 2012) (relying upon national data reported by ILO Chapter 6A in the absence of Chapter 6A industry-specific data), unchanged in *Small Diameter Graphite Electrodes from the People's Republic of China: Final Results of Administrative Review,* 77 FR 40854 (July 11, 2012).

[44] *See Labor Methodologies,* 76 FR at 36094.

[45] *See Final Determination of Sales at Less Than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China,* 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 11.

[46] *See* Surrogate Value Memorandum at 5 and Exhibit 3.

[47] *See* Surrogate Value Memorandum at 6 and Exhibit 6.

[48] *See* Surrogate Value Memorandum at 6 and Exhibit 8.

[49] *See Citric Acid and Certain Citrate Salts from the People's Republic of China: Final Affirmative Determination of Sales at Less Than Fair Value,* 74 FR 16838 (April 13, 2009), and accompanying Issues and Decision Memorandum at Comment 2.

[50] *See* Surrogate Value Memorandum at 5 and Exhibit 5 and 1.

[51] *See* Surrogate Value Memorandum at 5.

[52] *See* Golden Dragon's Preliminary Analysis Memo at 8.

[53] *See* 19 CFR 351.309(c)(1)(ii).

[54] *See* 19 CFR 351.309(d).

[55] *See* 19 CFR 351.310(c).

[56] *See* 19 CFR 351.310.

Parties should confirm by telephone the date, time, and location of the hearing. The Department intends to issue the final results of the administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days of publication of these preliminary results, in accordance with section 751(a)(3)(A) of the Act, unless the time limit is extended.

Assessment Rates

Upon issuance of the final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by the review. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of the review. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to the review.

Where the respondent reports reliable entered values, we calculate importer (or customer)-specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[57] Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis,* we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR.[58] Where we do not have entered values for all U.S. sales, we calculate a per-unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). To determine whether the duty assessment rates are above *de minimis,* in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific *ad valorem* ratios based on the entered value. Where an importer (or customer)-specific *ad valorem* rate is zero or *de minimis,* we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[59]

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (i.e., at that exporter's rate) will be liquidated at the NME-wide rate. For a full discussion of this practice, *see Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from the PRC 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) For Golden Dragon the cash deposit rate will be its rate established in the final results of this review; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent segment; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be that for the PRC-wide entity; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied those non-PRC exporters. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification of Interested Parties

This notice also 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 the subsequent assessment of double antidumping duties.

This administrative review and this notice are in accordance with sections 751(a)(1) and (3) and 777(i) of the Act, and 19 CFR 351.213.

Dated: July 31, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

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[57] *See* 19 CFR 351.212(b)(1).

[58] *See* 19 CFR 351.212(b)(1).

[59] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803]

Purified Carboxymethylcellulose From Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to requests from Aqualon Company, a division of Hercules Inc., (Petitioner) and respondents CP Kelco Oy and CP Kelco U.S., Inc. (collectively, CP Kelco), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on purified carboxymethylcellulose (CMC) from Finland. The review covers exports of the subject merchandise to the United States produced by CP Kelco. The period of review (POR) is July 1, 2010, through June 30, 2011.

We preliminarily find that CP Kelco made sales at less than normal value (NV) during the POR. If these preliminary results are adopted in our final results of this review, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on differences between the export price (EP) or constructed export price (CEP) and NV.

DATES: *Effective Date:* August 7, 2012.

FOR FURTHER INFORMATION CONTACT: Tyler Weinhold or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–1121 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on CMC from Finland on July 11, 2005.[1] On July 1, 2011, the Department published the notice of opportunity to request an

[1] *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands, and Sweden,* 70 FR 39734 (July 11, 2005).

administrative review of CMC from Finland for the period July 1, 2010, through June 30, 2011.[2]

On July 29, 2011, Petitioner requested a review of CP Kelco for the period July 1, 2010, through June 30, 2011. On July 29, 2011, CP Kelco requested an administrative review for the same period. On August 26, 2011, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review.[3]

On September 28, 2011, the Department issued its standard antidumping questionnaire (the Antidumping Questionnaire) to CP Kelco. CP Kelco submitted its response to section A of the Antidumping Questionnaire on October 19, 2011 (CP Kelco's Section A Response). CP Kelco submitted its responses to sections B and C of the Antidumping Questionnaire on November 4, 2011 (CP Kelco's Section B Response and CP Kelco's Section C Response, respectively). Because the Department disregarded sales which were made at prices below the cost of production (COP) in the most recently completed administrative review as of the initiation of the instant review, we are conducting a sales-below-cost investigation in this review.[4] Accordingly, CP Kelco submitted its response to section D of the Antidumping Questionnaire on November 9, 2011 (CP Kelco's Section D Response).

On December 16, 2011, the Department issued a supplemental questionnaire to CP Kelco regarding its responses to sections A, B, and C of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's sections A, B, and C supplemental questionnaire on February 7, 2012 (CP Kelco's February 7, 2012, Response). On February 7, 2012, the Department issued a supplemental questionnaire to CP Kelco regarding its response to section D of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on March 7, 2012 (CP Kelco's March 7, 2012, Response). On March 15, 2012, the Department issued another supplemental questionnaire to CP Kelco regarding its responses to sections A, B, and C of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on March 26, 2012 (CP Kelco's March 26, 2012, Response). On March 22, 2012, the Department issued a supplemental questionnaire to CP Kelco regarding its response to section C of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on April 2, 2012 (CP Kelco's April 2, 2012, Response). On April 24, 2012, the Department issued a supplemental questionnaire to CP Kelco regarding its response to section D of the Antidumping Questionnaire. CP Kelco submitted its response to the Department's supplemental questionnaire on May 8, 2012 (CP Kelco's May 8, 2012, Response). On May 25, 2012, Petitioner made a targeted dumping allegation (Petitioner's May 25, 2012, Targeted Dumping Allegation). On June 4, 2012, CP Kelco submitted rebuttal comments regarding Petitioner's May 25, 2012, Targeted Dumping Allegation (CP Kelco's June 4, 2012, Targeted Dumping Rebuttal Comments). On June 6, 2012, Petitioner submitted rebuttal comments regarding CP Kelco's June 4, 2012, Targeted Dumping Rebuttal Comments (Petitioner's June 6, 2012, Targeted Dumping Rebuttal Comments). On June 15, 2012, CP Kelco submitted a corrected U.S. sales file.

Scope of the Order

The merchandise covered by this order is all purified carboxymethylcellulose (CMC), sometimes also referred to as purified sodium CMC, polyanionic cellulose, or cellulose gum, which is a white to off-white, non-toxic, odorless, biodegradable powder, comprising sodium CMC that has been refined and purified to a minimum assay of 90 percent. Purified CMC does not include unpurified or crude CMC, CMC Fluidized Polymer Suspensions, and CMC that is cross-linked through heat treatment. Purified CMC is CMC that has undergone one or more purification operations which, at a minimum, reduce the remaining salt and other by-product portion of the product to less than ten percent. The merchandise subject to this order is classified in the Harmonized Tariff Schedule of the United States at subheading 3912.31.00. This tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Fair Value Comparisons

To determine whether sales of CMC in the United States were made at less than NV, we compared U.S. price to NV, as described in the ''Export Price,'' ''Constructed Export Price,'' and ''Normal Value'' sections of this notice. Because we determined that CP Kelco made both EP and CEP sales during the POR, we used both EP and CEP as the basis for U.S. price in our comparisons. We used the invoice date, as recorded in CP Kelco's normal books and records, as the date of sale for CP Kelco's EP, CEP, and home market sales. *See* 19 CFR 351.401(i).

Targeted Dumping

In Petitioner's May 25, 2012, Targeted Dumping Allegation, Petitioner alleges targeted dumping by CP Kelco in this POR. As Petitioner notes, the Department allows for the application of a different, exceptional or alternative price comparison method if the Department determines that it is more appropriate, to address case-specific circumstances.[5] As petitioner also points out, in *Final Modification,* the Department further explains that ''{it} will determine on a case-by-case basis whether it is appropriate to use an alternative comparison methodology by examining the same criteria that the Department examines in original investigations pursuant to sections 777A(d)(1)(A) and (B) of the {Tarriff Act of 1930, As amended (The Act)}.''[6] Citing Sections 777(d)(1)(A) and (B), Petitioner explains that it is submitting a targeted dumping allegation, in accordance with the Department's practice in investigations.[7]

Petitioner claims information on the record in this proceeding demonstrates that when the criteria pursuant to section 777A(d)(1)(B)(i) of the Act are considered, CP Kelco's sales demonstrate patterns of EPs and CEPs for comparable merchandise that differ significantly among purchasers, regions, and periods of time.[8] Petitioner asserts that CP Kelco's data ''already demonstrate an extremely high likelihood that application of the

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 76 FR 38609 (July 1, 2011).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 76 FR 53404 (August 26, 2011).

[4] *See Purified Carboxymethylcellulose from Finland; Notice of Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 47788 (August 9, 2010) (*2008–2009 Preliminary Results*) (unchanged in *Purified Carboxymethylcellulose from Finland; Notice of Final Results of Antidumping Duty Administrative Review,* 75 FR 73035 (November 29, 2010) (*2008–2009 Final Results*)).

[5] *See 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) (*Final Modification*).

[6] *See Final Modification* at 8102.

[7] *See* Petitioner's May 25, 2012, Targeted Dumping Allegation at 2 and 3.

[8] *Id.* at 1 and 3.

average-to-average calculation method will mask its targeted dumping.'' [9]

Petitioner also asserts that its allegation is timely and notes that the *Final Modification* does not set a deadline for the submission of targeted dumping allegations. Therefore, Petitioner explains it has followed what it asserts is the Department's current practice in investigations, whereby targeted dumping allegations are to be submitted no later than 45 days before the ''scheduled date'' of the preliminary determination.

In CP Kelco's June 4, 2012, Targeted Dumping Rebuttal Comments, CP Kelco argues that Petitioner's May 25, 2012, Targeted Dumping Allegation should be rejected by the Department as an untimely submission of new information. CP Kelco notes that the Department has not set a deadline for submitting allegations of targeted dumping in administrative reviews. Therefore, CP Kelco argues that section 351.301(b)(2) of the Department's regulations governs, and that any factual information submitted by a party in an administrative review must be submitted within 140 days of the anniversary month of the proceeding.[10]

Alternatively, CP Kelco argues that because the Department's preliminary results were initially scheduled to be released on April 1, 2012, the deadline for submitting a targeted dumping allegation was (and remains) 45 days prior to April 1, 2012. Therefore, CP Kelco argues Petitioner's allegation of targeted dumping is untimely.

CP Kelco contends that section 751(a)(3)(A) of the Act allows the Department to extend the due date of the preliminary results where it is not practicable for the Department to complete the review within the original time period, not to provide additional time for the parties to make new targeted dumping allegations. CP Kelco argues ''Petitioner should not be allowed to take advantage of the Department's need for additional time * * * by making an untimely targeted dumping allegation, which will further complicate the proceeding and the burden on the Department.'' [11]

In Petitioner's June 6, 2012, Targeted Dumping Rebuttal Comments, it argues that the 140-day deadline in 19 CFR 351.301(b)(2) does not apply because that deadline pertains to new factual information, and because Petitioner's May 25, 2012, Targeted Dumping Allegation is not new factual information.

Citing CP Kelco's rebuttal comments, Petitioner describes CP Kelco's alternative arguments as two-fold: That ''the '45 days prior to the preliminary determination' deadline for investigations does not apply to reviews,'' or, alternatively, that any extension of the deadline ''may not rebound to the benefit of the parties.'' [12] Petitioner further argues that CP Kelco provides nothing in support except to argue that ''the Department has not set a deadline for submitting allegations of targeted dumping in administrative reviews,'' and ''{a}s a result,'' the Department should apply the 140-day rule found in section 351.301(b)(2) of the Department's regulations.[13] Petitioner further contends that CP Kelco's argument that ''{Petitioner's targeted dumping allegation} will further complicate the proceeding and the burden on the Department'' [14] is specious because, as Petitioners put it, ''the date for the preliminary determination is the date for the preliminary determination, no matter how the Department arrives at it.'' [15] Petitioner further argues that ''there is no reason why the Department's practice of setting a 45-day deadline for targeted dumping allegations should be limited to un-extended preliminary determination dates.'' [16]

The Department has not established a deadline for targeted dumping allegations in administrative reviews, and so it would be unreasonable to reject this allegation as ''untimely'' where no such time limit was established. In addition, if we apply the 45-day deadline applicable in investigations, the allegation is timely. In the initiation notice of investigations, we only state that targeted dumping allegations are due no later than 45 days before the scheduled date of the preliminary determination, and our normal practice is to consider the 45-day period in light of the extended preliminary determination in investigations. As petitioner filed its targeted dumping analysis on May 25, 2012, the filing was 45-days prior to the extended preliminary deadline. Thus, the Department has accepted the allegation as timely filed, based on our extended deadline for the preliminary results. The Department also agrees with petitioner that the submission is merely an analysis of data previously placed upon the record by CP Kelco and, therefore, does not constitute untimely new factual information debarred under 19 CFR 351.302(b)(2).

For the purposes of these preliminary results, the Department has not conducted a targeted dumping analysis.[17] This is consistent with our approach to the identical issue in concurrent administrative reviews.[18] 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. The Department intends to continue to consider, pursuant to 19 CFR 351.414(c), whether another method is appropriate in this administrative review in light of the parties' pre-preliminary comments and any comments on the issue that parties may include in their case and rebuttal briefs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by CP Kelco covered by the ''scope of the order'' section and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We relied on five characteristics to match U.S. sales of subject merchandise to home market sales of the foreign like product (listed in order of priority): (1) Grade; (2) viscosity; (3) degree of substitution; (4) particle size; and (5) solution gel characteristics. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of these product characteristics and the reporting instructions listed in the antidumping questionnaire. When there were no appropriate home market sales of comparable merchandise, we compared the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act. For these preliminary results, we did base NV on constructed value (CV) in some instances. *See* ''Constructed Value'' section, below.

[9] *Id.* at 8.

[10] *See* CP Kelco's June 4, 2012, Targeted Dumping Rebuttal Comments at 1 to 2.

[11] *Id.* at 3.

[12] *See* Petitioner's June 6, 2012, Targeted Dumping Rebuttal Comments at 2.

[13] *See* CP Kelco's June 4, 2012, Targeted Dumping Rebuttal Comments at 1 to 2.

[14] *Id.* 2.

[15] *See* Petitioner's June 6, 2012, Targeted Dumping Rebuttal Comments at 2.

[16] *Id.* at 2.

[17] In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Final Modification.* In particular, the Department compared monthly weighted-average EPs (or CEPs) with monthly weighted-average NVs and granted offsets for non-dumped comparisons in the calculation of the weighted-average dumping margin.

[18] *See, e.g., Tapered Roller Bearings from China,* 77 FR 40579 (July 10, 2012).

Export Price

Section 772(a) of the Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States,'' as adjusted under section 772(c) of the Act. In accordance with section 772(a) of the Act, we used EP for a number of CP Kelco's U.S. sales. We preliminarily find that these sales are properly classified as EP sales because these sales were made before the date of importation and because our CEP methodology was not otherwise warranted.

We based EP on the prices to unaffiliated customers in the United States. We made adjustments for price or billing adjustments and discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate: foreign inland freight; international freight; marine insurance; U.S. brokerage and handling; and direct selling expenses (credit expenses).

We reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco in reimbursement for CP Kelco arranging and initially paying for freight.[19] We limited the amount of freight revenue deducted to no greater than the amount of movement expenses in the home market, in accordance with the Department's past practice.[20] As the Department explained in *Bags from the PRC,* section 772 (c)(1) of the Act provides that the Department shall increase the price used to establish either EP or CEP in only the following three instances: (A) When not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States; (B) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and (C) the amount of any countervailing duty imposed on the subject merchandise under subtitle A to offset an export subsidy. In addition, section 351.401(c) of the Department's regulations directs the Department to use a price in the calculation of U.S. price which is net of any price adjustments that are reasonably attributable to the subject merchandise. The term ''price adjustments'' is defined under 19 CFR 351.102(b)(38) as ''any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates, and post-sale adjustments, that are reflected in the purchaser's net outlay.''

In past cases, we have declined to treat freight-related revenues as either an addition to U.S. price under section 772(c) of the Act or as price adjustments under 19 CFR 351.102(b). Rather, we have incorporated these revenues as offsets to movement expenses because they relate to the transportation of subject merchandise.[21] Our offset practice limits the granting of an offset to situations where a respondent incurs expenses and realizes revenue for the same type of activity.[22] According to CP Kelco's responses, CP Kelco arranges and pre-pays for transportation and bills the freight expenses in question as a separate line on the product invoice.[23] Further, CP Kelco reports that these fees charged to the customer which generate freight revenues are based upon estimates of actual freight, not actual freight expenses. Therefore, we have limited the amount of the freight revenue used to offset CP Kelco's movement expenses to the amount of movement expenses incurred on the sale of subject merchandise.[24]

Constructed Export Price

In accordance with section 772(b) of the Act, CEP is ''the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter,'' as adjusted under sections 772(c) and (d) of the Act. In accordance with section 772(b) of the Act, we used CEP for a number of CP Kelco's U.S. sales because CP Kelco sold merchandise to its affiliate CP Kelco U.S., Inc. in the United States; and CP Kelco U.S., Inc., in turn, sold the subject merchandise to unaffiliated U.S. customers. We preliminarily find that these U.S. sales are properly classified as CEP sales because they occurred in the United States after importation and were made through CP Kelco U.S. Inc. to unaffiliated U.S. customers.

We based CEP on the prices to unaffiliated purchasers in the United States. We made adjustments for price or billing adjustments, and early payment discounts, where applicable. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, which included, where appropriate: foreign inland freight; foreign brokerage and handling; international freight; marine insurance; customs duties; U.S. brokerage; U.S. inland freight; and U.S. warehousing expenses. We also reduced movement expenses, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our treatment of freight revenue on U.S. sales of subject merchandise (*see* ''Export Price'' section, above), we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit expenses), inventory carrying costs, and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Normal Value

A. Selection of Comparison Market

In order to determine whether there was 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 was equal to or

[19] *See* CP Kelco's Section B Response at B–25; CP Kelco's Section C Response at C–28; and CP Kelco's January 28, 2012, Response, Section B, at 9 to 11, and Section C, at 11 to 14.

[20] *See, e.g., 2008–2009 Preliminary Results* (unchanged in *2008–2009 Final Results)* and *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 74 FR 6857 (February 11, 2009) (*Bags from the PRC*), and the accompanying Issues and Decision Memorandum at Comment 6; *Purified Carboxymethylcellulose from Finland; Notice of Final Results of Antidumping Duty Administrative Review,* 72 FR 44106 (August 7, 2007); *Purified Carboxymethylcellulose from Finland; Notice of Final Results of Antidumping Duty Administrative Review,* 74 FR 28886 (June 18, 2009); *Purified Carboxymethylcellulose from Finland; Notice of Final Results of Antidumping Duty Administrative Review,* 73 FR 75397 (December 11, 2008); and *Purified Carboxymethylcellulose from Finland; Notice of Final Results of Antidumping Duty Administrative Review,* 72 FR 70568 (December 12, 2007).

[21] *See, e.g., Stainless Steel Wire Rod from Sweden: Preliminary Results of Antidumping Duty Administrative Review,* 72 FR 51414 (September 7, 2007) (*Steel Wire Rod Preliminary Results*) (unchanged in *Stainless Steel Wire Rod from Sweden: Final Results of Antidumping Duty Administrative Review,* 72 FR 12950 (March 1, 2008)).

[22] *Id.*

[23] *See* CP Kelco's Section A response at A–26; CP Kelco's Section C response at C–27 to C–28; and CP Kelco's February 7, 2012, Response at A–39 to A–41.

[24] *See* Preliminary Analysis Memorandum at 3 and 8.

greater than five percent of the aggregate volume of U.S. sales), we compared the 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 section 773(a)(1) of the Act. As CP Kelco's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

In accordance with section 773(b)(2)(A)(ii) of the Act, we are conducting a sales-below-cost investigation in this review because the Department disregarded some of CP Kelco's sales as having been made at prices below the cost of production in the previous administrative review.[25]

C. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for each model based on the sum of CP Kelco's materials and fabrication costs for the foreign like product, plus an amount for home market selling, general, and administrative (SG&A) expenses, financial expenses, and packing costs. We examined the cost data and determined that our quarterly cost methodology is not warranted and, therefore, we have applied our standard methodology of using annual costs based on the reported data as adjusted below. We relied on the COP data submitted by CP Kelco except as follows. We adjusted COM, in accordance with the major input rule at section 773(f)(3) of the Act.[26]

We compared the weighted-average COP of CP Kelco's home market sales to home market sales prices of the foreign like product (net of billing adjustments, discounts, any applicable movement expenses, direct and indirect selling expenses, and packing), as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. Based on our review of the record evidence, it appears that CP Kelco did not experience significant changes in the cost of manufacturing during the POR. Therefore, we followed our normal methodology of calculating an annual weighted-average cost.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made in substantial quantities within an extended period of time and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

D. Results of the Cost Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of CP Kelco's sales of a given model were at prices less than the COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of CP Kelco's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were made: (1) within an extended period of time and in ''substantial quantities'' within the POR, in accordance with section 773(b)(2)(B) and (C) of the Act; and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.,* the sales were made at prices below the weighted-average per-unit COP for the POR). We disregarded some of CP Kelco's sales as having been made at prices below the cost of production in accordance with 773(b)(2)(C) of the Act. We used the remaining sales as the basis for determining NV in accordance with section 773(b)(1) of the Act.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers. We made adjustments for billing adjustments, early payment discounts, and rebates, where appropriate. We made deductions, where appropriate, for foreign inland freight, pursuant to section 773(a)(6)(B) of the Act. We also reduced foreign inland freight, where appropriate, by the amount of freight revenue paid by the customer to CP Kelco. In accordance with our treatment of freight revenue on U.S. sales of subject merchandise (*see* ''Export Price'' section, above), we capped the amount of freight revenue deducted at no greater than the amount of movement expenses in the home market. In addition, when comparing sales of similar merchandise, we made adjustments for differences in cost (*i.e.,* DIFMER), where those differences were attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act and section 351.411 of the Department's regulations. We also made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and Section 351.410 of the Department's regulations. We made COS adjustments for imputed credit expenses. We also made an adjustment, where appropriate, for the CEP offset in accordance with section 773(a)(7)(B) of the Act. *See* ''Level of Trade and CEP Offset'' section below. Finally, 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.

F. Constructed Value

In accordance with section 773(a)(4) of the Act, we base NV on CV if we are unable to find a contemporaneous comparison market match of identical or similar merchandise for the U.S. sale. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication employed in making the subject merchandise, selling, general, and administrative expenses (SG&A expenses), profit, and U.S. packing costs. We calculated the cost of materials and fabrication for CP Kelco based on the methodology described in the COP section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by CP Kelco in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For these preliminary results, we based NV on CV in some instances.

Level of Trade and CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we base NV on sales made in the comparison market at the same level of trade (LOT) as the export transaction. The NV LOT is based on the starting price of sales in the home market or, when NV is based on CV, on the LOT of the sales from which SG&A expenses and profit are derived. With respect to CEP transactions in the U.S. market, the CEP LOT is defined as the level of trade of the constructed sale from the exporter to the importer. *See* section 773(a)(7)(A) of the Act.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). If the comparison-market sales are at a

[25] *See 2008–2009 Preliminary Results* (unchanged in *2008–2009 Final Results*).

[26] *See* Memorandum from Angie Sepulveda, Accountant, to Neal Halper, Director, Office of Accounting, regarding ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results—CP Kelco Oy'' dated July 30, 2012 (Cost Calculation Memorandum)).

different LOT, and the difference affects 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 make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision).[27] For CEP sales, we consider only the selling activities reflected in the U.S. price after the deduction of expenses incurred in the U.S. and CEP profit under section 772(d) of the Act.[28] We expect that if the claimed LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party claims the LOTs are different for different groups of sales, the functions and activities of the seller should be dissimilar.[29]

CP Kelco reported two levels of trade for its U.S. sales, an EP level of trade (based on the selling activities associated with the transactions between CP Kelco Oy and its customers in the U.S.) and a CEP LOT (which is based on the selling activities associated with the transaction between CP Kelco and its affiliated importer, CP Kelco U.S., Inc.).[30] We obtained information on CP Kelco's marketing process and selling functions along the chain of distribution between the producer and the customer in the U.S.[31] Our analysis indicates the selling functions performed in the EP channel of distribution are either performed at a higher degree of intensity or are greater in number than the selling functions performed for CEP sales to CP Kelco U.S., Inc. For example, in comparing CP Kelco's selling activities, we find most of the reported selling functions performed in the EP channel of distribution are not a part of CEP transactions (*i.e.,* sales negotiation, credit risk management, collection, sales promotion, direct sales personnel, technical support, and guarantees). For those selling activities performed for both EP sales and CEP sales (*i.e.,* customer service, logistics, inventory maintenance, packing, and freight/delivery), CP Kelco reported it performed each activity at either the same or at a higher level of intensity in the EP channel of distribution, with the sole exception of the inventory maintenance selling function.

We further note that CEP sales from CP Kelco to CP Kelco U.S., Inc., generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory. In contrast, all sales made through the EP channel of distribution occur closer to the end of the distribution chain, involve smaller volumes. They also require more customer interaction and consequently the performance of more selling functions. Accordingly, we preliminarily determine that CP Kelco's EP sales and CEP sales were made at separate and distinct LOTs, and that the EP LOT is at a more advanced stage than the CEP LOT.

In the current review, CP Kelco reported only one level of trade in the home market.[32] We obtained information from CP Kelco regarding the marketing process and selling functions along the chain of distribution between the producer and the customer in the home market. In the home market, our analysis indicates the selling functions performed for home market end user customers are performed at similar degree of intensity and are similar in number to the selling functions performed for home market distributor customers. For example, in comparing CP Kelco's selling activities, CP Kelco reported that all of the selling functions performed in the home market distributor channel of distribution are also performed in the home market end user channel of distribution (*i.e.,* sales negotiation, credit risk management, customer service, logistics, inventory maintenance, packing, freight/delivery, collection, sales promotion, direct sales personnel, technical support, and guarantees).

CP Kelco also reported that many selling functions are performed at the same level of intensity for all three channels of distribution (*i.e.,* customer service, logistics, collection, sales promotion, and guarantees). Further, CP Kelco reported that the credit risk management and packing selling functions are performed at the same level of intensity for both the EP and home market distributor channel of distribution. CP Kelco reported differences in the level of intensity between the home market distributor and end user channels of distribution and the EP channel of distribution for the inventory maintenance, packing, direct sales personnel, and technical support selling functions. However, where there were differences reported by CP Kelco, these differences were minor.

While we found differences in the levels of intensity performed for some of these functions between the home market and EP levels of trade, such differences are minor and do not establish distinct and separate levels of trade. We further note that home market and EP sales both occur closer to the end of the distribution chain and involve similar volumes; they require similar customer interaction and consequently the performance of similar selling functions at similar levels of intensity. Accordingly, we preliminarily determine CP Kelco's home market and EP sales were made at the same LOT and no LOT adjustment is warranted for the EP sales.

CP Kelco claims that it did not make home market sales at a LOT comparable to the CEP LOT. Therefore, CP Kelco requests the Department make a CEP offset.[33] Accordingly, we compared the NV LOT (based on the selling activities associated with the transactions between CP Kelco and its customers in the home market) to the CEP LOT (which is based on the selling activities associated with the transaction between CP Kelco and its affiliated importer, CP Kelco U.S., Inc.) Our analysis indicates the selling functions performed for home market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for sales to CP Kelco U.S., Inc. For example, in comparing CP Kelco's selling activities, we find most of the reported selling functions performed in the home market are not a part of CEP transactions (*i.e.,* sales negotiations, credit risk management, intermediate warehousing, collection, sales promotion, direct sales personnel, technical support, guarantees, and discounts). For those selling activities performed for both home market sales and CEP sales (*i.e.,* customer service, logistics, inventory maintenance, packing, and freight/

[27] *See, e.g., Final Determination of Sales at Less Than Fair Value: Greenhouse Tomatoes From Canada,* 67 FR 8781 (February 26, 2002), and accompanying Issues and Decision Memorandum at Comment 8; *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil; Preliminary Results of Antidumping Duty Administrative Review,* 70 FR 17406, 17410 (April 6, 2005) (unchanged in final results of review, 70 FR 58683 (October 7, 2005)).

[28] *See Micron Technology, Inc.* v. *United States,* 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

[29] *See Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 65 FR 30068 (May 10, 2000), and accompanying Issues and Decision Memorandum at Comment 6.

[30] *See* CP Kelco's Section C Response at pages C–24 to C–25.

[31] *See* CP Kelco's Section A response at A–16 to A–37.

[32] *See* CP Kelco's Section B Response at B–21.

[33] *See* CP Kelco's Section A Response at A–33 to A–34.

delivery), CP Kelco reported it performed each activity at either the same or at a higher level of intensity in one or both of the home market channels of distribution. For both the packing and the freight/delivery selling functions, each function is performed at the same level of intensity in one home market channel of distribution, but at a lower level of intensity in the other home market channel of distribution.

We further note that CEP sales from CP Kelco to CP Kelco U.S., Inc., generally occur at the beginning of the distribution chain, representing essentially a logistical transfer of inventory. In contrast, all sales in the home market occur closer to the end of the distribution chain, involve smaller volumes. They also require more customer interaction and consequently the performance of more selling functions. Based on the foregoing, we conclude that the NV LOT is at a more advanced stage than the CEP LOT.

Because we found the home market and U.S. CEP sales were made at different LOTs, we examined whether a LOT adjustment or a CEP offset may be appropriate in this review. As we found only one LOT in the home market, it was not possible to make a LOT adjustment to home market sales, because such an adjustment is dependent on our ability to identify a pattern of consistent price differences between the home market sales on which NV is based and home market sales at the LOT of the U.S. sales. *See* 19 CFR 351.412(d)(1)(ii). Furthermore, we have no other information that provides an appropriate basis for determining a LOT adjustment. Because the data available do not form an appropriate basis for making a LOT adjustment, and because the NV LOT is at a more advanced stage of distribution than the CEP LOT, we have made a CEP offset to NV in accordance with section 773(a)(7)(B) of the Act.

Currency Conversions

CP Kelco reported certain U.S. sales prices and certain U.S. expenses and adjustments in Euros. Therefore, we made Euro-U.S. dollar currency conversions, where appropriate. Conversions were based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Board, in accordance with section 773A(a) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily find the following weighted-average dumping margin exists for the period July 1, 2010, through June 30, 2011:

Manufacturer/exporter	Weighted average margin (percentage)
CP Kelco	5.86

The Department intends to disclose the calculations used in our analysis to parties in this review within five days of the date of publication of this notice in accordance with Section 351.224(b) of the Department's regulations.[34] An interested party may. 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, filed electronically using Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.[35] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[36] Parties should confirm by telephone the date, time, and location of the hearing.

Comments

Interested parties are invited to comment on the preliminary results of this review. The Department will consider case briefs filed by interested parties within 30 days after the date of publication of this notice in the **Federal Register**.[37] Interested parties may file rebuttal briefs, limited to issues raised in the case briefs. The Department will consider rebuttal briefs filed not later than five days after the time limit for filing case briefs.[38] Parties who submit arguments are requested to submit with each argument a statement of the issue, a brief summary of the argument, and a table of authorities cited. The Department intends to issue the final results of this administrative review, including the results of our analysis of issues raised in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Upon completion of this administrative review, pursuant to section 351.212(b) of the Department's regulations, the Department will calculate an assessment rate on all appropriate entries. CP Kelco has reported entered values for all of its sales of subject merchandise to the U.S. during the POR. If CP Kelco's weighted-average dumping margin is above *de minimis* in the final results of this review, we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the importer's examined sales to the total entered value of the examined sales of that importer, in accordance with section 351.212(b)(1) of the Department's regulations.[39] These rates will be assessed uniformly on all entries the respective importers made during the POR. The Department will issue appropriate assessment instructions directly to CBP fifteen days after publication of the final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003.[40] This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate un-reviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of final results of this administrative review for all shipments of CMC from Finland entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for CP Kelco will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers

[34]

[35] *See* 19 CFR 351.303(b).

[36] *See* 19 CFR 351.310.

[37] *See* 19 CFR 351.309(c).

[38] *See* 19 CFR 351.309(d).

[39] In these preliminary results, the Department applied the assessment rate calculation method adopted in *Final Modification, i.e.,* on the basis of monthly average-to-average comparisons using only the transactions associated with that importer with offsets being provided for non-dumped comparisons.

[40] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

or exporters not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be the all-others rate of 6.65 percent *ad valorem* established in the LTFV investigation.[41] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also 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 the subsequent assessment of double the antidumping duties.

Authority and Publication

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 30, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2012–19313 Filed 8–6–12; 8:45 am]

BILLING CODE 3510–DS–P

[41] *See Notice of Antidumping Duty Orders: Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden,* 70 FR 39734 (July 11, 2005).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Work Group on Measuring Systems for Electric Vehicle Fueling

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) is forming a Work Group (WG) to develop proposed requirements for commercial electricity-measuring devices (including those used in sub-metering electricity at residential and business locations and those used to measure and sell electricity dispensed as a vehicle fuel) and to ensure that the prescribed methodologies and standards facilitate measurements that are traceable to the International System of Units (SI). This work is not intended to address utility metering in the home or business where the electricity metered is consumed by the end purchaser.

DATES: A preliminary web-based meeting or teleconference will be held on Wednesday, August 29, 2012, from 1:00 p.m. to 3:00 p.m. Eastern time. This meeting is intended to be a precursor to any subsequent face-to-face meeting and will serve to provide further information and orientation regarding the objectives of the WG. To register for this preliminary meeting, please submit your full name, email address, and phone number to Mr. Marc Buttler by Friday, August 24, 2012, using the contact information provided below.

ADDRESSES: The preliminary meeting will be held using either a teleconference or a web-based format where participants will join the meeting remotely by telephone and/or computer. Once registered, participants will receive login and/or call-in instructions via email.

FOR FURTHER INFORMATION CONTACT: Mr. Marc Buttler, NIST, Office of Weights and Measures, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600. You may also contact Mr. Buttler by telephone (301) 975–4615 or by email at *marc.buttler@nist.gov*.

SUPPLEMENTARY INFORMATION: The formation of this WG is intended to bring together government officials and representatives of business, industry, trade associations, and consumer organizations on the subject of standards and test procedures used in the testing of commercial measuring devices and systems by regulatory officials and service companies. NIST participates to promote uniformity among the states in laws, regulations, methods, and testing equipment that comprises the regulatory control of commercial weighing and measuring devices and systems and other trade and commerce issues.

The WG will review and propose changes as needed to draft method-of-sale requirements for: (1) Possible inclusion in NIST Handbook 130, ''Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality''; (2) draft requirements for equipment used to measure and sell electricity in commercial applications for possible inclusion in NIST Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices''; and (3) proposed procedures for type evaluation, laboratory, and field testing of equipment for possible inclusion in NIST Examination Procedure Outlines and other procedures documents.

The changes proposed to NIST Handbooks 44 and 130 will be put forward through the submission process outlined in the ''Introduction'' sections of these Handbooks.

Included among the topics to be discussed by the WG for current and emerging device technologies used in commercial electric measuring systems are: (1) Method-of-sale requirements; (2) metrology laboratory standards and test procedures; (3) uncertainties; (4) measurement traceability; (5) tolerances and other technical requirements for commercial measuring systems; (6) existing standards for testing equipment; (7) field implementation; (8) data analysis; (9) field test and type evaluation procedures; (10) field enforcement issues; (11) training at all levels; and (12) other relevant issues identified by the WG. The WG's technical output may result in the revision of current standards or the development of new standards for testing equipment, including documents such as the NIST Handbook 105 Series for field standards; NIST HB 44, and NIST Examination Procedure Outlines, as well as proposed changes to requirements and testing procedures for commercial devices and systems used to assess charges to consumers for electric vehicle fuel.

There is no cost for participating in the Work Group. No proprietary information will be shared as part of the Work Group, and all research results will be in the public domain.

Dated: August 1, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–19285 Filed 8–6–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC062

Draft 2012 Marine Mammal Stock Assessment Reports

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

ACTION: Notice; request for comments.

SUMMARY: NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act. SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on draft 2012 SARs.

DATES: Comments must be received by November 5, 2012.

ADDRESSES: The 2012 draft SARs, summaries of them, and references cited in this notice are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/sars/draft.htm.*

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way NE., BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic, Gulf of Mexico, and Caribbean Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Jim Carretta, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037–1508.

You may submit comments, identified by [NOAA–NMFS–2012–0119], by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Mail: Send comments or requests for copies of reports to: Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov;* Robyn Angliss 206–526–4032, *Robyn.Angliss@noaa.gov,* regarding Alaska regional stock assessments; Gordon Waring, 508–495–2311, *Gordon.Waring@noaa.gov,* regarding Atlantic, Gulf of Mexico, and Caribbean regional stock assessments; or Jim Carretta, 858–546–7171, *Jim.Carretta@noaa.gov,* regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. The term ''strategic stock'' means a marine mammal stock: (A) For which the level of direct human-caused mortality exceeds the potential biological removal level; (B) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act within the foreseeable future; or (C) which is listed as a threatened species or endangered species under the Endangered Species Act. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific independent Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information. NMFS solicits public comments on the draft 2012 SARs.

Alaska Reports

In the Alaska region (waters off Alaska that are under the jurisdiction of the United States), SARs for 29 Alaska stocks (14 ''strategic,'' 15 ''non-strategic'') were updated. The following stocks were reviewed and considered for updating for 2012: Steller sea lion (western and eastern stocks), Northern fur seal, harbor seals (12 stocks), Cook Inlet beluga whale, AT1 transient killer whale, Pacific white-sided dolphin, harbor porpoise (Gulf of Alaska, Bering Sea, Southeast Alaska stocks), Dall's porpoise, sperm whale, humpback whale (western North Pacific and central North Pacific stocks), fin whale, minke whale, North Pacific right whale, and bowhead whale. Most revisions included updates of abundance and/or mortality estimates. None of the updates resulted in change of status of a stock. Information on the remaining Alaska region stocks can be found in the final 2011 reports (Allen and Angliss, 2012).

In 2010, NMFS and the Alaska Native Harbor Seal Commission held their annual co-management meeting during which they agreed to proceed with a revised set of population boundaries for harbor seals in Alaska, resulting in a population structure of twelve harbor seal stocks in Alaska. At the recommendation of the Alaska SRG, data for all 12 harbor seals stocks in Alaska will be presented in a single harbor seal SAR document. Therefore, NMFS will not be developing separate SARs for all 12 stocks. Serious injury and mortality records for harbor seals are reported; however, most of these records have not been assigned to a particular stock.

Typically, the most recent five years of data are used for estimating average annual serious injury and mortality of stocks. In 2007, the NMFS Alaska Fisheries Science Center (AFSC) developed a new database for the fisheries observer data and analytical methods for estimating bycatch were updated. As a result of these changes, AFSC determined that data from 2007 onward could not be combined with data from analyses of data prior to 2006. Therefore, after consulting the SRG, the AFSC decided to base fishery observer serious injury and mortality estimates on an analysis of the most recent four-year period from 2007–2010.

NMFS has decided to shift the eastern North Pacific gray whale SAR from the Alaska SARs to the Pacific SARs beginning in 2012, because the Southwest Fisheries Science Center (SWFSC) has the responsibility for conducting abundance estimates and management for the gray whale stock. In 2012, both the Alaska SRG and Pacific SRG reviewed the gray whale SAR, and staff who compile the Pacific SARs have worked closely with AFSC and Northwest Regional Office staff during this first year of transition.

Atlantic Reports

In the Atlantic region (including the Atlantic coast, Gulf Coast, and U.S. territories in the Caribbean), 52 reports (covering 80 stocks) were updated, including 23 Atlantic reports and 29 Gulf of Mexico reports. Of these, 43 stocks are ''strategic'' and 37 are ''non-strategic.'' Information on the remaining Atlantic region stocks can be found in the final 2011 reports (Waring *et al.,* 2011).

Atlantic white-sided dolphins became non-strategic in 2012, due to new abundance estimates. The Northern North Carolina Estuarine System Stock of bottlenose dolphins has a new abundance estimate based on a 2006 mark-recapture survey, resulting in a PBR calculation of 7.9 animals for this stock (previously ''undetermined'' PBR); the stock remains ''strategic.'' The Gulf of Mexico Northern Coastal Stock of bottlenose dolphins changed from non-strategic to strategic status with this 2012 report, because an Unusual Mortality Event of unprecedented size and duration (began 1 February 2010 and is ongoing) has impacted the Northern Coastal Stock area.

A new section entitled Habitat Issues has been added to each Gulf of Mexico report, which includes information on the Deepwater Horizon oil spill and the Natural Resource Damage Assessment process.

Pacific Reports

In the Pacific region (waters along the west coast of the United States, within waters surrounding the main and Northwest Hawaiian Islands, and within waters surrounding U.S. Territories in the Western Pacific), SARs were revised for 15 stocks (five ''strategic'' and ten ''non-strategic'' stocks). Strategic stocks included: Hawaiian monk seal, Southern Resident killer whale, Hawaii Insular false killer whale, Hawaii Pelagic false killer whale, and California/Oregon/Washington Sperm Whale. Non-strategic stocks included: Long-beaked common dolphin, Eastern North Pacific Gray Whale, Northwestern Hawaiian Islands false killer whale, Palmyra Atoll false killer whale, Hawaii Island spinner dolphin, Oahu/Four Islands spinner dolphin, Kauai/Niihau spinner dolphin, Pearl and Hermes Reef spinner dolphin, Midway Atoll/Kure spinner dolphin, and Hawaii Pelagic spinner dolphin. Information on the remaining Pacific region stocks can be found in the final 2011 reports (Carretta *et al.,* 2012).

The stock assessment report for Palmyra Atoll false killer whale now appears separately from false killer whale reports that focus on the Hawaiian Islands region, and a new stock of Northwestern Hawaiian Islands false killer whales is presented for the first time. New abundance estimates are available for eight stocks: Hawaiian monk seal, Long-beaked common dolphin, Southern Resident killer whale, three stocks of spinner dolphin (Hawaii Island, Oahu/Four Islands, and Kauai/Niihau), Hawaii Pelagic false killer whale and Northwestern Hawaiian Islands false killer whale. The stock assessment report for Eastern North Pacific gray whales is now included in the Pacific Region stock assessment reports.

Dated: August 1, 2012.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–19308 Filed 8–6–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB158

Marine Mammals; File No. 16580

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Shannon Atkinson, Ph.D., University of Alaska Fairbanks, 17101 Pt. Lena Loop Road, Juneau, AK 99801 to receive, import and export marine mammal parts for scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

FOR FURTHER INFORMATION CONTACT: Laura Morse or Jennifer Skidmore, (301)427–8401.

SUPPLEMENTARY INFORMATION: On May 30, 2012 notice was published in the **Federal Register** (77 FR 31835) that a request for a permit to receive, import and export specimens for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The permit authorizes the receipt and export of samples of marine mammals taken by Alaskan Native subsistence hunters; and the receipt, import, and export of specimens from scientists in academic, federal, and state institutions involved in legally authorized marine mammal research for all marine mammal species under NMFS jurisdiction. Marine mammal parts may be used incidentally for educational purposes. Import and export activities may occur world-wide. No takes of live animals are authorized. The permit will expire August 1, 2017.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 1, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–19304 Filed 8–6–12; 8:45 am]

BILLING CODE 3510–22–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Proposed Collection; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau), as part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, invites the general public and other

Federal agencies to take this opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau is soliciting comments concerning the information collection requirements relating to ''Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau.''

DATES: Written comments are encouraged and must be received on or before October 9, 2012 to be assured of consideration.

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

• *Electronic:* *CFPB_Public_PRA@cfpb.gov*.

• *Mail/Hand Delivery/Courier:* Direct all written comments to Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552.

Instructions: Submissions should include agency name and the title of the collection, ''Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau.'' Comments will be available for public inspection and copying at 1700 G Street NW., Washington, DC 20552 on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect comments by telephoning (202) 435–7275. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. You should only submit information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the documents contained under this approval number should be directed to the Consumer Financial Protection Bureau, (Attention: PRA Office), 1700 G Street NW., Washington, DC 20552, (202) 435–9011, or through the Internet at *CFPB_Public_PRA@cfpb.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance for the Collection of Qualitative Feedback on the Service Delivery of the Consumer Financial Protection Bureau.

OMB Control Number: 3170–XXXX.

Abstract: The proposed information collection activity would garner qualitative feedback from financial institutions, consumers, and stakeholders on a wide range of services the Bureau provides in an efficient, timely manner, in accordance with the Bureau's commitment to improving service delivery. By qualitative feedback the Bureau means information that provides useful insights on, for example, comprehension, usability, perceptions, and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. The Bureau expects this feedback to include insights into consumer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the Bureau and consumers, financial institutions, and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from consumers, financial institutions, and stakeholders on the Bureau's services will be unavailable.

The Bureau will only submit a collection for approval under this generic clearance if it meets the following conditions:

• The collections are voluntary;

• The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;

• The collections are non-controversial and do not raise issues of concern to other Federal agencies;

• Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;

• Personally identifiable information (PII) is collected only to the extent necessary and is not retained;

• Information gathered is intended to be used only internally for general service improvement and program management purposes and is not intended for release outside of the Bureau (if released, the agency must indicate the qualitative nature of the information);

• Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

• Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance would provide useful information, but it would not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Type of Review: New Generic.

Affected Public: Individuals and Households; Businesses, Organizations, and other for-profit, not-for-profit institutions; and State, Local or Tribal Governments.

Average Expected Annual Number of Activities: 25.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 1 Hour per Response.

Frequency of Response: 1 per Year.

Estimated Total Annual Burden Hours: 250,000.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the

request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information shall have practical utility; (b) the accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methodology and the 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 respondents, including through the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: August 1, 2012.

Chris Willey,

Chief Information Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2012–19305 Filed 8–6–12; 8:45 am]

BILLING CODE 4810–AM–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Thursday, August 9, 2012, 3:30 p.m.–5:30 p.m.

PLACE: Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matters To Be Considered

Briefing Matter: Notice of Proposed Rulemaking for Hazardous Magnet Sets.

A live webcast of the Meeting can be viewed at *www.cpsc.gov/webcast.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: August 3, 2012.

Todd A. Stevenson,

Secretary.

[FR Doc. 2012–19475 Filed 8–3–12; 4:15 pm]

BILLING CODE 6355–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, August 29, 2012; 1 p.m.–5 p.m.

ADDRESSES: Cities of Gold Conference Center, 10–A Cities of Gold Road, Pojoaque, NM 87506.

FOR FURTHER INFORMATION CONTACT: Menice Santistevan, Northern New Mexico Citizens' Advisory Board (NNMCAB), 94 Cities of Gold Road, Santa Fe, NM 87506. Phone (505) 995–0393; Fax (505) 989–1752 or Email: *msantistevan@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m. Call to Order by Deputy Designated Federal Officer (DDFO), Ed Worth
- Establishment of a Quorum: Roll Call and Excused Absences, Staff
- Welcome and Introductions, Ralph Phelps, Chair
- Approval of Agenda and July 25, 2012, Meeting Minutes

1:15 p.m. Public Comment Period

1:30 p.m. Old Business
- Written Reports
- Report on Rocky Flats Tour
- Consideration and Action on ''Top Issues'' for Chairs' Fall Meeting
- Other Items

1:45 p.m. New Business
- Report from Nominating Committee (Section V, F. of NNMCAB Bylaws), Nicole Castellano
- Election of Chair and Vice Chair for Fiscal Year (FY) 2013
- Other Items

2 p.m. Items from the DDFO, Ed Worth
- Update from DOE
- Other Items

2:15 p.m. Presentation on FY 2013 EM Budget, Terry Tyborowski, DOE–HQ

2:45 p.m. Break

3 p.m. Update from Los Alamos Site Manager, Kevin Smith

4 p.m. Presentation on Intellus
- What and Why?
- Database Guided Tour
- Data Input and Validation and Verification Process

4:45 p.m. Wrap-up and Comments from Board Members, Ralph Phelps

5 p.m. Adjourn, Ed Worth, DDFO.

Public Participation: The EM SSAB, Northern New Mexico, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Menice Santistevan at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Santistevan at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Menice Santistevan at the address or phone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.energy.gov/.*

Issued at Washington, DC, on July 30, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–19247 Filed 8–6–12; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Biomass Research and Development Technical Advisory Committee

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

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research

and Development Technical Advisory Committee. The Federal Advisory Committee Act (Public Law No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register.**

DATES:
August 22, 2012; 1:30 p.m.–5:30 p.m.
August 23, 2012; 8:30 a.m.–5:30 p.m.

ADDRESSES: Renaissance DuPont Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Elliott Levine, Designated Federal Officer, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585; (202) 586–1476; Email: *Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biomass R&D Activities
- Update on DOE Biomass R&D Activities
- Review of the recently awarded Biomass Research and Development Projects
- Review of Congressional Research Service Report—*Biofuels Incentives: A Summary of Federal Programs*

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you must contact Elliott Levine at (202) 586–1476; Email: *Elliott.Levine@ee.doe.gov* or Roy Tiley at (410) 997–7778 ext. 220; Email: *rtiley@bcs-hq.com at least 5 business days* prior to the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Co-chairs of the Committee will make efforts to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Co-chairs will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying at the following Web site: *www.usbiomassboard.gov/committee/meetings.*

Issued at Washington, DC, on July 31, 2012.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2012–19253 Filed 8–6–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: EIA has submitted an information collection request to the OMB for extension under the provisions of the Paperwork Reduction Act of 1995. The information collection requests a three-year extension of its Petroleum Marketing Program, OMB Control Number 1905–0174. The proposed collection will collect basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include costs, sales, prices, and distribution of crude oil and petroleum products. The data are used for analyses, publications, and multi-fuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers. EIA intends to extend for three years the petroleum marketing survey forms listed below:

EIA–14, ''Refiners' Monthly Cost Report''
EIA–182, ''Domestic Crude Oil First Purchase Report''
EIA–782A, ''Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report''
EIA–782C, ''Monthly Report of Prime Supplier Sales of Petroleum Products Sold for Local Consumption''
EIA–821, ''Annual Fuel Oil and Kerosene Sales Report''
EIA–856, ''Monthly Foreign Crude Oil Acquisition Report''
EIA–863, ''Petroleum Product Sales Identification Survey''
EIA–877, ''Winter Heating Fuels Telephone Survey''
EIA–878, ''Motor Gasoline Price Survey''
EIA–888, ''On-Highway Diesel Fuel Price Survey''

DATES: Comments regarding this proposed information collection must be received on or before September 6, 2012. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the DOE Desk Officer at OMB of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at 202–395–4718.

ADDRESSES: Written comments should be sent to the DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street NW., Washington, DC 20503; and to Jason Worrall, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration, Forrestal Building, 1000 Independence Ave. SW., U.S. Department of Energy, Washington, DC 20585–0670, (202) 586–6075 (phone).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Worrall at the contact information above. Alternatively Mr. Worrall may be emailed at, *Jason.Worrall@eia.gov*. Copies of the information collection instruments and instructions can also be viewed at *http://www.eia.gov/survey*.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) *OMB No.* 1905–0174; (2) *Information Collection Request Title:* Petroleum Marketing Program; (3) *Type of Request:* Renewal with Change; (4) *Purpose:* The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information.

This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

EIA's petroleum marketing survey forms collect volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets.

These data are published by EIA on its Web site, *http://www.eia.gov,* as well as in publications such as the *Monthly Energy Review* (*http://www.eia.gov/*

totalenergy/data/monthly/), *Annual Energy Review* (*http://www.eia.gov/totalenergy/data/annual/*), *Petroleum Marketing Monthlyhttp://www.eia.gov/oil_gas/petroleum/data_publications/petroleum_marketing_monthly/pmm.html*), *Weekly Petroleum Status Report http://www.eia.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html*), and the *International Energy Outlook* (*http://www.eia.gov/forecasts/ieo/*); (5) *Annual Estimated Number of Respondents:* 11,953; (6) *Annual Estimated Number of Total Responses:* 106,661; (7) *Annual Estimated Number of Burden Hours:* 56,186; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* 0. EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on August 1, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U. S. Energy Information Administration.

[FR Doc. 2012–19267 Filed 8–6–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–14–000; (FERC–914)]

Commission Information Collection Activities; Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–914 (Cogeneration and Small Power Production—Tariff Filings) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 31342, 5/25/2012) requesting public comments. FERC received no comments on the FERC–914 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by September 6, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0213, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov.* Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–14–000, by either of the following methods:

• *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*

• *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: *Title:* FERC–914, Cogeneration and Small Power Production—Tariff Filings.

*OMB Control No.:*1902–0213.

Type of Request: Three-year extension of the FERC–914 information collection requirements with no changes to the reporting requirements.

Abstract: Section 205(c) of the Federal Power Act (FPA) requires that every public utility have all of its jurisdictional rates and tariffs on file with the Commission and make them available for public inspection, within such time and in such form as the Commission may designate. Section 205(d) of the FPA requires that every public utility must provide notice to the Commission and the public of any changes to its jurisdictional rates and tariffs, file such changes with the Commission, and make them available for public inspection, in such manner as directed by the Commission. In addition, FPA section 206 requires the Commission, upon complaint or its own motion, to modify existing rates or services that are found to be unjust, unreasonable, unduly discriminatory or preferential. FPA section 207 requires the Commission upon complaint by a state commission and a finding of insufficient interstate service, to order the rendering of adequate interstate service by public utilities, the rates for which would be filed in accordance with FPA sections 205 and 206.

In Orders Nos. 671 and 671–A,[1] the Commission revised its regulations that govern qualifying small power production and cogeneration facilities. Among other things, the Commission eliminated certain exemptions from rate regulation that were previously available to qualifying facilities (QFs). New qualifying facilities may need to make tariff filings if they do not meet the new exemption requirements.

FERC implemented the Congressional mandate of the Energy Policy Act of 2005 (EPAct 2005) to establish criteria for new qualifying cogeneration facilities by: (1) Amending the exemptions available to qualifying facilities from the FPA and from PUHCA [resulting in the burden imposed by FERC–914, the subject of this statement]; (2) ensuring that these facilities are using their thermal output in a productive and beneficial manner; that the electrical, thermal, chemical and mechanical output of new qualifying cogeneration facilities is used fundamentally for industrial, commercial, residential or industrial purposes; and there is continuing progress in the development of efficient electric energy generating technology; (3) amending the FERC Form 556 [2] to reflect the criteria for new qualifying cogeneration facilities; and (4) eliminating ownership limitations for qualifying cogeneration and small power production facilities. The Commission satisfied the statutory mandate and its continuing obligation to review its policies encouraging cogeneration and small power production, energy conservation, efficient use of facilities and resources

[1] *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order No. 671, 71 FR 7852 (2/15/2006), FERC Stats. & Regs. ¶ 31,203 (2006); and *Revised Regulations Governing Small Power Production and Cogeneration Facilities,* Order 671–A, 71 FR 30585 (5/30/2006), in Docket No. RM05–36.

[2] The FERC–556 is cleared separately as OMB Control No. 1902–0075 and is not a subject of this notice.

by electric utilities and equitable rates for energy customers.

Type of Respondents: New qualifying facilities and small power producers that do not meet Commission exemption criteria.

Estimate of Annual Burden[3]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–914 (IC12–14–000): COGENERATION AND SMALL POWER PRODUCTION—TARIFF FILINGS

	Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A) × (B) = (C)	Average burden hours per response (D)	Estimated total annual burden (C) × (D)
FPA Section 205 filings	*100*	*1*	*100*	*183*	*18,300*
Electric Quarterly Reports (initial)	*100*	*1*	*100*	*230*	*23,000*
Electric Quarterly Reports (later)	*100*	*3*	*300*	*6*	*1,800*
Change of Status	*100*	*1*	*100*	*3*	*300*
TOTAL	*N/A*	*N/A*	*600*	*N/A*	*43,400*

The total estimated annual cost burden to respondents is $2,995,016 [43,400 hours ÷ 2,080[4] hours/year = 20.86538 * $143,540/year[5] = $2,995,016].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 1, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19269 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC12–13–000; (FERC–915)]

Commission Information Collection Activities; Comment Request

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Comment request.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is submitting the information collection FERC–915 (Public Utility Market-Based Rate Authorization Holders—Records Retention Requirement) to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (77 FR 28863, 5/16/2012) requesting public comments. FERC received no comments on the FERC–915 and is making this notation in its submittal to OMB.

DATES: Comments on the collection of information are due by September 6, 2012.

ADDRESSES: Comments filed with OMB, identified by the OMB Control No. 1902–0223, should be sent via email to the Office of Information and Regulatory Affairs: *oira_submission@omb.gov*. Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may also be reached via telephone at 202–395–4718.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission, identified by the Docket No. IC12–13–000, by either of the following methods:

- *eFiling at Commission's Web Site: http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp*. For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp*.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* by telephone at (202) 502–8663, and by fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–915, Public Utility Market-Based Rate Authorization Holders—Records Retention Requirement.

*OMB Control No.:*1902–0223.

Type of Request: Three-year extension of the FERC–915 information collection requirements with no changes to the reporting requirements.

Abstract: The Commission has the regulatory responsibility under section 205 of the Federal Power Act to ensure that wholesale sales of electricity are just and reasonable and provided in a non-discriminatory manner. Under section 35.41(d), the Commission requires all sellers with market-based rates to retain all relevant sales documents for five years. Relevant documents include all information upon which they bill their prices charged for electric energy or electric energy products sold pursuant to their market-

[3] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[4] 2080 hours/year = 40 hours/week * 52 weeks/year

[5] Average annual salary per employee in 2012.

based rate tariff and the prices reported for use in price indices.

The five-year statute of limitations applies where the Commission seeks civil penalties for violations of the Anti-Manipulation rule or other rules, regulations, or orders to which the price information may be relevant.

The information maintained by the respondents under FERC–915 is used by the Commission to monitor the entities' sales, ensure that the prices are just and reasonable, maintain the integrity of the wholesale jurisdictional sales markets, and ensure that the entities comply with the requirements of the Federal Power Act, the Commission's regulations and any orders authorizing market-based rate sales.

Type of Respondents: Public Utility Market-Based Rate Authorization Holders.

Estimate of Annual Burden [1]*:* The Commission estimates the total Public Reporting Burden for this information collection as:

FERC–915 (IC12–13–000): PUBLIC UTILITY MARKET-BASED RATE AUTHORIZATION HOLDERS—RECORDS RETENTION REQUIREMENT

	Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours per response	Estimated total annual burden
	(A)	(B)	(A) × (B) = (C)	(D)	(C) × (D)
Electric Utilities with Market-Based Rate Authority	1,730	1	1,730	1	1,730

The total estimated annual cost burden to respondents is $369,638 [$40,655 (labor costs) + $315,792 (record retention/storage cost) + $13,191 (electronic record-keeping cost) = $369,638]

- Labor costs: $40,655 [(1,730 hours ÷ 2 [2] = 865 hours * $19/hours [3] = $16,435) + (1730 hours ÷ 2 = 865 * $28/hour [4] = $24,220)]
- Record retention/storage cost (using an estimate of 48,891 cubic feet): $315,792 [5]
- Electronic record retention/storage cost: $13,191 (1,730 respondents ÷ 2 = 865 respondents * $15.25/hour [6] = $13,191).[7]

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: August 1, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19266 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

[1] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

[2] The Commission assumes 50% of responding entities utilize conventional (i.e. ''paper'' storage).

[3] 2012 average hourly wage of filing clerk working within an electric utility.

[4] The Commission bases the $28/hour figure on a FERC staff study that included estimating public utility recordkeeping costs.

[5] The Commission bases this figure on industry archival storage costs.

[6] Per entity; the Commission bases this figure on the estimated cost to service and to store 1 GB of data (based on the aggregated cost of an IBM advanced data protection server).

[7] The Commission assumes 50% of responding entities are storing records in electronic formats.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation

Member Representatives Committee and Board of Trustees Meetings

Hilton Quebec, Rene-Levesque Blvd. East, Quebec City, QC, Canada, G1R 4P3.

August 15, 2012 (1 p.m.–5 p.m.)
August 16, 2012 (8 a.m.–1 p.m.)

Further information regarding these meetings may be found at: *http://www.nerc.com/calendar.php.*

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RC08–5, North American Electric Reliability Corporation
Docket No. RC11–5, North American Electric Reliability Corporation
Docket No. RC11–6, North American Electric Reliability Corporation
Docket No. RR08–4, North American Electric Reliability Corporation
Docket No. RR12–8, North American Electric Reliability Corporation
Docket No. RR12–10, North American Electric Reliability Corporation
Docket No. RR12–11, North American Electric Reliability Corporation
Docket No. RD09–11, North American Electric Reliability Corporation
Docket No. RD10–2, North American Electric Reliability Corporation
Docket No. RD12–3, North American Electric Reliability Corporation
Docket No. RD12–4, North American Electric Reliability Corporation
Docket No. NP11–238, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov.*

Dated: August 1, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19270 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–89–000]

The Incorporated Village of Port Jefferson v. National Grid Generation LLC; Notice of Complaint

Take notice that on July 30, 2012, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure; 18 CFR 385.206 (2011) and 18 CFR 1c, and sections 206, 222, 306

and 309 of the Federal Power Act, The Incorporated Village of Port Jefferson (Complainant) filed a formal complaint against the National Grid Generation LLC (Respondent) requesting a Commission investigation and hearing regarding certain conduct of the Respondent. As more fully explained in the Complaint, Complainant alleges that the Respondent is currently perpetrating fraudulent practices and illegally exercising market power.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19280 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF12–11–000]

El Paso Natural Gas Company; Notice of Intent To Prepare an Environmental Impact Statement for the Planned Sasabe Lateral Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental impact statement (EIS) that will discuss the environmental impacts of the Sasabe Lateral Project (Project) involving construction and operation of facilities by El Paso Natural Gas Company (El Paso) in Pima County, Arizona. The Commission will use this EIS in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EIS.

You may submit comments in written form or verbally. Further details on how to submit written comments are in the Public Participation section of this notice. In addition, the Commission intends to host public scoping meetings in the Project area. The times and locations of scoping meetings will be announced in a future Notice of Scoping Meetings. Scoping will close 7 days after the last scoping meeting.

This notice is being sent to the Commission's current environmental mailing list for the Sasabe Lateral Project, and the forthcoming Notice of Scoping Meetings will also be sent out to this list. State and local government representatives should notify their constituents of this planned project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the Project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is available for viewing on the FERC Web site (*www.ferc.gov*). This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Summary of the Planned Project

The Project would consist of the following facilities in Pima County, Arizona:

- Installation of about 60 miles of 36-inch-diameter natural gas pipeline;
- Construction of a new meter station near the U.S.-Mexico border; and
- Construction of other appurtenant facilities.

The Project would link El Paso's existing South Mainline System near Tucson to the U.S.-Mexico border near the town of Sasabe, Arizona. El Paso is currently considering two routes for the pipeline: the West Route and the East Route. The West Route would be located on private and state lands. The East Route would be located on private, state, and federal lands. The East Route would primarily follow an existing highway right-of-way and traverse the Buenos Aires National Wildlife Refuge. The general location of the Project facilities is shown in Appendix 1.[1]

According to El Paso, the planned Project would provide additional natural gas export capability of between 160 and 210 million cubic feet of natural gas per day to an interconnect with the Puerto Libertad Pipeline at the international border. The Mexico Comisión Federal de Electricidad has specified this point as their desired receipt point in order to supply gas for power generation.

Land Requirements for Construction

Construction of the planned facilities would disturb about 815 acres of land for the pipeline and aboveground facilities. Following construction, El Paso would maintain about 362 acres for permanent operation of the Project's facilities; the remaining acreage would be restored and revert to former uses. About 70 percent of the East Route parallels existing utility or road rights-

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

of-way, while about 30 percent of the West Route parallels existing utility or road rights-of-way.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EIS. We will consider all filed comments during the preparation of the EIS.

In the EIS we will discuss impacts that could occur as a result of the construction and operation of the planned Project under these general headings:

- Geology and soils;
- Water resources, fisheries, and wetlands;
- Vegetation, wildlife, and endangered and threatened species;
- Land use and cumulative impacts;
- Socioeconomics;
- Cultural resources;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the planned Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Although no formal application has been filed, we have already initiated our NEPA review under the Commission's pre-filing process. The purpose of the pre-filing process is to encourage early involvement of interested stakeholders and to identify and resolve issues before the FERC receives an application. As part of our pre-filing review, we have begun to contact some federal and state agencies to discuss their involvement in the scoping process and the preparation of the EIS.

The EIS will present our independent analysis of the issues. We will publish and distribute the draft EIS for public comment. After the comment period, we will consider all timely comments and revise the document, as necessary, before issuing a final EIS. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 5.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues related to this Project to formally cooperate with us in the preparation of the EIS.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice. Currently, the U.S. Fish and Wildlife Service, Arizona Ecological Services Office and the Buenos Aires National Wildlife Refuge, and the Arizona Game and Fish Department have expressed their intention to participate as a cooperating agency in the preparation of the EIS to satisfy their NEPA responsibilities related to this Project.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the Arizona State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects in consultation with the SHPO as the Project develops. On natural gas facility projects, the Area of Potential Effects at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, meter stations, and access roads). Our EIS for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the planned facilities and the environmental information provided by El Paso. This preliminary list of issues may change based on your comments and our analysis:

- Impacts on riparian areas at approximately 220 dry wash crossings;
- Land use impacts, such as disruption of on-going conservation efforts to restore native grassland;
- Visual impacts in consideration of Native American sacred sites;
- The creation of a new corridor that could exacerbate the current illegal immigration and drug trafficking activities;
- Socioeconomic issues, such as job creation and future development;
- Unauthorized all terrain vehicle use of the right-of-way after construction;
- Impacts on threatened and endangered species (including the masked bobwhite quail, Pima pineapple cactus, and Chiricahua leopard frog) and other sensitive species (including the cactus ferruginous pygmy owl); and
- Alternatives, including routing that may impact the Buenos Aires National Wildlife Refuge.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before the end of the scoping period, which will close 7 days after the last scoping meeting, to be announced in a future Notice of Scoping Meetings. This is not your only public input opportunity; please refer to the Environmental Review Process flow chart in Appendix 2.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (PF12–11–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register for Historic Places.

(2) You can file your comments electronically using the eFiling feature located on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the planned Project.

Copies of the completed draft EIS will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (Appendix 3).

Becoming an Intervenor

Once El Paso files its application with the Commission, you may want to become an ''intervenor,'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site. Please note that the Commission will not accept requests for intervenor status at this time. You must wait until the Commission receives a formal application for the Project.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., PF12–11). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

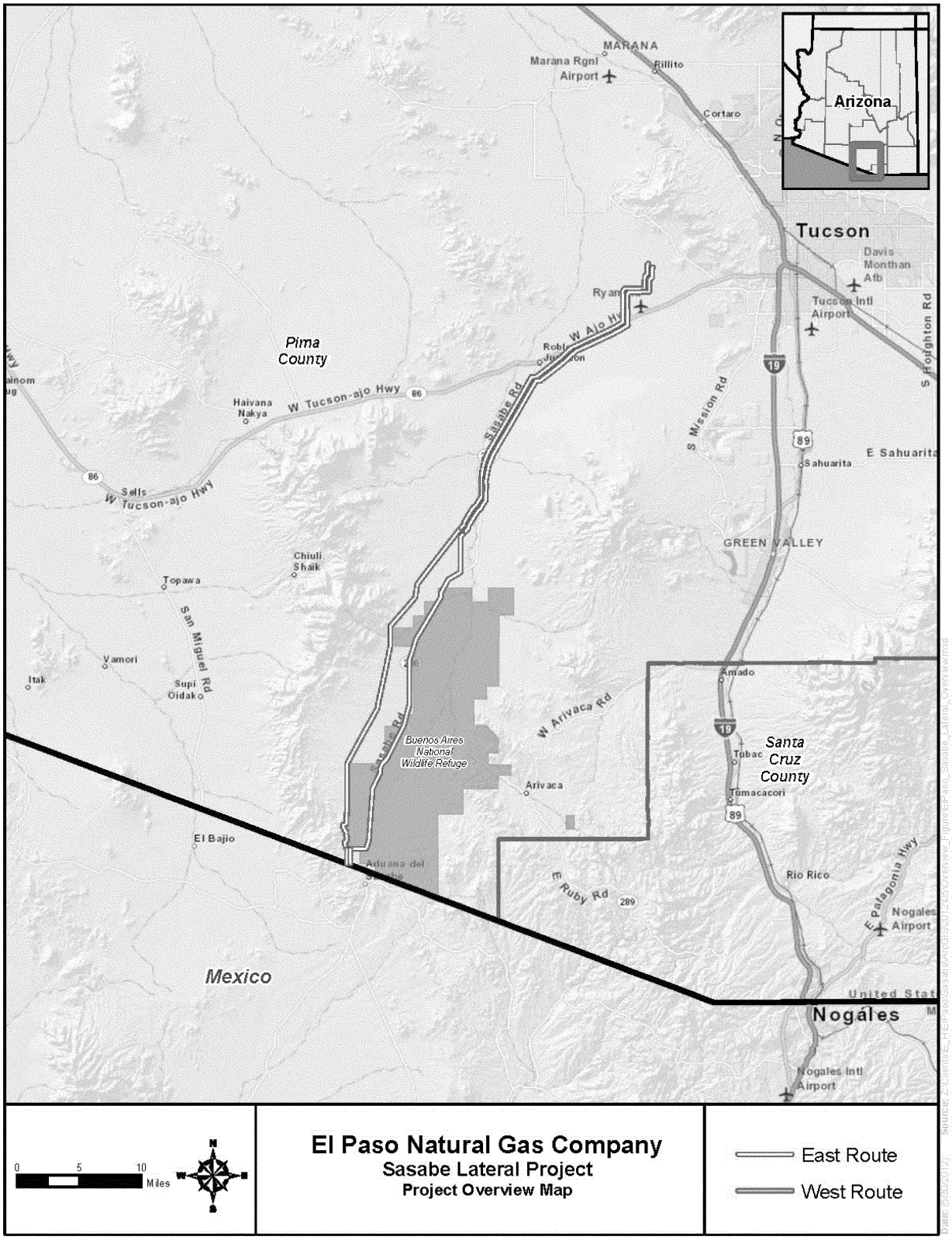
Dated: August 1, 2012.

Kimberly D. Bose,

Secretary.

BILLING CODE 6717–01–P

Appendix 1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Robles Junction
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Topawa
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Amado
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Buenos Aires National Wildlife Refuge
Tubac
Santa Cruz County
Tumacacori
Arivaca
El Bajio
Aduana del Sasabe
Ruby Rd
289
Rio Rico
E Patagonia Hwy
Nogales Airport
Mexico
Nogales
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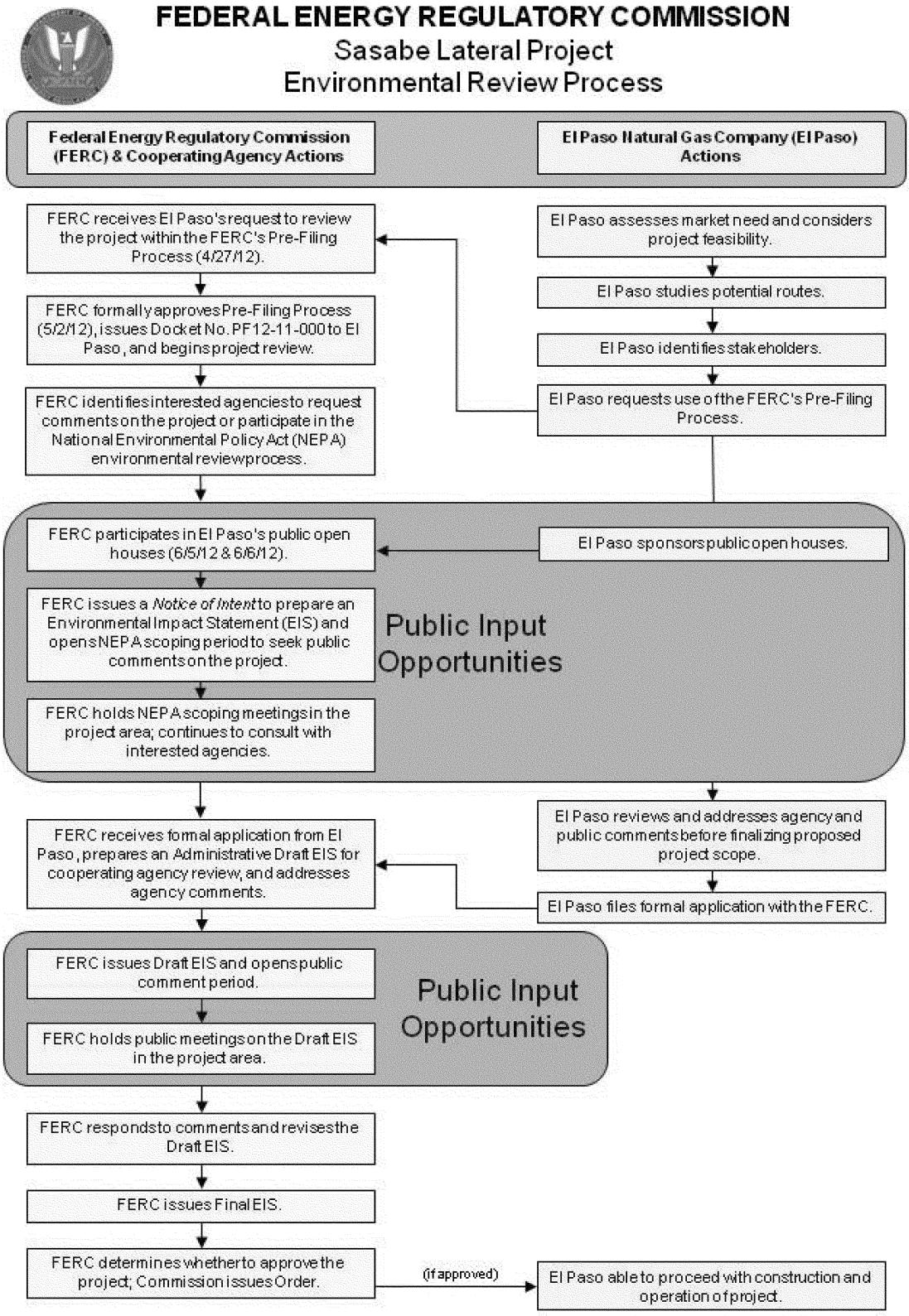
El Paso Natural Gas Company
Sasabe Lateral Project
Project Overview Map
East Route
West Route

Appendix 2


FEDERAL ENERGY REGULATORY COMMISSION
Sasabe Lateral Project
Environmental Review Process
Federal Energy Regulatory Commission (FERC) & Cooperating Agency Actions
El Paso Natural Gas Company (El Paso) Actions
FERC receives El Paso's request to review the project within the FERC's Pre-Filing Process (4/27/12).
El Paso assesses market need and considers project feasibility.
El Paso studies potential routes.
FERC formally approves Pre-Filing Process (5/2/12), issues Docket No. PF12-11-000 to El Paso, and begins project review.
El Paso identifies stakeholders.
FERC identifies interested agencies to request comments on the project or participate in the National Environmental Policy Act (NEPA) environmental review process.
El Paso requests use of the FERC's Pre-Filing Process.
FERC participates in El Paso's public open houses (6/5/12 & 6/6/12).
El Paso sponsors public open houses.
FERC issues a Notice of Intent to prepare an Environmental Impact Statement (EIS) and opens NEPA scoping period to seek public comments on the project.
Public Input Opportunities
FERC holds NEPA scoping meetings in the project area; continues to consult with interested agencies.
El Paso reviews and addresses agency and public comments before finalizing proposed project scope.
FERC receives formal application from El Paso, prepares an Administrative Draft EIS for cooperating agency review, and addresses agency comments.
El Paso files formal application with the FERC.
FERC issues Draft EIS and opens public comment period.
Public Input Opportunities
FERC holds public meetings on the Draft EIS in the project area.
FERC responds to comments and revises the Draft EIS.
FERC issues Final EIS.
FERC determines whether to approve the project; Commission issues Order.
(if approved)
El Paso able to proceed with construction and operation of project.

Appendix 3

INFORMATION REQUEST

Sasabe Lateral Project

Name_____

Agency_____

Address_____

City_____ **State**_____ **Zip Code**_____

☐ **Please send me a paper copy of the published NEPA document**

☐ **Please remove my name from the mailing list**

FROM_____

_____

_____

_____

ATTN: OEP - Gas 1, PJ - 11.1
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

(Docket No. PF12-11-000, Sasabe Lateral Project)

Staple or Tape Here

[FR Doc. 2012–19265 Filed 8–6–12; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–2079–069—CA]

Middle Fork American River Hydroelectric Project Placer County Water Agency; Notice of Draft Environmental Impact Statement; Public Meetings

a. *Date and Time of Meetings:* Tuesday, August 28, 2012, from 9:00 a.m. to 11:00 a.m. and from 7:00 p.m. to 9:00 p.m. (Pacific Time).

b. *Location:* The Holiday Inn Auburn, 120 Grass Valley Highway, Auburn, California 95603, Telephone: (530) 887–8787.

c. *FERC Contact:* Carolyn Templeton, (202) 502–8785, *carolyn.templeton@ferc.gov*.

d. *Purpose of the Meeting:* Commission staff will hold two public meetings for the purpose of receiving verbal and/or written comments on the draft environmental impact statement for the Middle Fork American River Project No. 2079. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization comments, while the evening meeting is primarily for receiving input from the public. All interested individuals and entities are invited to attend one or both of the public meetings. The meetings will be recorded by a court reporter, and all statements will become part of the Commission's public record for the project. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

e. All local, state, and federal agencies, tribes, and interested parties, are hereby invited to participate in the meeting.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19278 Filed 8–6–12; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–30–000]

Transcontinental Gas Pipe Line Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Northeast Supply Link Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Northeast Supply Link Project (Project) proposed by Transcontinental Gas Pipe Line Company (Transco) in the above-referenced docket. Transco requests authorization to construct and operate certain pipeline and compressor facilities in New York, New Jersey, and Pennsylvania in order to expand the natural gas delivery capacity to the northeast region of the United States by up to 250,000 dekatherms per year.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate

mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, and U.S. Department of Transportation Pipeline and Hazardous Materials Safety Administration participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Project includes the following facilities:

- Installing approximately 12.0 miles of new 42-inch-diameter pipeline loop [1] in three separate segments in Hunterdon County, New Jersey and Lycoming and Monroe Counties, Pennsylvania;
- Replacing approximately 0.5 mile of 36-inch-diameter pipeline in Essex County, New Jersey;
- Uprating [2] approximately 25.6 miles of existing 36-inch-diameter pipeline in Essex, Passaic, Bergen, and Hudson Counties, New Jersey;
- Uprating approximately 1.4 miles of existing 26-inch-diameter pipeline in Richmond and Kings Counties, New York;
- Constructing new Compressor Station 303 and an associated electrical substation in Essex County, New Jersey;
- Modifying existing Compressor Stations 505 and 515 in Somerset County, New Jersey and Luzerne County, Pennsylvania, respectively;
- Modifying other existing aboveground facilities in New York (three facilities); New Jersey (six facilities); and Pennsylvania (one facility);
- Installing associated appurtenant aboveground facilities including mainline valves and pig [3] launchers and receivers; and
- Using contractor/pipe yards and access roads.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; libraries in the project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before August 31, 2012.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP12–30–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at *www.ferc.gov* under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[4] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP12–30). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

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Dated: August 1, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19272 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–92–000]

Southern Illinois Power Cooperative; Notice of Filing

Take notice that on July 30, 2012, Southern Illinois Power Cooperative filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

[1] A loop is a segment of pipe that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] An uprate is a process by which an existing pipeline is approved to operate at a higher pressure, thus increasing the capacity of the pipeline. To obtain an uprate, pipeline operators must determine and document that the pipeline can safely operate at the increased pressure.

[3] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

[4] See the previous discussion on the methods for filing comments.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19264 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–93–000]

Illinois Municipal Electric Agency; Notice of Filing

Take notice that on July 30, 2012, Illinois Municipal Electric Agency filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

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Comment Date: 5:00 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19273 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–95–000]

Missouri Joint Municipal Electric Utility Commission; Notice of Filing

Take notice that on July 30, 2012, Missouri Joint Municipal Electric Utility Commission filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19275 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–97–000]

Indiana Municipal Power Agency; Notice of Filing

Take notice that on July 30, 2012, Indiana Municipal Power Agency filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19277 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–90–000]

Prairie Power, Inc.; Notice of Filing

Take notice that on July 30, 2012, Prairie Power, Inc. filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19281 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–91–000]

American Municipal Power, Inc.; Notice of Filing

Take notice that on July 30, 2012, American Municipal Power, Inc. filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19282 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–96–000]

Northern Illinois Municipal Power Agency; Notice of Filing

Take notice that on July 30, 2012, Northern Illinois Municipal Power Agency filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of

intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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Comment Date: 5:00 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19276 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL12–94–000]

Kentucky Municipal Power Agency; Notice of Filing

Take notice that on July 30, 2012, Kentucky Municipal Power Agency filed a Proposed Revenue Requirement for reactive supply service under Midwest Independent Transmission System Operator, Inc. Tariff Schedule 2.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on August 20, 2012.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19274 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Rejecting Request for Rehearing

	Project Nos.
Northland Power Mississippi River LLC	14072–001, 14073–002, 14075–002, 14076–002, 14077–002, 14078–002, 14080–002, 14081–002, 14082–002, 14089–002, 14090–002, 14091–002, 14092–002, 14093–002, 14094–002, 14095–002, 14096–002, 14097–002, 14098–002, 14099–002
FFP Project 19 LLC	12842–005
FFP Project 23 LLC	12843–005
FFP Project 24 LLC	12844–005
FFP Project 14 LLC	12845–005
FFP Project 6 LLC	12848–004
FFP Project 7 LLC	12851–004
FFP Project 12 LLC	12853–005
FFP Project 13 LLC	12854–005
FFP Project 3 LLC	12856–005
FFP Project 18 LLC	12857–004
FFP Project 16 LLC	12858–005
FFP Project 28 LLC	12861–005
FFP Project 20 LLC	12869–005
FFP Project 32 LLC	12921–004
FFP Project 33 LLC	12924–004
FFP Project 39 LLC	12925–004
FFP Project 30 LLC	12927–004

On June 1, 2012, the Commission denied Northland Power Mississippi River LLC's (Northland) request for rehearing of Commission staff orders issuing successive preliminary permits to wholly-owned subsidiaries of Free Flow Power Corporation (Free Flow) to study hydrokinetic projects at sites along the Mississippi River.[1] On July 2, 2012, Northland filed a request for rehearing of the Commission's order denying rehearing.

Rehearing of an order on rehearing lies when the order on rehearing modifies the result reached in the original order in a manner that gives rise to a wholly new objection.[2] The Commission's June 1 rehearing order does not modify the result of the orders issuing successive preliminary permits to Free Flow and denying Northland's competing applications. Therefore, Northland's request for rehearing of the June 1 order is rejected.[3]

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice must be filed within 30 days of the date of issuance of this notice pursuant to 18 CFR 385.713 (2012).

[1] *Northland Power Mississippi River LLC,* 139 FERC ¶ 61,177 (2012).

[2] *See Duke Power,* 114 FERC ¶ 61,148 (2006); *Gustavus Electric Co.,* 111 FERC ¶ 61,424 (2005); *Symbiotic, L.L.C.,* 99 FERC ¶ 61,064 (2002); and PacifiCorp, 99 FERC ¶ 61,015 (2002). *See also Southern Natural Gas Co.* v. *FERC,* 877 F.2d 1066, 1072–73 (D.C. Cir. 1999) (*citing Tennessee Gas Pipeline* v. *FERC,* 871 F.2d 1099–100 (D.C. Cir. 1988)).

[3] Northland also seeks to raise new arguments regarding Free Flow's diligence under its prior permits and the Commission's first-in-time tiebreaker rule. Because these arguments could and should have been raised earlier, they are untimely and may not be raised now. Under section 313(a) of the Federal Power Act, 16 U.S.C. 825l(a) (2006), a party may apply for rehearing within thirty days after the issuance of the order from which they are seeking rehearing. However, the thirty-day limit is a jurisdictional one which the Commission has no authority to waive, *E.g., Kings River Conservation Dist.,* 32 FERC ¶ 61,021, at 61,079 (1985).

Dated: August 1, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19271 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD12–2–000]

Notice of Availability of Draft Revisions; Upland Erosion Control, Revegetation, and Maintenance Plan; Wetland and Waterbody Construction and Mitigation Procedures; Request for Comments

The staff of the Office of Energy Projects is revising its Upland Erosion Control, Revegetation, and Maintenance Plan (Plan) and Wetland and Waterbody Construction and Mitigation Procedures (Procedures), last updated January 17, 2003. In accordance with Order 603,[1] the staff is asking for comments on the draft revisions from the natural gas industry, federal, state and local agencies, environmental consultants, inspectors, construction contractors, and other interested parties with special expertise with respect to environmental issues commonly associated with pipeline projects. Please note that this comment period will close on October 9, 2012.

The Plan and Procedures are referred to at 18 Code of Federal Regulations (CFR) 380.12(i)(5) and 380.12(d)(2), respectively, as well as 18 CFR 157.206(b)(3)(iv). The Plan and Procedures identify the staff's baseline mitigation measures for minimizing erosion and enhancing revegetation in uplands and the extent and duration of project-related disturbance on wetlands and waterbodies. Attached to this notice are full texts of the draft revisions, identifying all proposed changes from the current versions of the Plan and Procedures in tracked changes format[2]. The draft revisions can also be viewed on the Federal Energy Regulatory Commission (FERC or Commission) Web site at *http://www.ferc.gov/industries/gas/enviro/guidelines.asp.*

The staff announced its intention to revise the Plan and Procedures by public notice issued October 31, 2011, in the above referenced docket. The proposed revisions address comments filed in response to the public notice, frequent inquiries for clarification or guidance, and common variance requests. Other modifications provide necessary updates to reflect current laws and industry best management practices.

We will consider all timely comments on the draft revisions before issuing the final versions. For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the docket number (AD12–2–000) with your submission. The Commission encourages electronic filing of comments and has expert eFiling staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*. Please include your name and email address so we can include you in future notices regarding our planned revisions.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's Web site at www.ferc.gov under the link to Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Web site at www.ferc.gov under the link to Documents and Filings. With eFiling you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making. A comment in response to this notice is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

All of the information related to the proposed revisions to the Plan and Procedures and submitted comments can be found on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., AD12–2). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Information Collection Statement

The Office of Management and Budget (OMB) regulations require OMB approval of certain reporting, record keeping, and public disclosure requirements (collections of information) imposed by an agency[3]. To ensure compliance with OMB's regulations implementing the Paperwork Reduction Act of 1995[4], the Office of Energy Project's staff is providing notice of potential modifications to information collections from jurisdictional natural gas companies, and is requesting comments on information collection and reporting burden. Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information to the Commission and any applicable third parties.

Comments in consideration of the collection of information should be submitted following the guidelines described on page 2 of this notice, and should reference OMB Control No. 1902–0060 in addition to Docket No. AD12–2–000. Comments regarding information collection requirements should focus on whether the information will have practical utility; the accuracy of burden estimates (provided below); ways to enhance the quality, utility, and clarity of the information collected; and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques. Following the comment period, the Commission staff will submit the final revised Plan and Procedure documents to OMB for review of the information collection requirements.

The information collection requirements described in the current versions of the Plan and Procedures are approved by OMB via FERC–537, ''Gas Pipeline Certificates: Construction, Acquisition, and Abandonment'' (OMB Control No. 1902–0060), which is used by the Commission to implement the

[1] Revision of Existing Regulations Under Part 157 and Related Sections of the Commission's Regulations Under the Natural Gas Act, Commission Order No. 603, Docket No. RM98–9–000, issued April 29, 1999. Noticed in the **Federal Register** on May 14, 1999. 64 FR 26572.

[2] The attachments referenced in this notice will not appear in the **Federal Register**.

[3] 5 CFR Part 1320.

[4] 44 U.S.C. 3507(d).

statutory provisions of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301–3432, and the Natural Gas Act (NGA) (15 U.S.C. 717–717w). The information collected per FERC–537 is necessary to certificate interstate pipelines engaged in the transportation and sale of natural gas, and the construction, acquisition, and operation of facilities to be used in those activities, to authorize the abandonment of facilities and services, and to authorize certain NGPA transactions.

The draft Plan and Procedure revisions identified in this notice are primarily modifications and clarifications to the content of information collections required by the current versions. For example, revisions to Plan sections III.H., III.I., and VII.B.2. clarify staff's expectations for the content of blasting plans, winter construction plans, and quarterly activity reports, respectively. Draft revisions to Plan section III.F.3. regarding agency consultations on wildlife and livestock, standardize a best management practice and staff expectation. A draft revision to Procedure section VI.D.3. modifies the wetland revegetation success criteria used for monitoring and reporting. Such revisions do not constitute entirely new information collections; however, the proposed revisions could increase reporting burden by adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to respond to a modified collection of information; and completing and reviewing such collections.

Draft revisions would reduce reporting burden on jurisdictional natural gas companies by providing guidance that is frequently requested during report preparations; directions to provide information that frequently results in data requests; and improved flexibility to reduce variance requests for construction practices the staff has determined are acceptable. For example, frequently requested guidance on beneficial reuse of construction materials is provided in revised Plan sections II.B.17. and III.E. Identification of baseline expectations for residential construction practices is provided in revised Plan section III.G. Variance requests would be reduced via revisions to Procedures section V.B.3.g. that address construction through waterbodies that are dry or frozen, and VI.B.2.f. that address burning of woody debris in wetlands. Additionally, proposed revisions to Procedure sections V.B.2.b. and VI.B.1.b. would reduce reporting burden on jurisdictional entities, permitting detailed justifications for reduced setbacks at waterbodies and wetlands.

Revised terminology is proposed in order to be inclusive of prior notice, advanced notice, and automatic authorization projects to address the wider net of project types subject to Plan and Procedure requirements. The revisions clarify applicability for projects constructed under the Commission's blanket certificate program (18 CFR Part157, Subpart F) and construction of facilities for transportation services under the NGPA section 311 (18 CFR Part 284, Subpart A). These clarifications would improve the efficiency of the environmental review process, and reduce labor hours required of jurisdictional natural gas companies to prepare complete reports.

Entirely new information collection requirements are limited. A new record retention requirement is proposed regarding drainage system repairs or improvements (see draft revised Plan section VII.B.1.e.). In addition, a new annual report is proposed for affected wetlands that do not successfully revegetate within three years after construction (see draft revised Procedure section VI.D.4.). We expect this revision to result in a minor increase in reporting burden due to the low incidence of wetland revegetation failure; we estimate less than 10 percent of affected wetlands on an annual basis. In addition, our experience indicates that the cause of failure in many cases is anthropogenic activities that would negate the need for further monitoring and remediation by the project sponsors.

Additional filings for blanket certificate prior notice projects would also be required (see revised ''Applicability'' discussions in sections I. of the Plan and Procedures). Such filings include winter construction plans noted in revised Plan section III.I., and the pre-construction filings noted in section II. of the Procedures (i.e., hydrostatic testing information, waterbody crossing schedules, spill prevention and response procedures, plans for major waterbody crossings, horizontal directional drill crossings, and justifications for any alternative measures). This would not reflect an entirely new reporting burden however, as this information is typically requested by staff during review of these projects to ensure compliance with blanket certificate standard conditions in 18 CFR 157.206.

Overall, in consideration of the proposed revisions to reporting requirements and the increased efficiency that would realized during the environmental review process, we expect the net effect of the proposed Plan and Procedure revisions to constitute a minor increase in information collection burden.

Burden Estimate

The estimate below is based on workload completion data prepared by FERC's Division of Gas—Environment and Engineering for fiscal year 2011. Respondents include companies that filed project applications under NGA Section 7, blanket certificate prior notice filings and annual reports, and NGPA 311 advanced notification filings and annual reports.

Proposed modification to FERC–537, OMB Control No. 1902–0060	Average number of respondents annually	Average number of filings per year [5] (a)	Average change in burden hours per filing (rounded) (b)	Total annual change in burden hours for all filings types (a × b)
Upland Plan	81 Natural Gas Companies	113	6.1	681
Wetland and Waterbody Procedures	81 Natural Gas Companies	113	−3.8	−428
Grand Total				253

[5] NGA 7, Blanket Certificate, and NGPA 311 filings. Filings were excluded if they qualified as categorical exclusions under the National Environmental Policy Act or were otherwise categorized as ''environment not involved.'' These types of projects would not be subject to the environmental requirements of the Plan and Procedures and thus would not be affected by changes to information collections.

Information Collection Costs: The Commission staff seeks comments on the costs to comply with the proposed revisions to the Plan and Procedures. The total estimated annual cost burden to prepare new or modified information collections based on the proposed Plan and Procedure revisions is $17,459.43 (253 hours/2,080 hours [6] per year, times $143,540 [7]).

We expect the estimated burden would reduce in subsequent years, as companies adjust to the modified information collections and have trained their personnel to collect information per the revised Plan and Procedures.

Interested persons may obtain additional information on the OMB process and information collection statement by contacting Ellen Brown, Office of the Executive Director, via email at *DataClearance@ferc.gov;* by phone (202) 502–8663, or facsimile (202) 273–0973.

Dated: July 31, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–19279 Filed 8–6–12; 8:45 am]

BILLING CODE 6717–01–P

[6] Estimated number of hours an employee works each year.

[7] Estimated average annual cost (salary plus benefits) per employee.

DEPARTMENT OF ENERGY

Western Area Power Administration

Central Arizona Project-Rate Order No. WAPA–158

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Proposed Extension of Transmission Formula Rates.

SUMMARY: The Western Area Power Administration (Western), a power marketing administration with the Department of Energy (DOE), is proposing to extend the existing formula rates for Central Arizona Project (CAP) transmission services on the CAP 115-kilovolt (kV) and 230-kV transmission facilities through December 31, 2015. The existing Transmission Service Formula Rate Schedules CAP–FT2, CAP–NFT2, and CAP–NITS2, expire December 31, 2012. This notice of proposed extension of rates is issued pursuant to 10 CFR 903.23(a). Publication of this **Federal Register** notice begins the formal process for the proposed extension of the CAP Transmission Formula Rates.

DATES: The consultation and comment period will end on September 6, 2012. Western will accept oral and written comments any time during the consultation and comment period. In accordance with 10 CFR 903.23(a), Western has determined it is not necessary to hold a public information or public comment forum.

ADDRESSES: Send written comments to: Deborah Emler, Acting Regional Manager, Desert Southwest Customer Service Regional Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, email *EMLER@wapa.gov.* Written comments may also be faxed to (602) 605–2490, attention: Jack Murray. Western will post official comments received via letter, fax and email to its Web site at *http://www.wapa.gov/dsw/pwrmkt/CAPTRP/CAPTRP.htm* after the close of the comment period. Western must receive written comments by the end of the consultation and comment period to ensure they are considered in Western's decision process.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Regional Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, email *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

The existing Rate Schedules consist of separate transmission service rates for firm point-to-point transmission service, non-firm point-to-point transmission service, and Network Integration Transmission Service (NITS) on the CAP 115-kV and 230-kV transmission system. Rate Schedules CAP–FT2, CAP–NFT2, CAP–NITS2, Rate Order No. WAPA–124,[1] were approved for a 5-year period beginning on January 1, 2006, and ending December 31, 2010. Rate Order No. WAPA–153 [2] extended these rate schedules for a 2-year period, beginning January 1, 2011, and ending December 31, 2012.

The existing formula transmission service rates provide adequate revenue to pay all annual costs, including interest expense, and to repay investment on the CAP 115-kV and 230-kV transmission facilities within the allowable periods. The rates are updated annually using updated financial and transmission reservation data. Western is proposing no change at this time to the rate formula, and based on preliminary financial and contractual information available, it is expected the rate will remain at its current level through calendar year 2013. Since no changes are anticipated to the formula rate, and the existing rate provides sufficient revenue to recover all appropriate costs, Western proposes to extend the current rate schedules pursuant to 10 CFR 903.23(a).

All documents made or kept by Western for developing the proposed extension for the Transmission Service Rate Schedules are available for inspection and copying at the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, AZ 85005–6457. These documents are also available on Western's Web site at: *http://www.wapa.gov/dsw/pwrmkt/CAPTRP/CAPTRP.htm.*

After review of public comments, Western will take further action on the proposed extension of rates consistent with 10 CFR part 903.

Dated: July 31, 2012.

Anthony H. Montoya,

Acting Administrator.

[FR Doc. 2012–19234 Filed 8–6–12; 8:45 am]

BILLING CODE 6450–01–P

[1] FERC confirmed and approved Rate Order No. WAPA–124 on June 29, 2006, in Docket No. EF06–5111–000. See *Order Confirming and Approving Rate Schedules on a Final Basis,* 115 FERC ¶ 62,326.

[2] 76 FR 548 (January 5, 2011).

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9712–7]

Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of corrections to the 2012 Construction General Permit.

SUMMARY: EPA previously announced the issuance of the NPDES general permit for stormwater discharges from construction activity, also referred to as the 2012 Construction General Permit (2012 CGP), in the February 29, 2012 **Federal Register**. Today's action

provides notice of final 2012 CGP issuance for Idaho; Washington (for projects involving federal operators); the Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; the Bad River Band and Lac Du Flambeau Band of Lake Superior Chippewa in Wisconsin. EPA is also today providing notice of its correction of typographical errors made in the 2012 CGP pertaining to New Mexico's state-specific requirements and the state's list of designated Tier 2 and Tier 3 waters, and a correction to EPA's omission of Idaho's list of designated Tier 2 and Tier 3 waters.

DATES: The 2012 CGP became effective in Idaho on April 9, 2012; for federal operators in Washington on April 13, 2012; and for the above-referenced Tribal areas in Minnesota and Wisconsin on May 9, 2012. These effective dates provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2008 CGP on February 15, 2012. The 2012 CGP and the authorization to discharge will expire at midnight on February 16, 2017. Within 90 days of the permit's date of issuance, operators of existing projects must submit an NOI for coverage under the new permit. Therefore, for existing projects located in areas in the State of Idaho (except for Indian country) NOIs must be submitted by no later than July 8, 2012. For existing projects located in areas in the State of Washington (except for Indian country) subject to construction activity by a Federal Operator, NOIs must be submitted by no later than July 12, 2012. For existing projects located in the following areas, NOIs must be submitted no later than August 7, 2012: The Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; the Bad River Band and Lac Du Flambeau Band of Lake Superior Chippewa in Wisconsin. Operators of new projects who elect to be covered under the 2012 CGP are required to submit an NOI for coverage at least 14 days prior to the commencement of earth-disturbing activities. If a permitted operator is transferring control of a construction project to a new operator, the new operator must submit a NOI 14 days prior to the date of transfer.

In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on the date of this publication. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be had by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued for purposes of judicial review. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent for projects located in the areas listed above are provided as part of this action.

FOR FURTHER INFORMATION CONTACT: For further information on the CGP, contact the appropriate EPA Regional office listed in Section I.C, or you can send an email to *cgp@epa.gov*. You may also contact Greg Schaner or Erika Farris, EPA Headquarters, Office of Water, Office of Wastewater Management at tel.: *schaner.greg@epa.gov* or *farris.erika@epa.gov,* respectively.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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B. Correction of Typographical Errors in New Mexico Requirements
C. Correction to Omission of Idaho's List of Sensitive Waters
III. Compliance With Other Statutes

I. General Information

EPA summarized the CGP permit conditions, as well as changes from the previous version of the CGP, in the February 29, 2012, **Federal Register** notice.

A. Does this action apply to me?

The final 2012 construction general permit (also referred to as ''CGP'' or ''2012 CGP'') applies to the following construction activities:

TABLE 1—ENTITIES POTENTIALLY REGULATED BY THIS PERMIT

Category	Examples of affected entities	North American Industry Classification System (NAICS) code
Industry	Construction site operators disturbing 1 or more acres of land, or less than 1 acre but part of a larger common plan of development or sale if the larger common plan will ultimately disturb 1 acre or more, and performing the following activities:	
	Construction Buildings	236
	Heavy and Civil Engineering Construction	237

EPA does not intend the preceding table to be exhaustive, but provides it as a guide for readers regarding entities likely to be regulated by this action. This table lists the types of activities that EPA is now aware of that could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility is regulated by this action, you should carefully examine the definition of ''construction activity'' and ''small construction activity'' in existing EPA regulations at 40 CFR 122.26(b)(14)(x) and 122.26(b)(15), respectively. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed for technical information in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How can I get copies of these documents and other related information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2010–0782. 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. Although all documents in the

docket are listed in an index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available 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.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the United States government on-line source for Federal regulations at *http://www.regulations.gov.*

Electronic versions of this final permit and fact sheet are available on EPA's NPDES Web site at *http://www.epa.gov/npdes/stormwater/cgp.*

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 submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/dockets.* Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Facility identified in Section I.B.1.

C. Who are the EPA regional contacts?

For EPA Region 5, contact Brian Bell at tel.: (312) 886–0981 or email at *bell.brianc@epa.gov.*

For EPA Region 6, contact Suzanna Perea at tel.: (214) 665–7217 or email at *perea.suzanna@epa.gov.*

For EPA Region 10, contact Margaret McCauley at tel.: (206) 553–1772 or email at *mccauley.margaret@epa.gov.*

II. Summary of Permit Actions

A. Issuance of 2012 CGP for Additional States and Tribes

On February 16, 2012, EPA issued the 2012 CGP for most of the areas where EPA is the permitting authority. Because EPA had not yet received Clean Water Act Section 401 certifications from certain states and tribes, EPA was not able to issue the final CGP in these areas. The following states and tribes were affected:

- The State of Idaho;
- Federal operators in Washington;
- The Fond Du Lac Band and Grand Portage Band of Lake Superior Chippewa in Minnesota; and
- The Bad River, Lac Du Flambeau, and Sokaogon Chippewa (Mole Lake) Community in Wisconsin.

Now that EPA has received the required Clean Water Act 401 certifications, the Agency has issued the final 2012 CGP for these areas, except for the Sokaogon Chippewa (Mole Lake) Community in Wisconsin, who denied certification of the permit. Pursuant to CWA section 401(d), the limitations and requirements contained in these certifications are now conditions of the 2012 CGP and are included in Part 9 of the permit. See Parts 9.3, 9.7.1, and 9.7.3.

The complete text of the updated 2012 CGP as well as additional information on Webcasts, Guidance, and Other Implementation Assistance can be obtained through EPA's Web site at *http://www.epa.gov/npdes/stormwater/cgp.*

B. Correction of Typographical Errors in New Mexico Requirements

Following the issuance of the 2012 CGP on February 16, 2012, EPA discovered that a few of the requirements in Part 9.4.1 were incorrectly transcribed from the State of New Mexico's Section 401 certification conditions. The errors related to EPA's misinterpretation of a few of the state's site stabilization conditions. Additionally, EPA learned that the permit's list of New Mexico waterbodies designated by the state as Tier 2 or Tier 3 for antidegradation purposes (Appendix F) was inaccurate. As a result of the errors, Appendix F did not properly inform construction operators of which waters are designated by the state as Tier 2; construction sites discharging to Tier 2-designated waters are subject to stricter stabilization and inspection requirements. See Part 3.3.2. In consultation with the state, EPA has corrected the errors and included updated requirements in Part 9.4.1 and Appendix F of the permit.

C. Correction to Omission of Idaho's List of Sensitive Waters

Subsequent to permit issuance, EPA also discovered that it had erroneously omitted Idaho's list of state Tier 2 and 3 waters (Appendix F). In consultation with the state, EPA has corrected the omission, and has updated the Appendix F list to include instructions on how to determine if particular waters are designated as Tier 2 or 3.

III. Compliance With Other Statutes

EPA summarized the Agency's compliance with the National Environmental Policy Act (NEPA), Executive Orders 12866 and 13563, Executive Order 12898, and Executive Order 13175 in the February 29, 2012 **Federal Register** notice. See 77 FR 12292 for more information.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: May 30, 2012.

Michael A. Bussell,

Director, Office of Water and Watersheds, EPA Region 10.

Dated: May 31, 2012.

Timothy C. Henry,

Associate Director, Water Division, EPA Region 5.

Dated: May 30, 2012.

William K. Honker, P.E.,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 2012–19307 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9712–6]

Notification of Two Public Quality Review Teleconferences of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the chartered SAB to conduct quality reviews of: (1) An SAB draft review report on EPA's ecological assessment action plan and (2) an SAB draft review report on EPA's accounting framework for biogenic carbon dioxide emissions from stationary sources.

DATES: The public teleconference on August 28, 2012, will be held from 2:00 p.m. to 5:00 p.m. The public teleconference on August 31, 2012, will be held from 11:00 a.m. to 2:00 p.m.

ADDRESSES: The public teleconferences will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information the quality review teleconferences should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400R), 1200 Pennsylvania Avenue NW., Washington, DC 20460; via telephone/voice mail (202) 564–2218; fax (202) 565–2098 or via email at *nugent.angela@epa.gov.* General

information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the EPA Science Advisory Board will hold two public teleconferences to conduct quality reviews of two SAB draft reports. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background

Quality review is a key function of the chartered SAB. Draft reports prepared by SAB committees, panels, or work groups must be reviewed and approved by the chartered SAB before transmittal to the EPA Administrator. The chartered SAB makes a determination in an open, public meeting consistent with FACA about the quality of all draft reports and determines whether the report is ready to be transmitted to the EPA Administrator.

August 28, 2012 teleconference. The purpose of the August 28, 2012 teleconference is for the chartered SAB to conduct a quality review of a draft SAB report entitled ''SAB Review (7–24–12 Draft) of the EPA's Ecological Assessment Action Plan.'' The EPA's Office of the Science Advisor requested that the SAB review the agency's ecological assessment action plan developed in response to recommendations in a 2007 SAB report, ''Advice to EPA on Advancing the Science and Application of Ecological Risk Assessment in Environmental Decision-Making'' (EPA–SAB–08–002). Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/RAF%20Eco%20Action%20Plan?OpenDocument.*

August 31, 2012 teleconference. The purpose of the August 31, 2012 teleconference is for the chartered SAB to conduct a quality review of a draft SAB report entitled ''SAB Review (7–26–12 Draft) of EPA's Accounting Framework for Biogenic CO_2 Emissions from Stationary Sources (September 2011).'' The EPA's Office of Air and Radiation requested the SAB review the scientific and technical issues associated with an agency draft framework that assesses options for accounting for carbon dioxide emissions from biogenic sources. Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Accounting%20for%20biogenic%20CO2?OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of the teleconferences will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconferences.

Procedures for Providing Public Input: Public comment for consideration by EPA's federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a federal advisory committee is different from the process used to submit comments to an EPA program office. Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit relevant comments pertaining to the group providing advice, EPA's charge questions and EPA review or background documents. Input from the public to the SAB will have the most impact if it consists of comments that provide specific scientific or technical information or analysis for the SAB panel to consider or if it relates to the clarity or accuracy of the technical information. Members of the public wishing to provide comment should contact the DFO for the relevant advisory committee directly. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. Those interested in being placed on the public speakers list for the August 28 and 31, 2012 teleconferences should contact Dr. Nugent at the contact information provided above by August 21, 2012. *Written Statements:* Written statements for the August 28, 2012, teleconference should be supplied to the DFO via email to *nugent.angela@epa.gov* by August 21, 2012. Written statements for the August 31, 2012, teleconference should be supplied to the DFO via email to *nugent.angela@epa.gov* by August 24, 2012. Written statements should be supplied in one of the following acceptable file format: Adobe Acrobat PDF, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Nugent, as appropriate at the contact information provided above. To request accommodation of a disability, please contact her preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: July 26, 2012.

Thomas H. Brennan,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2012–19310 Filed 8–6–12; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on August 9, 2012, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available) and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- July 12, 2012.

B. New Business

- Investments in Unincorporated Business Entities—Proposed Rule.

Closed Session *

- Office of Secondary Market Oversight Quarterly Report.

Dated: August 3, 2012.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2012–19435 Filed 8–3–12; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–09]

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 ''Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances,'' which has been assigned control 2590–0008 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: Interested persons may submit comments on or before October 9, 2012.

ADDRESSES: Submit comments to FHFA using any *one* of the following methods:

- *Email: RegComments@fhfa.gov.* Please include Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances (No. 2012–N–09) in the subject line of the message.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, Washington, DC 20024, ATTENTION: Public Comments/Proposed Collection; Comment Request: Federal Home Loan Bank Acquired Member Assets, Core Mission Activities, Investments and Advances (No. 2012–N–09).

We will post all public comments we receive without change, including any personal information you provide, such as your name, address (mailing and email), and telephone number 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 Federal Housing Finance Agency, 400 Seventh Street SW., Eighth Floor, 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: Rajkumar Thangavelu, Financial Database Specialist at 202–649–3943 (not a toll-free number), *Rajkumar.Thangavelu@fhfa.gov.* The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

The Federal Home Loan Banks (Banks) are authorized under 12 CFR part 955 to acquire from their member financial institutions and non-member housing associates certain home mortgage loans and related assets, which are referred to as ''Acquired Member Assets'' or ''AMA.'' In conjunction with this authority, each Bank that acquires AMA is required by regulation to report to FHFA certain data regarding each loan acquired, as specified in FHFA's Data Reporting Manual (DRM). The DRM specifies 87 data elements that must be reported semi-annually for each new loan acquired, as well as 22 additional data elements that must be reported semi-annually for existing AMA loans or loan participations held in the Bank's portfolio. The DRM also requires that the Banks report aggregated AMA loan data on a quarterly basis. FHFA uses the collected loan-level and aggregated AMA data to monitor the safety and soundness of the Banks and the extent to which the Banks are fulfilling their statutory housing finance mission through their AMA programs.[1]

Since 2010, FHFA has also published the previous calendar year's loan-level AMA data in an online public use database.[2] The agency maintains this public use database in order to fulfill its duties under section 10(k) of the Federal Home Loan Bank Act (Bank Act), which requires that the Banks report to FHFA specified census tract-level data relating to purchased mortgages and that the agency make this data available to the public in a useful form.[3] At the time that Congress enacted section 10(k) in 2008, the Banks were already reporting most of the data referenced in that provision pursuant to the existing requirements of part 955 and the DRM. In order to implement fully the new statutory requirements, FHFA amended the DRM in September 2009 to require the Banks to report to FHFA six additional data elements relating to newly-acquired AMA loans (in addition to then-existing 81 data elements) beginning in February 2010.

While each Bank that acquires or holds AMA loans must report both loan-level and aggregated AMA data directly to FHFA, the Bank initially must collect some of the underlying loan-level data from the member institution or housing associate from which the Bank acquires the loan (this is usually, but not always, the originator of the loan). The Bank typically collects the data for a particular AMA loan from the seller at the time the Bank agrees to acquire the loan. The Bank then uses this loan-level data to derive many of the other data elements that it is required to report to FHFA. For example, from the address of the property that secures the loan, a Bank is able to determine from publicly-available information the census tract code (and other similar geographic codes) for the property, as well as the median family income, and other data regarding the census tract or other defined geographic area. With this additional information, the Bank is also able to calculate various ratios, such as the ratio of the borrower's income to the area median family income, which it is required to report under the DRM. Finally, some of the loan-level data originates with the Bank itself, such as the name of the acquiring Bank, the unique loan number assigned to the acquired loan, and the AMA program under which the loan was acquired.

All but 8 to 10 of the data elements provided by the seller to the acquiring Bank are information that any purchaser of mortgage loans would require a seller to furnish in the ordinary course of business, even in the absence of any statutory or regulatory requirements. For example, the Bank must report, and the seller must therefore initially provide, data on: The location and type of the residential property securing the loan; the annual income and the debt-to-

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

[1] FHFA is responsible for supervising the safety and soundness of the Banks, as well as the fulfillment of the Banks' statutory housing finance mission. See 12 U.S.C. 4513(a)(1).

[2] This public use database is accessible at *http://www.fhfa.gov/Default.aspx?Page=304.*

[3] *See* 12 U.S.C. 1430(k).

income ratio of the borrower and any co-borrowers; and the unpaid principal balance, term-to-maturity, interest rate, and type (*i.e.,* fixed- or adjustable-rate) of the loan. The remaining data that would not normally be exchanged in the ordinary course of business comprises information identifying the race, ethnicity, and gender of the borrower and any co-borrowers, which are items that the Banks are required to aggregate and report by census-tract to FHFA under section 10(k) of the Bank Act. It is these few items that comprise the actual information collection requirement to which Bank members and housing associates may be required to respond.

The OMB control number for the information collection, which expires on October 31, 2012, is 2590–0008. The likely respondents are member and non-member financial institutions that sell AMA assets to Banks.

B. Burden Estimate

FHFA estimates that the hour burden associated with the AMA collection will be lower than that estimated when the agency last requested clearance for this control number. FHFA estimates that the total annual average number of AMA loans acquired by all Banks will be 48,000 and that the average time needed for a respondent to record and transmit the relevant data to the acquiring Bank will be 5 minutes per loan. Accordingly, the estimate for the total annual hour burden on respondents is 4,000 hours (48,000 loans × 5 minutes per loan).

C. Comment Request

FHFA requests written comments 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, including through the use of automated collection techniques or other forms of information technology.

Dated: July 31, 2012.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2012–19243 Filed 8–6–12; 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 applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Oriental Financial Group Inc.,* San Juan, Puerto Rico; to acquire 100 percent of the voting shares of BBVAPR Holding Corporation, and thereby indirectly acquire Banco Bilbao Vizcaya Argentaria Puerto Rico, both in San Juan, Puerto Rico.

Board of Governors of the Federal Reserve System, August 2, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–19291 Filed 8–6–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Withdrawal of the Commission Policy Statement on Monetary Equitable Remedies in Competition Cases

AGENCY: Federal Trade Commission.

ACTION: Notice of withdrawal of Commission policy statement.

SUMMARY: In 2003 the Federal Trade Commission issued a Policy Statement on Monetary Remedies in Competition Cases. The Commission has now withdrawn the Policy Statement.

DATES: *Effective Date:* July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Seidman, Attorney, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, 202–326–3296

SUPPLEMENTARY INFORMATION:

Statement of the Commission, Effecting the Withdrawal of the Commission's Policy Statement on Monetary Equitable Remedies in Competition Cases (July 31, 2012)

In 2003, the Federal Trade Commission issued the Policy Statement on Monetary Remedies in Competition Cases (''Policy Statement''),[1] which outlined an analytical framework to guide Commission determination of appropriate circumstances for the use of monetary equitable remedies in federal court. Although intended to clarify past Commission views on this topic, the practical effect of the Policy Statement was to create an overly restrictive view of the Commission's options for equitable remedies.[2] Accordingly, the Commission withdraws the Policy Statement and will rely instead upon existing law, which provides sufficient guidance on the use of monetary equitable remedies.

As past cases demonstrate, disgorgement and restitution can be effective remedies in competition matters, both to deprive wrongdoers of unjust enrichment and to restore their victims to the positions they would have occupied but for the illegal behavior. Because the ordinary purpose and effect of anticompetitive conduct is to enrich wrongdoers at the expense of consumers, competition cases may often be appropriate candidates for monetary equitable relief. Although our decisions and orders generally focus on structural

[1] Fed. Trade Comm'n, Policy Statement on Monetary Equitable Remedies in Competition Cases, 68 FR 45,820 (Aug. 4, 2003) [hereinafter ''Policy Statement''].

[2] Although footnote 4 of the Policy Statement notes that ''[i]t does not create any right or obligation, impose any element of proof, or adjust the burden of proof or production of evidence on any particular issue, as those standards have been established by the courts,'' we are concerned that parties could mistakenly argue that the factors laid out in the Policy Statement are binding on the Commission, thus creating an unnecessary side issue in litigation. *Id.* at n.4.

or behavioral remedies intended to curb future competitive harm, the agency's mission to protect consumers and competition also includes, where appropriate, taking action to remedy the actual, realized effects of antitrust violations. The policy of depriving wrongdoers of the fruits of their misconduct is evident in the Commission's consumer protection work, where the Commission regularly seeks and attains monetary remedies. Accordingly, while disgorgement and restitution are not appropriate in all cases, we do not believe they should apply only in ''exceptional cases,'' as previously set out in the Policy Statement.[3]

The Policy Statement provided three factors for the Commission to consider in potential disgorgement (or, to some extent, restitution) cases: (1) Whether the underlying violation is ''clear''; [4] (2) whether there is a reasonable basis to calculate the remedial payment; and (3) whether remedies in other civil or criminal litigation are likely to accomplish fully the purposes of the antitrust laws. While the second factor does no more than restate existing legal standards, the other two factors may impose constraints on the Commission beyond the requirements of the law.

As to the first factor, rarity or clarity of the violation is not an element considered by the courts in disgorgement requests.[5] Indeed, some have erroneously interpreted the clarity factor to mean that disgorgement should not be sought in cases of first impression. Whether conduct is common or novel, clearly a violation or never before considered, has little to do with whether the conduct is anticompetitive; some novel conduct can violate the antitrust laws and can be even more egregious than ''clear'' violations. Moreover, a notice requirement may be understood to suggest that disgorgement is a punitive tool akin to fines or imprisonment. It is not. Rather, it is designed, when used in conjunction with other forms of equitable relief, to return the market to the condition that existed before the violation occurred, and to ensure that the party that engaged in the anticompetitive conduct does not retain the profits derived from that conduct. We therefore do not see a basis for creating a heightened standard for disgorgement in cases brought under the federal antitrust statutes.[6]

The third factor also may place an undue burden on the Commission. Specifically, the Policy Statement provides that the Commission will consider whether ''other remedies are likely to fail to accomplish fully the purposes of the antitrust laws[.]'' [7] That language may be read to require that the Commission demonstrate the insufficiency of other actions to secure monetary equitable remedies. If misinterpreted in that manner, such a burden is inappropriate. The question of whether there are alternative plaintiffs that may seek or are seeking monetary relief is relevant in this context, but it is not dispositive. It is only one of several questions that might usefully be asked in deciding whether a Commission imposed monetary remedy is appropriate and necessary.

It has been our experience that the Policy Statement has chilled the pursuit of monetary remedies in the years since the statement's issuance. At a time when Supreme Court jurisprudence has increased burdens on plaintiffs, and legal thinking has begun to encourage greater seeking of disgorgement,[8] the FTC has sought monetary equitable remedies in only two competition cases since we issued the Policy Statement in 2003.[9] Although many of the issues explored in the Policy Statement will continue to inform our future consideration of the use of monetary equitable remedies, we withdraw the Policy Statement to clarify that the Commission will assess the use of those remedies on the basis of relevant law. Existing case law suffices to guide our use of disgorgement and restitution remedies, and we will evaluate the unique circumstances of each case through that framework.

As always, the Commission will exercise responsibly its prosecutorial discretion in determining which cases are appropriate for disgorgement. The Commission regards disgorgement as one of many remedial solutions at its disposal in competition cases, and will employ it accordingly to protect consumers and promote competition.

By direction of the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark,

Secretary.

[3] *Id.* at 45,821 (''In general, we will continue to rely primarily on more familiar, prospective remedies, and seek disgorgement and restitution in exceptional cases.'').

[4] This factor did not apply to restitution.

[5] *See, e.g., United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 638–42 (S.D.N.Y. 2011) (supporting the Department of Justice's settlement of Sherman Act claims with disgorgement); *Fed. Trade Comm'n* v. *Mylan Laboratories,* 62 F. Supp. 2d 25, 36–37 (D.D.C. 1999) (upholding the FTC's ability to require disgorgement in a competition case). We note that the Department of Justice is not subject to the heightened standards articulated by the Commission in the Policy Statement.

[6] In addition to violating the federal antitrust statutes, anticompetitive conduct generally—and novel conduct in particular—may at times constitute a stand-alone violation of Section 5 of the FTC Act. The scope of the Commission's Section 5 enforcement authority is inherently broader than the antitrust laws, in keeping with Congressional intent to create an agency that would couple expansive jurisdiction with more limited and, typically, forward-looking remedies. We do not intend to use monetary equitable remedies in stand-alone Section 5 matters.

[7] Policy Statement, 68 FR at 45,822.

[8] *See, e.g.,* Einer Elhauge, *Disgorgement as an Antitrust Remedy,* 76 ANTITRUST L.J. 79 (2009).

[9] *Fed. Trade Comm'n* v. *Perrigo Co.,* No. 1:04CV1397 (D.D.C. Aug. 12, 2004); *Fed. Trade Comm'n* v. *Lundbeck, Inc.,* No. 08–6379, 2010 WL 3810015 (D. Minn. Aug. 31, 2010).

Statement of Commissioner Maureen K. Ohlhausen, Dissenting From the Commission's Decision To Withdraw Its Policy Statement on Monetary Equitable Remedies in Competition Cases (July 31, 2012)

I dissent from the majority's decision to withdraw the Commission's 2003 Policy Statement on Monetary Equitable Remedies in Competition Cases (''Policy Statement'').[1]

The Policy Statement had a strong pedigree. It was issued in 2003 through a 5–0 bipartisan vote.[2] The Policy Statement subsequently received a unanimous endorsement by the Antitrust Modernization Commission (''AMC''), which concluded in 2007 that ''[t]here is no need to clarify, expand, or limit the agencies' authority to seek monetary equitable relief. The [AMC] endorses the Federal Trade Commission's policy governing its use of monetary equitable remedies in competition cases.'' [3] Other well-respected antitrust practitioners, such as former FTC Chairman Pitofsky, also have expressed support for using disgorgement only in exceptional cases.[4]

Rescinding the bipartisan Policy Statement signals that the Commission will be seeking disgorgement in

[1] Fed. Trade Comm'n, Policy Statement on Monetary Equitable Remedies in Competition Cases, 68 FR 45,820 (Aug. 4, 2003).

[2] Press Release, Fed. Trade Comm'n, FTC Issues Policy Statement on Use of Monetary Remedies in Competition Cases (July 31, 2003), *available at http://www.ftc.gov/opa/2003/07/disgorgement.shtm.*

[3] Antitrust Modernization Comm'n, Report and Recommendations 288 (2007). In fact, four of the AMC Commissioners recommended ''that the DOJ adopt a policy similar to the FTC's Policy Statement to articulate the circumstances in which it would exercise its authority to seek equitable monetary remedies.'' *Id.* n.*.

[4] *See* Statement of Chairman Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson, Hearst Trust, File No. 991–0323, at 1, available at *http://www.ftc.gov/os/2001/04/hearstpitantthom.htm* (''The remedy of disgorgement should be sought by the Commission in competition cases only in exceptional circumstances.'').

circumstances in which the three-part test heretofore utilized under the Statement is not met, such as where the alleged antitrust violation is not clear or where other remedies would be sufficient to address the violation. I have significant concerns about sending such a signal and seeking disgorgement in such situations.

In withdrawing the Policy Statement, the majority makes the vague assertion that ''[i]t has been our experience that the Policy Statement has chilled the pursuit of monetary remedies in the years since the statement's issuance.'' [5] I have not been presented with any evidence that the Policy Statement has inappropriately constrained the Commission in the nine years it has been in effect. This begs the questions why the agency needs to rescind the Policy Statement now and why it should not perhaps be revised rather than rescinded altogether.

The guidance in the Policy Statement will be replaced by this view: ''[T]he Commission withdraws the Policy Statement and will rely instead upon existing law, which provides sufficient guidance on the use of monetary equitable remedies.'' [6] This position could be used to justify a decision to refrain from issuing any guidance whatsoever about how this agency will interpret and exercise its statutory authority on any issue. It also runs counter to the goal of transparency, which is an important factor in ensuring ongoing support for the agency's mission and activities. In essence, we are moving from clear guidance on disgorgement to virtually no guidance on this important policy issue.

Finally, I am troubled by the seeming lack of deliberation that has accompanied the withdrawal of the Policy Statement. Notably, the Commission sought public comment on a draft of the Policy Statement before it was adopted. That public comment process was not pursued in connection with the withdrawal of the statement. I believe there should have been more internal deliberation and likely public input before the Commission withdrew a policy statement that appears to have served this agency well over the past nine years.

[FR Doc. 2012–19185 Filed 8–6–12; 8:45 am]

BILLING CODE 6750–01–P

[5] Fed. Trade Comm'n, Withdrawal of the Commission's Policy Statement on Monetary Equitable Remedies in Competition Cases, at 2 (July 31, 2012).

[6] *Id.* at 1.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0128]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Congenital Syphilis (CS) Case investigation and Report Form (CDC73.126), (OMB) No.0920–0128, Expiration (03/31/2013)—Revision—Division of STD Prevention (DSTDP), National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Congenital syphilis (CS) is an important sentinel health event that marks potential problems in both prenatal care and syphilis prevention programs. Congenital syphilis (CS) is nearly 100% preventable by early detection and treatment of syphilis in pregnant women before or during pregnancy.

Reducing congenital syphilis is a national objective in the U.S. Department of Health and Human Services report entitled, ''Healthy People 2020''.

The CDC continues to collect and report information on congenital syphilis morbidity as part of its ongoing Sexually Transmitted Disease (STD) surveillance efforts. A reporting form for congenital syphilis (CDC Form 73.126) was initiated in 1983 to improve detection, case management, and treatment of congenital syphilis cases. Continued data collection will assist in identifying needs for congenital syphilis prevention efforts nationwide.

The current CS reporting form was revised and approved by OMB in 2009 to collect information based on the surveillance case definition and removal of Reporting city information. It is being used by all health jurisdictions reporting CS to CDC as part of the National Notifiable Diseases Surveillance. For the new approval period, CDC requests elimination of the field ''Did the infant/child have an IgM-specific treponemal test?'' This data element is no longer required because treponemal IgM technologies, for the purpose of identifying CS in an infant, are highly insensitive. The following fields have been added: ''Mothers obstetric history'', ''Did mother have treponemal test result: If so, when was the test performed?'' ''What stage of syphilis did mother have?'', ''Date of Mother's treatment'', ''What was mother's treatment?'' ''Congenital Syphilis Case Classification—Presumptive has been replaced with probable,'' as there is no case definition for presumptive congenital syphilis.

This information collection is authorized under Sections 301 and 318 of the Public Health Service Act (42 U.S.C. 241 and 247c).

The congenital syphilis data will continue to be used to develop intervention strategies and to evaluate ongoing control efforts. There is no cost to respondents other than their time.

ESTIMATE OF ANNUALIZED BURDEN TABLE

Types of respondent	Form name	Number of respondents	Number of responses per respondent	Average Burden per Response (in hours)	Total annual burden (in hours)
State Health Departments	Congenital Syphilis (CS) Case Investigation and Report.	10	11	20/60	37
Territorial Health Agencies	Congenital Syphilis (CS) Case Investigation and Report.	3	11	20/60	11
City and county health departments	Congenital Syphilis (CS) Case Investigation and Report.	4	11	20/60	15
Total		17			63

Dated: July 31, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Directors, Centers for Disease Control and Prevention.

[FR Doc. 2012–19235 Filed 8–6–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-12–12IG]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at 404–639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806.

Proposed Project

Targeted Surveillance and Biometric Studies for Enhanced Evaluation of Community Transformation Grants—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Prevention and Public Health Fund (PPHF) of the Patient Protection and Affordable Care Act of 2010 (ACA) provides an important opportunity for states, counties, territories and tribes to advance public health across the lifespan and to reduce health disparities. The PPHF authorizes Community Transformation Grants (CTG) for the implementation, evaluation, and dissemination of evidence-based community preventive health activities. The CTG Program emphasizes five strategic directions: (1) Tobacco-free living, (2) active lifestyles and healthy eating, (3) high impact, evidence-based clinical and other preventive services, (4) social and emotional well-being, and (5) healthy and safe physical environments.

The CTG Program is administered by the Centers for Disease Control and Prevention (CDC), National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). As required by Section 4201 of the ACA, CDC is responsible for conducting a comprehensive evaluation of the CTG Program which includes assessment over time of measures relating to each of the five strategic directions.

CDC is requesting OMB approval to collect information through two studies needed for these assessments. One study is a telephone and mailed survey (Adult Targeted Surveillance Survey) of a random sample of adults in 20 CTG communities (1000 individuals per community). Respondents will be asked to provide information about household practices and their personal behaviors specific to the five strategic directions (e.g., nutrition). Information from the targeted surveillance surveys will be compared with data from other local, state or national surveillance systems to monitor changes in relevant attitudes, risk behaviors, and other behavioral factors.

The second study for which OMB approval is requested to conduct the Youth and Adult Biometric Study (YABS), in up to 8 CTG areas that are implementing evidence-based strategies to prevent exposure to secondhand smoke and to improve nutrition and physical activity among children and adults (and are part of the targeted surveillance study described above). The YABS will examine the impact of CTG strategies on biometric markers of health status including weight, height (i.e., body mass index or BMI), waist circumference, secondhand smoke exposure, and blood pressure. Each adult respondent in the YABS will be asked to participate in an in-home visit with a trained interviewer, who will collect biometric data about the respondent such as height, weight, saliva, blood pressure, etc. The adult respondent will also be asked to provide information about his or her activity level over a one-week period. Objective measures of activity will be collected through use of an accelerometer, i.e., an electronic meter worn next to the body. In addition, the respondent will maintain a hardcopy activity diary to assist in interpreting the accelerometry data. An adult YABS respondent who is the parent or guardian of a child in the household will be asked to allow one child (age 3–17 years) to participate in the youth component of the YABS. With the child's assent, similar biometric and activity measures will be collected from the child. If the child is between 3 and 11 years of age, the parent or guardian will be asked to complete a Caregiver Survey about the child's behaviors. If the child is between 12 and 17 years of age, he or she will be asked to complete a Youth Survey.

The estimated burden per response is 30 minutes for adults participating in the first study, and up to an additional 60 minutes if the same adult agrees to participate in the YABS study. The estimated burden for youth between 12 and 17 years of age is 50 minutes, and 20 minutes for children aged 3 to 11 years. Caregivers for the younger children will have an estimated burden per response of 20 minutes to complete the Caregiver Survey. The information to be collected will allow CDC to estimate the effect of all CTG interventions on health behaviors and health outcomes in adults and children ages 3–17 years, and to estimate the independent effect of school-based interventions in youth. OMB approval is requested for the first three years of the five-year CTG project period. Participation is voluntary and there are

no costs to respondents other than their time. The total estimated burden hours are 8,301.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)
Adults in CTG Awardee Communities	Adult Targeted Surveillance Survey Recruitment Screener.	10,000	1	2/60
	Adult Targeted Surveillance Survey	10,000	1	28/60
Adults Participants in the Youth and Adult Biometric Study.	Adult Targeted Surveillance Survey Recruitment Screener.	1,300	1	2/60
	Adult Targeted Surveillance Survey	1,300	1	28/60
	Adult Biometric Measures Recruitment Screener (phone/paper).	2,000	1	8/60
	Adult Biometric Measures Recruitment Screener (in-person).	2,000	1	2/60
	Youth Survey Recruitment Screener for Parent/Guardian.	800	1	2/60
	Adult Biometric Measures	2,000	1	30/60
	Adult Activity Diary and Reminder	500	1	20/60
	Caregiver Survey Recruitment Screener	800	1	2/60
	Caregiver Survey	800	1	18/60
	Caregiver Activity Diary (on behalf of young child).	250	1	10/60
Children Participants in the Youth and Adult Biometric Study.	Child or Youth Biometric Measures.	1,600	1	20/60
	Youth Activity Diary	250	1	10/60
	Youth Survey Recruitment Screener for Youth.	800	1	2/60
	Youth Survey	800	1	16/60

Dated: July 31, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Directors, Centers for Disease Control and Prevention.

[FR Doc. 2012–19260 Filed 8–6–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–12–0834]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Occupational injuries and illnesses among emergency medical services (EMS) workers: A NEISS–Work telephone interview survey (0920–0834, Expiration 12/31/2012)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Studies have reported that EMS workers have higher rates of non-fatal injuries and illnesses as compared to the general worker population. As EMS professionals are tasked with protecting the health of the public and treating urgent medical needs, it follows that understanding and preventing injuries and illnesses among EMS workers will have a benefit reaching beyond the workers to the general public.

As mandated in the Occupational Safety and Health Act of 1970 (Pub. L. 91–596), the mission of NIOSH is to conduct research and investigations on occupational safety and health. Related to this mission, the purpose of this project is to conduct research that will provide a detailed description of non-fatal occupational injuries and illnesses incurred by EMS workers. The project will use two related data sources. The first source is data abstracted from medical records of EMS workers treated in a nationally stratified sample of emergency departments. These data are routinely collected by the occupational supplement to the National Electronic Injury Surveillance System (NEISS–Work). The second data source, for which NIOSH is seeking OMB approval for a two year extension, is responses to telephone interview surveys of the injured and ill EMS workers identified within NEISS–Work. Collection of telephone interview data began in July 2010.

Data collected under the original OMB approval for this project indicate that EMS workers are willing to respond to detailed questions about their occupational injury and related circumstances. However, in order to obtain enough data to produce stable, detailed national estimates, data collection should continue until July 1, 2014. This will provide a total of four years of data for analysis. The only revisions to this project are related to a reduced annual sample, based on the annual number of interviews collected to-date, and a reduced cost burden due to a decrease in estimated respondent costs due to a decrease in the average hourly wage of EMS workers.

The ongoing telephone interview surveys will supplement NEISS–Work data with an extensive description of EMS worker injuries and illnesses, including worker characteristics, injury types, injury circumstances, injury

outcomes, and use of personal protective equipment. Previous reports describing occupational injuries and illnesses to EMS workers provide limited details on specific regions or sub-segments of the population. As compared to these earlier studies, the scope of the telephone interview data will be broader as it includes sampled cases nationwide and has no limitations in regards to type of employment (i.e., volunteer versus career). Results from the telephone interviews will be weighted and reported as estimates of EMS workers treated for occupational injuries and illnesses in emergency departments.

The sample size for the telephone interview survey is estimated to be approximately 150 EMS workers annually for the proposed four year duration of the study. This estimate is based on preliminary analysis of the data collected to-date. This revised estimate was reduced from the original sample projection of 175 EMS workers. Consequently, the burden has been reduced as well. Each telephone interview will take approximately 20 minutes to complete, resulting in an annualized burden estimate of 50 hours.

This project is a collaborative effort between the Division of Safety Research in the NIOSH and the Office of Emergency Medical Services in the National Highway Traffic Safety Administration. Both agencies have a strong interest in improving surveillance of EMS worker injuries and illnesses to provide the information necessary for effectively targeting and implementing prevention efforts and, consequently, reducing occupational injuries and illnesses among EMS workers.

There is no cost to respondents other than their time. The total estimated annualized burden hours are 50.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
EMS workers	150	1	20/60

Dated: July 31, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Directoros, Centers for Disease Control and Prevention.

[FR Doc. 2012–19255 Filed 8–6–12; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–12PZ]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Kimberly S. Lane, at 1600 Clifton Road, MS D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Proficiency Testing in U.S. Clinical Laboratories: Perception, Practices and Potential for Expanded Utility—NEW—the Office of Surveillance, Epidemiology and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The primary focus of this project is to conduct a systematic analysis in order to understand which types of laboratories would be likely to follow Proficiency Testing (PT) Good Laboratory Practices (GLPs). The Association of Public Health Laboratories (APHL) and CDC (Centers for Disease Control and Prevention) hope to learn more about which laboratories are not following Clinical Laboratory Amendments of 1988 (CLIA) PT guidelines and the reasons why. Our survey population frame is 20,500 Certificate of Compliance laboratories and 16,800 Certificate of Accreditation laboratories. All of these laboratories are required to perform PT in accordance with the CLIA. Many of these labs also use their PT results internally for laboratory quality improvement (PT GLPs).

In addition, Centers for Medicaid and Medicare Services (CMS) and CDC are currently collaborating to revise the CLIA regulations to update the list of non-microbiological tests (analytes) for which PT is required, and to update the requirements for microbiology PT. Both of these changes are expected to have some impact on clinical and public health laboratories, but CDC has very little data to estimate the impact. This information is needed to complete the regulatory impact analysis. The Department of Health and Human Services knows very little about which analytes are tested in the affected laboratories other than those for which PT is required by CLIA regulations. This survey will ask laboratories whether they offer testing for candidate analytes, and how the regulatory changes would impact their costs and PT practices in their laboratory. Similarly for microbiology laboratories, CMS and CDC are considering whether to remove the levels of service model for PT enrollment. Therefore the survey will ask a sample of microbiology laboratories how this and other potential changes would impact their costs, PT practices, and perceived risk of failing PT.

The goal of this project is to complete a needs assessment to identify the populations that would benefit from receiving information on PT GLPs. Since laboratories already pay for these

PT materials, information provided to further use PT for quality improvement purposes has the potential to further improve laboratory quality at no additional cost to U.S. clinical laboratories.

The first phase of this project was conducted by Association of Public Health Laboratories (APHL) through focus group research in 2011. The focus groups explored how clinical and public health laboratories perceived commercial PT programs, and explored the ways in which the laboratories used PT (GLPs) to assure and improve the quality of testing in their own laboratories. This second phase of the project will be administration of a survey to help identify laboratories that would benefit from learning additional uses for PT and providing information on how to disseminate them to laboratories in a strategic and targeted way.

The goal is to achieve an 80% response rate (29,840 out of 37,300 labs). APHL and CDC will strive to ensure a high response rate by promoting the survey through advertisements in laboratory trade publications, at professional meetings, and possibly through programs and laboratory accreditation organizations.

The cohort of laboratories will be all laboratories listed in the Centers for Medicare and Medicaid (CMS) Online Survey, Certification and Reporting (OSCAR) database. The OSCAR database contains demographic information and practice characteristics for all laboratories included in the database.

The survey will be administered through a web-based survey system, specifically Survey Monkey. APHL will send each laboratory a postmarked letter explaining the survey and providing them with a link to log in to the survey with a unique identifier on their address label. Two weeks afterwards, APHL will follow-up with a postcard reminder which will also include that unique identifier on the address label.

Approximately 37,300 clinical laboratories will be targeted and solicited to take the on-line survey. Each laboratory is permitted to submit only one completed survey. Preliminary pilot testing indicates completion of the on-line survey will take approximately 15 minutes. Assuming a 80% response rate, there would be 29,840 respondents.

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)	Total burden (in hrs)
Laboratorians	Laboratory Practices	29,840	1	20/60	9,947
Total					9,947

Dated: July 31, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Directors, Centers for Disease Control and Prevention.

[FR Doc. 2012–19240 Filed 8–6–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Cross-Site Evaluation of the Infant Adoption Awareness Training Program for Projects Initially Funded in Fiscal Year 2006.

OMB No.: 0970–0371.

Description: The Administration for Children and Families (ACF), Children's Bureau (CB), will conduct the Cross-Site Evaluation of the Infant Adoption Awareness Training Program (IAATP). Title XII, Subtitle A, of the Children's Health Act of 2000 (CHA) authorizes the Department of Health and Human Services to make Infant Adoption Awareness Training grants available to national, regional, and local adoption organizations for the purposes of developing and implementing programs that train the staff of public and non-profit private health service organizations to provide adoption information and referrals to pregnant women on an equal basis with all other courses of action included in non-directive counseling of pregnant women. Participants in the training include individuals who provide pregnancy or adoption information and those who will provide such services after receiving the training, with Title X (relating to voluntary family planning projects), Section 330 (relating to community health centers, migrant health centers, and centers serving homeless individuals and residents of public housing), and CHA-funded school-based health centers, receiving priority to receive the training. A total of six organizations were awarded IAATP funding in 2006.

Section 1201(a)(2)(A) of the IAATP legislation requires grantees to develop and deliver trainings that are consistent with the Best Practice Guidelines for Infant Adoption Awareness Training. The IAATP guidelines address training goals, basic skills, curriculum and training structure. A complete description of the guidelines is available at *http://www.acf.hhs.gov/programs/cb/programs_fund/discretionary/iaatp.htm*.

In addition, grantees are required to conduct local evaluation of program outcomes and participate in the national evaluation of the extent to which IAATP training objectives are met. The Infant Adoption Awareness Training Program: Trainee Survey is the primary data collection instrument for the national cross-site evaluation. Respondents will complete the survey prior to receiving training and approximately 90 days after the training to assess the extent to which trainees demonstrate sustained gains in their knowledge about adoption, and to determine the impact of the training on their subsequent work with pregnant women.

1. Do health care workers who participate in the IAATP training: Demonstrate enhanced knowledge, attitudes, skills, and behaviors with respect to adoption counseling following completion of the program? Provide adoption information to pregnant women on an equal basis with other pregnancy planning options? Demonstrate enhanced awareness of community adoption-related resources and refer expectant mothers to them as needed?

2. Are trainees more confident about discussing all three pregnancy planning options (parenting, abortion, and adoption) in a non-directive counseling style than they were prior to

participating in the training? Cross-site evaluation data will be collected on an annual basis throughout the five-year funding period. Pre-test and follow-up versions of the survey are expected to require approximately 10 to 15 minutes to complete. Estimated response time for the follow-up survey includes time for respondents to access the web-based survey, complete the survey online, and electronically submit the survey. Respondents will not need to implement a recordkeeping system or compile source data in order to complete the survey. Where possible, fields in the follow-up version of the survey will be pre-filled with static data from the respondents pre-test (e.g., demographics, agency type) in order to further expedite completion of the survey and minimize respondent burden.

Respondents: Infant Adoption Awareness Program Trainees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
IAATP: Trainee Survey Pre-Test Administration	1,200	1	0.15	180
IAATP: Trainee Survey Follow-Up Administration	1,200	1	0.10	120

Estimated Total Annual Burden Hours: 300.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–19239 Filed 8–6–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority; Office of Planning, Research and Evaluation

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority The Administration for Children and Families has realigned the Office of Planning, Research and Evaluation (OPRE). This notice establishes the Division of Family Strengthening within OPRE. It realigns research and evaluation functions among the three divisions of OPRE.

FOR FURTHER INFORMATION CONTACT: Naomi Goldstein, Director, Office of Planning, Research and Evaluation, 901 D Street SW., Washington, DC 20447, (202) 401–9220. This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KM, as last amended, 75 FR 42760–42762, July 22, 2010.

I. Under Chapter KM, Office of Planning, Research and Evaluation, delete KM.00 Mission in its entirety and replace with the following:

KM.00 Mission. The Office of Planning, Research and Evaluation (OPRE) is the principal advisor to the Assistant Secretary for Children and Families on improving the effectiveness and efficiency of programs designed to make measurable improvements in the economic and social well-being of children and families.

OPRE provides guidance, analysis, technical assistance, and oversight to ACF programs and across programs in the agency on: strategic planning aimed at measurable results; performance measurement; research and evaluation methodologies; demonstration testing and model development; statistical, policy and program analysis; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery. OPRE, through the Division of Economic Independence, the Division of Child and Family Development, and the Division of Family Strengthening, oversees and manages the research programs under sections 413, 429, 511, 1110, and 2008 of the Social Security Act and section 649 of the Head Start Act, as well as other research authorized by Congress and related to ACF programs and the populations they serve. Activities of OPRE include: Priority setting and analysis; managing and coordinating major cross-cutting, leading-edge studies and special initiatives; and collaborating with states, communities, foundations, professional organizations and others to promote the development of children, family-focused services, parental responsibility, employment, and economic independence. OPRE also provides coordination and leadership in implementing the Government Performance and Results Act Modernization Act (GPRAMA).

II. Under Chapter KM, Office of Planning, Research and Evaluation, delete KM.10 Organization in its entirety and replace with the following:

KM.10 Organization. OPRE is headed by a Director, who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Office of the Director (KMA)
Division of Economic Independence (KMB)
Division of Child and Family Development (KMC)
Division of Family Strengthening (KMD)

III. Under Chapter KM, Office of Planning, Research and Evaluation, delete KM.20, Functions, Paragraph C in its entirety and replace with the following:

C. The Division of Child and Family Development, in cooperation with ACF programs and others, works with Federal counterparts, States, community

agencies, and the private sector to: Improve the effectiveness and efficiency of programs; and foster sound growth and development of children and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: strategic planning and performance measurement for all ACF programs, including child and family development; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division conducts, manages, and coordinates major cross-program, leading-edge research, demonstration, and evaluation studies; develops policy-relevant research priorities; and manages and conducts statistical, policy, and program analyses related to children and families. Division staff also provides consultation, coordination, direction and support for research activities related to children and families across ACF programs.

IV. Under Chapter KM, Office of Planning, Research and Evaluation, add KM.20 Functions, Paragraph D as follows:

D. The Division of Family Strengthening, in cooperation with ACF programs and others, works with Federal counterparts, States, community agencies, and the private sector to: Improve the effectiveness and efficiency of programs; assure the protection of children, youth, and other vulnerable populations; strengthen families; and foster sound growth and development of children, youth and their families.

The Division provides guidance, analysis, technical assistance and oversight in ACF on: child, youth and family development; child safety; statistical, policy and program analysis; surveys, research and evaluation methodologies; demonstration testing and model development; synthesis and dissemination of research and demonstration findings; and application of emerging technologies to improve the effectiveness of programs and service delivery.

The Division conducts, manages, and coordinates major cross-program, leading-edge research, demonstration, and evaluation studies; develops policy-relevant research priorities; and manages and conducts statistical, policy, and program analyses related to strengthening families. Division staff also provides consultation, coordination, direction and support for research activities related to strengthening families across ACF programs.

Dated: July 10, 2012.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2012–19019 Filed 8–6–12; 8:45 am]

BILLING CODE 4184–79–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

2012 Parenteral Drug Association/Food and Drug Administration Joint Regulatory Conference; Compliance Through Quality Systems: Implementing and Advancing a Sustainable Global Quality Culture

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA), in cosponsorship with Parenteral Drug Association (PDA), is announcing a public conference entitled ''Compliance Through Quality Systems: Implementing and Advancing a Sustainable Global Quality Culture.'' The conference will cover current issues affecting the industry as well as explore strategies and approaches for ensuring conformance with regulations to facilitate the development and continuous improvement of safe and effective medical products. The conference establishes a unique forum to discuss the foundations, emerging technologies and innovations in regulatory science, as well as the current quality and compliance areas of concerns. Meeting participants will hear from FDA and industry speakers about the requirements and best practices to consider while implementing robust quality systems in order to deliver the best quality product.

Date and Time: The public conference will be held on September 10, 2012, from 7 a.m. to 6 p.m.; September 11, 2012, from 7:30 a.m. to 6:15 p.m.; and September 12, 2012, from 7:30 a.m. to 12:15 p.m.

Location: The public conference will be held at the Baltimore Marriott Waterfront Hotel, 700 Aliceanna St., Baltimore, MD 21202, 410–385–3000, Fax: 410–895–1900.

Contact: Wanda Neal, Parenteral Drug Association, PDA Global Headquarters, Bethesda Towers, 4350 East West Hwy., Suite 200, Bethesda, MD 20814, 301–656–5900, ext. 111, Fax: 301–986–1093, email: *info@pda.org.*

Accommodations: Attendees are responsible for their own accommodations. To make reservations at the Baltimore Marriott Waterfront Hotel at the reduced conference rate, contact the Baltimore Marriott Waterfront Hotel (see *Location*)—cite the meeting code ''PDA.'' Room rates are: Single: $229, plus 15.5 percent state and local taxes and Double: $229, plus 15.5 percent state and local taxes. Reservations can be made on a space and rate availability basis.

Registration: Attendees are encouraged to register at their earliest convenience. The PDA registration fees cover the cost of facilities, materials, and refreshments. Seats are limited; please submit your registration as soon as possible. Conference space will be filled in order of receipt of registration. Those accepted for the conference will receive confirmation. Registration will close after the conference is filled. Onsite registration will be available on a space available basis on each day of the public conference beginning at 7 a.m. on September 10, 2012. The cost of registration is as follows:

TABLE 1—COST OF REGISTRATION

Affiliation	Through August 10, 2012	After August 10, 2012
Member	$1,700	$1,900
Nonmember	1,949	2,149
Government/Health Authority Member	530	530
Government/Health Authority Nonmember [1]	700	700
Academic Member	700	700
Academic Nonmember [1]	800	800
Student Member	280	280

TABLE 1—COST OF REGISTRATION—Continued

Affiliation	Through August 10, 2012	After August 10, 2012
Student Nonmember [1]	310	310

[1] Applicable nonmember rates.

Please visit PDA's Web site: *http://www.pda.org/pdafda2012* to confirm the prevailing registration fees. (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

If you need special accommodations due to a disability, please contact Wanda Neal (see *Contact*), at least 7 days in advance of the conference.

Registration Instructions: To register, please submit your name, affiliation, mailing address, telephone, fax number, and email address, along with a check or money order payable to ''PDA.'' Mail to: PDA, Global Headquarters, Bethesda Towers, 4350 East West Hwy., Suite 200, Bethesda, MD 20814. To register via the Internet, go to PDA's Web site: *http://www.pda.org/pdafda2012.*

The registrar will also accept payment by major credit cards (VISA/American Express/MasterCard only). For more information on the meeting, or for questions on registration, contact PDA (see *Contact*).

Transcripts: As soon as a transcript is available, it can be obtained in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: The PDA/FDA Joint Regulatory Conference offers the unique opportunity for participants to join FDA representatives and industry experts in face-to-face dialogues. Each year, FDA speakers provide updates on current efforts affecting the development of global regulatory strategies, while industry professionals from some of today's leading pharmaceutical companies present case studies on how they employ global strategies in their daily processes.

Through a series of sessions and meetings, the conference will provide participants with the opportunity to hear directly from FDA experts and representatives of global regulatory authorities on best practices, including:

- Regulatory Submission and Meetings
- Quality Risk Management Implementation
- Manufacturing in the Future
- Quality Systems
- Regulatory Considerations During Development
- Cell Therapy Innovations
- Life Cycle Management
- Process Validation
- Validation FDA Guidance
- Challenges of Contract Manufacturing Organizations
- Contract Agreements
- Drug Safety
- Emerging Active Pharmaceutical Ingredients (API) Regulations
- Investigations
- Emerging API Regulations
- User Fees
- Excipient Best Practices
- Good Manufacturing Practices Foreign Inspections Findings
- Regulatory Process to Approval (Inspectional Readiness)
- Combination Products and Companion Diagnostics

To help ensure the quality of FDA-regulated products, the workshop helps to achieve objectives set forth in section 406 of the FDA Modernization Act of 1997 (21 U.S.C. 393) which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The workshop also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), as outreach activities by Government Agencies to small businesses.

Dated: August 1, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–19295 Filed 8–6–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Availability of Draft Policy Document for Comment

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: This is a Notice of Availability and request for comments on a draft Agency Guidance (''Policy Information Notice'' (PIN)). The draft PIN provides clarification on the sliding fee discount program and related requirements for federally-funded health centers and Federally Qualified Health Center (FQHC) Look-Alikes. The draft PIN, ''Clarification of Sliding Fee Discount Program Requirements,'' is available on the Internet at *http://www.bphc.hrsa.gov/policiesregulations/policies/draftsforcomment.html.*

DATES: Comments must be received by the close of business on September 28, 2012.

ADDRESSES: Comments should be submitted to *OPPDSFPIN@hrsa.gov* by the close of business on September 28, 2012.

SUMMARY: HRSA believes that community input is valuable to the development of policies and policy documents related to the implementation of HRSA programs, including the Health Center Program. Therefore, we are requesting comments on the PIN referenced above. Comments will be reviewed and analyzed, and a final PIN, along with a summary and general response to the comments, will be published as soon as possible after the deadline for receipt of comments.

Background: HRSA provides grants to eligible health centers under Section 330 of the Public Health Service Act (PHS Act) to support the delivery of preventive and primary care services to medically-underserved communities and vulnerable populations. In 2011, grants helped fund approximately 1,200 health center grantees, which provided services at more than 8,500 health care delivery sites and served more than 20.2 million people. There are also approximately 100 FQHC Look-Alikes. As described in section 1861(aa)(4) and section 1905(l)(2)(B) of the Social Security Act, FQHC Look-Alikes do not receive Federal funding under Section 330 of the PHS Act. However, in order to receive the FQHC Look-Alike designation and benefits, FQHC Look-Alikes must meet the statutory, regulatory, and policy requirements for Health Centers Programs under Section 330.

A key requirement of the Health Center Program is for a health center to establish a ''sliding fee discount

program'' that includes a schedule of discounts for services, or ''sliding fee discount schedule,'' that ensures financial barriers to care are minimized for patients who meet certain eligibility criteria. All Section 330-funded health centers and FQHC Look-Alikes must utilize a sliding fee discount schedule that provides discounts to eligible patients based on their family size and income.

The purpose of this PIN is to provide clarification on Health Center Program sliding fee discount program requirements including: (1) A schedule of fees for services; (2) a corresponding schedule of discounts for eligible patients that is adjusted on the basis of the patient's ability to pay (referred to as the sliding fee discount schedule, or SFDS for the purposes of this PIN); and (3) governing board-approved policies and procedures, including those around billing, collections, and waivers or reductions of any fees or payments required by the center for services that support the fee and discount schedules based on an individual's ability to pay. When finalized, this PIN will supersede all other previous Health Center Program guidance and policy issued on this program requirement. However, please note that this policy does not supersede patient billing requirements resulting from a health center's FQHC status under Titles XVIII and XIX of the Social Security Act (the Medicare and Medicaid programs), its implementing regulations, or policies.

HRSA's Bureau of Primary Health Care is making this draft PIN available for comment. When providing comments, please be as specific as possible, and reference the section of the PIN and/or page number(s). Comments will be reviewed and analyzed, and a final PIN, along with a summary and general response to comments, will be published as soon as possible after the comment submission deadline. Comments should be submitted to *OPPDSFPIN@hrsa.gov* by the close of business on September 28, 2012.

FOR FURTHER INFORMATION CONTACT: For questions regarding this notice, please contact the Office of Policy and Program Development, Bureau of Primary Health Care, HRSA, at OPPDSFPIN@hrsa.gov.

Dated: July 31, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–19159 Filed 8–6–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Announcement of Requirements and Registration for ''Stop Bullying Video Challenge''

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration's (HRSA) Maternal and Child Health Bureau, located within the Department of Health and Human Services (HHS), announces the launch of the ''Stop Bullying Video Challenge.'' Bullying is unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior is repeated, or has the potential to be repeated, over time. Bullying can affect everyone—those who are bullied, those who bully, and those who witness bullying. Bullying is linked to many negative outcomes including impacts on mental health, substance use, and suicide. The Federal Partners for Bullying Prevention is a Federal workgroup which is comprised of 9 departments, with 34 offices within those 9 departments, dedicated to preventing and ending bullying in schools and communities across the nation. HRSA and the Federal Partners are launching a video challenge that will encourage and motivate youth to prevent bullying.

The goal of the contest is to create an impact through accepting videos that demonstrate:

1. Peer-to-peer communication,
2. Positive messaging, and
3. Promotion of the *www.stopbullying.gov* Web site. By using these guidelines, contestants will create relevant, youth-designed videos that stand to increase knowledge about bullying and how to prevent it.

DATES: Contestants can begin submission of tools on August 7, 2012, until the end of the submission period October 10, 2012. Judging will take place between October 11 and December 2, 2012. Winners will be notified and prizes awarded no later than December 31, 2012.

FOR FURTHER INFORMATION CONTACT: Erin Reiney, MPH, CHES; Public Health Analyst, 301–443–5848.

AWARD APPROVING OFFICIAL: Mary K. Wakefield, Ph.D., R.N., Administrator, Health Resources and Services Administration.

SUPPLEMENTARY INFORMATION:

Eligible Entities

This video contest is open to U.S. middle and high school students aged 13–18 at the time of entry. Contestants may be individuals or groups (including but not limited to middle and high schools located in the U.S., and youth advocacy groups incorporated in and located in the U.S.). An individual, whether participating singly or in a group, must be a citizen or permanent resident of the U.S. If the contestant is under 18 years of age at the time of entry, the contestant must have permission from a parent or guardian, and an adult must complete and submit the contest entry form. Contestants/submitters must also have all the necessary permissions for individuals heard and/or seen on the submitted video. The permission of the parent or guardian of each person under the age of 18 who is seen or heard in the video is also required. Contestants in this category are encouraged to submit group entries. Employees and contractors of the Federal government are not eligible, nor are their immediate family members. The Contest is subject to all applicable Federal laws and regulations. Participation constitutes contestant's full and unconditional agreement to these Official Rules, which are final and binding in all matters related to the Contest. Eligibility for a prize award is contingent upon fulfilling all requirements set forth herein.

Competition Submission Period and other Submission Requirements

Contestants must submit their videos between August 7 and October 10, 2012. Each contestant must complete and submit the required information on *www.challenge.gov* for the video entered into the Contest. Groups of more than one individual must submit a contest entry through a single designated individual or school within the group. Once a submission is made, the contestant may not make any changes or alter the submission until the judging is complete and winners announced. Contestants remain owners of the intellectual property rights of their submissions. Contestants must upload their video to YouTube as private. To do this, select ''Privacy Settings,'' mark video as private, enter the YouTube username ''stopbullyinggov'' in the box that appears below, then select ''save changes.'' Videos must be uploaded to YouTube in one of the following file formats: WebM, MPEG4, 3GPP, MOV, AVI, MPEGPS, WMV, or FLV.

Contest Guidelines

(1) All tools must be submitted through the Stop Bullying Video Challenge Contest page located at *http://stopbullying.challenge.gov*.

(2) Individual contestants must be a U.S. citizen or legal resident to enter and win. U.S. Government employees, contractors, or grantees and their immediate family members are not eligible to win.

(3) Individuals creating the video must be 13–18 years of age.

(4) Videos must be submitted by an adult, age 18 or older, with one youth lead indicated on the submission form. In cases where the contestant/submitter is an 18-year-old submitting on their own behalf, that individual can also be designated as the youth lead.

(5) An adult must complete the contest entry form and provide valid contact information.

(6) The permission of the parent or guardian of each person under the age of 18 who is seen or heard in the video is also required.

(7) Entries will be judged by an expert panel on the basis of creativity and originality, quality, technical accuracy, and content of the message. HRSA reserves the right not to select a winner if none of the entries received are judged to be of high quality based on the above criteria.

(8) The video must be an original creation by an individual or group of individuals between the ages of 13 and 18. No copyrighted music, video, or images may be used in the video.

(9) The submitted video must not infringe on any third party rights.

(10) Videos previously produced for compensation and videos already posted on *www.stopbullying.gov* are not eligible.

(11) The winner(s) must provide a copy of the original video file to receive the prize funds.

(12) By submitting a video to this contest, contestants grant a royalty-free license to copy, distribute, modify, display and perform publicly and otherwise use, and authorize others to use, your video for any educational purpose throughout the world and in any media.

(13) HRSA reserves the right to make your video available to the general public from its Web site and to distribute it to groups and any other organizations interested in showing it for educational purposes, including, but not limited to, on internet sites, at conferences and events, on television, and other media outlets.

(14) HRSA will disqualify any entries deemed to contain offensive material.

(15) You must have a consent form filled out and signed by each person appearing or heard in the video, and his/her guardian if s/he is a minor. If your video is chosen, you must provide copies of these *signed* consent forms.

(16) Entries must be received or postmarked by October 10, 2012. The winner will be notified via email and announced on the contest Web site in December.

(17) Each entrant must agree to these terms and conditions, or, if a minor, his/her parent or legal guardian.

Formatting Requirements

(1) The video must be 30 seconds to 60 seconds in length, and close with a visual mention of *www.stopbullying.gov*;

(2) You may enter multiple versions (30 seconds to 60 seconds) of your Public Service Announcement (PSA);

(3) The video cannot have been submitted previously in a promotion or contest of any kind or exhibited or displayed publicly through any means previously;

(4) The video must not contain material that violates or infringes another's rights, including but not limited to privacy, publicity or intellectual property rights, or that constitutes copyright or license infringement;

(5) The video must not contain brand names or trademarks;

(6) The video must not contain material that is inappropriate, indecent, obscene, hateful, defamatory, slanderous or libelous;

(7) The video must not contain material that promotes bigotry, racism, hatred or harm against any group or individual or promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation, gender identification or age; and

(8) The video must not contain material that is unlawful, in violation of, or contrary to the laws or regulations in any state where the video is created.

Winner Selection and Judges

Following the deadline for submissions, a panel will judge the videos for accuracy of the information and its compliance with the video requirements shown above. A panel of expert judges will then choose the top three videos submitted. The top three videos will be posted on *www.stopbullying.gov* and recognized as the winners of this PSA contest. The grand prize winner will be selected from the top three videos by a public majority vote via challenge.gov. All three winners will receive a prize. There will be one grand prize award of $2,000 and two runners-up awards of $500 given to winning contestants. An expert panel of judges, qualified by training and experience, will evaluate the submissions on the criteria identified below. Judges will be fair and impartial, may not have a personal or financial interest in, or be an employee, officer, director, or agent of, any entity that is a registered participant in the competition, and may not have a familial or financial relationship with an individual who is a registered contestant. The panel will provide expert advice on the merits of each submission to HRSA officials responsible for final selections for award.

Judging Criteria

Message and Appropriateness to Theme (50%)

- The message is effective at promoting greater public awareness about bullying issues and conveys clear and concise steps that can be taken to motivate youth to prevent bullying.
- Involves kids talking to kids. While working with adults to communicate the message is encouraged, the PSA should feature youth addressing their peers on the issue of bullying.
- Communicates a positive message. The focus should be on how youth can be more than a bystander, rather than a PSA that solely explains why bullying is wrong. HRSA *encourages creating a video that promotes an environment where kindness and respect for others matters.*
- The anti-bullying message is supported by information found on *www.stopbullying.gov,* and includes the Web site URL for 3 seconds at the end of the video.

Creativity & Originality (30%)

- Video concept and approach is unique.
- Entrant employs innovative methods to convey the message.
- Audio and visual enhance, rather than distract from, the underlining message.

Audience Appeal/Quality (20%)

- Audio quality—any dialogue that can be easily understood; music and/or sound effects are of adequate fidelity.
- Visual quality—video production appears professional; any visual effects contribute rather than distract from message.

Winners and Recognition

Winners will be identified and notified prior to the date of public announcement and promotion of winners. All winning tools will be

featured on *www.stopbullying.gov* and *www.challenge.gov,* and via social media channels, including, but not limited to, Facebook, Twitter, and YouTube pages. There will be up to 3 winners.

Intellectual Property Rights

All videos submitted to the Stop Bullying Video Challenge remain the intellectual property of the individuals who developed them. However, the Federal Government maintains a non-exclusive, royalty-free license to use, reproduce, publish, distribute and exhibit the submission/winning video in any and all formats or manner for educational, training and other information purpose consistent with the Federal Partners for Bullying Prevention's mission. Submissions will be made available free of charge to the public. The Federal Government also reserves the right to make all submitted videos available for partners and local access stations to feature winners or local contestants.

Publicity

Except where prohibited, participation in the Contest constitutes the winner's consent to use of the winner's name, likeness, photograph, voice, opinions, and/or hometown and state information by the Contest's sponsors and/or agents for promotional purposes in any media, worldwide, without further payment or consideration.

Copyright

The contestant warrants that the identified individual(s) involved are the sole author(s) and owner(s) of the Contest submission, that the Contest submission completely originates with the identified participants, that it does not infringe upon any copyright or any other rights of any third party of which the contestant(s) is aware, and that it is free of malware. The contestant cannot submit material that participating individuals between the ages of 13 and 18 did not create and do not own. The contestant cannot take material from any other source.

Liability

The contestant/submitter agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property (including any damage that may result from a virus, malware, etc., to Government systems utilized to play the video), revenue, or profits, whether direct, indirect, or consequential, arising from their participation in the competition, whether the injury, death, damage, or loss arises through negligence or otherwise. The contestant/submitter shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for any claim, demand, judgment, or other allegation arising from alleged violation of an individual's trademark, copyright, or other legally protected interest in videos submitted to the Federal Government.

Privacy Policy

Personal information collected for this contest will only be used to contact video submitters about the contest. The contest winners' names (and the names of any honorable mentions selected) will be announced publically, after consultation with the winner and any honorable mentions, as a part of the Stop Bullying Video Challenge award recognition process. All information collected is subject to the ChallengePost privacy policy located at *www.challengepost.com/privacy.*

General Conditions

HRSA reserves the right to cancel, suspend, and/or modify the Contest, or any part of it, for any reason, at HRSA's sole discretion. Participation in this Contest constitutes a contestant's full and unconditional agreement to abide by the Contest's Official Rules found at *http://stopbullying.challenge.gov*.

Authority: 15 U.S.C. 3719.

Dated: August 1, 2012.

Mary K. Wakefield,

Administrator.

[FR Doc. 2012–19225 Filed 8–6–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Interventions Conflicts and Eating Disorders 3.

Date: August 15, 2012.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marina Broitman, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: July 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19186 Filed 8–6–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Clinical Trial Cooperative Agreement Grant Review Meeting.

Date: August 23, 2012.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To Review and Evaluate Grant Applications.
Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John F. Connaughton, Ph.D., Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 31, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–19183 Filed 8–6–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0020; OMB No. 1660–0009]

Agency Information Collection Activities: Proposed Collection; Comment Request, The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency, 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 a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments. This collection allows states to request a major disaster or emergency declaration.

DATES: Comments must be submitted on or before October 9, 2012.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2012–0020. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

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 read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Branch Chief, Declarations Unit, Federal Emergency Management Agency at (202) 646–3886 or *Peggy.Miller@fema.dhs.gov* for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections-Management@dhs.gov.*

SUPPLEMENTARY INFORMATION: Under Sections 401 and 501 of the Richard T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) (42 U.S.C. 5170 and 5190), if a State is impacted by an event of the severity and magnitude that is beyond its response capabilities, the State Governor may seek a declaration by the President that a major disaster or emergency exists. Any major disaster or emergency request must be submitted through FEMA, which evaluates the request and makes a recommendation to the President about what response action to take. If the major disaster or emergency declaration request is granted, the State may be eligible to receive assistance under 42 U.S.C. 5170a–5170c; 5172–5186; 5189c–5189d; and 5192. A State may appeal denials of a major disaster or emergency declaration request for determinations under section 44 CFR 206.46 and seek an adjustment to the cost share percentage under section 44 CFR 206.47.

On May 16, 2012, FEMA published in the **Federal Register** at 77 FR 28615, an emergency collection change notice for its newly implemented FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency form. The form was approved and went into effect on June 20, 1012. FEMA subsequently received a comment in response to this form and is taking it into account for this collection renewal to ensure instructions regarding completion of FEMA Form 010–0–13 are clear and easily understood.

Collection of Information

Title: The Declaration Process: Requests for Preliminary Damage Assessment (PDA), Requests for Supplemental Federal Disaster Assistance, Appeals, and Requests for Cost Share Adjustments.

Type of Information Collection: Extension, without change, of a currently approved information collection.

OMB Number: 1660–0009.

Form Titles and Numbers: FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency.

Abstract: When a disaster occurs in a State, the Governor of the State or the Acting Governor in his/her absence, may request a major disaster declaration or an emergency declaration. The Governor should submit the request to the President through the appropriate Regional Administrator to ensure prompt acknowledgement and processing. The information obtained by joint Federal, State, and local preliminary damage assessments will be analyzed by FEMA regional senior level staff. The regional summary and the regional analysis and recommendation will include a discussion of State and local resources and capabilities, and other assistance available to meet the disaster related needs. The Administrator of FEMA provides a recommendation to the President and also provides a copy of the Governor's request. In the event the information required by law is not contained in the request, the Governor's request cannot be processed and forwarded to the White House. In the event the Governor's request for a major disaster declaration or an emergency declaration is not granted, the Governor may appeal the decision.

Affected Public: State, local or Tribal Government.

Number of Respondents: 56.

Number of Responses: 336.

Estimated Total Annual Burden Hours: 11,088 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	FEMA Form 010–0–13, Request for Presidential Disaster Declaration Major Disaster or Emergency.	56	6	9	3,024	$65.67	$198,586.08
State, Local or Tribal Government.	Initial Data Gathering for Governor's Request/No Form.	56	6	24	8,064	33.64	271,272.96
Total	.....	56	.....	.....	11,088	.....	469,859.04

Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.4 multiplier to reflect a fully-loaded wage rate.

Estimated Cost: The estimated annual cost to respondents for the hour burden is $469,859.04. There are no annual costs to respondents operations and maintenance costs for technical services. There is no annual start-up or capital costs. The cost to the Federal Government is $1,517,483.52.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: July 31, 2012.

Charlene D. Myrthil,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2012–19236 Filed 8–6–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2012–0003; Internal Agency Docket No. FEMA–B–1257]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Title 44, Part 65 of the Code of Federal Regulations (44 CFR Part 65). The LOMR will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents of those buildings. For rating purposes, the currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will become effective on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Deputy Associate Administrator for Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov;* or visit the FEMA Map Information eXchange (FMIX) online at *www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *www.msc.fema.gov* for comparison.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Alabama:						
Escambia	City of Atmore. (12–04–2355P)	The Honorable Howard Shell, Mayor, City of Atmore, City Hall, 201 East Louisville Avenue, Atmore, AL 36502.	City Hall, 201 East Louisville Avenue, Atmore, AL 36502.	*http://www.bakeraecom.com/index.php/alabama/escambia/.*	July 12, 2012	010071
Escambia	Unincorporated areas of Escambia County (12–04–2355P).	The Honorable David M. Stokes, Chairman, Escambia County Board of Commissioners, P.O. Box 848, Brewton, AL 36427.	County Commission, 314 Belleville Avenue, Brewton, AL 36426.	*http://www.bakeraecom.com/index.php/alabama/escambia/.*	July 12, 2012	010251
Houston	City of Dothan (12–04–2178P)	The Honorable Mike Schmitz, Mayor, City of Dothan, P.O. Box 2128, Dothan, AL 36302.	Public Works Department, Engineering Services Division, 126 North St. Andrews Street, Room 309, Dothan, AL 36303.	*http://www.bakeraecom.com/index.php/alabama/houston/.*	July 23, 2012	010104
Arizona:						
Maricopa	City of Phoenix (12–09–0112P).	The Honorable Greg Stanton, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	July 13, 2012	040051
Maricopa	Unincorporated areas of Maricopa County (12–09–0273P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	July 13, 2012	040037
Maricopa	Unincorporated areas of Maricopa County (12–09–0405P).	The Honorable Max W. Wilson, Chairman, Maricopa County Board of Supervisors, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Maricopa County Flood Control District, 2801 West Durango Street, Phoenix, AZ 85009.	*http://www.bakeraecom.com/index.php/arizona/maricopa-county/.*	July 13, 2012	040037
Mojave	City of Lake Havasu City (12–09–0013P)	The Honorable Mark Nexsen, Mayor, City of Lake Havasu City, 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.	*http://www.bakeraecom.com/index.php/arizona/mohave-county/.*	July 16, 2012	040116
California:						
Los Angeles ...	Unincorporated areas of Los Angeles County (12–09–0692P).	The Honorable Zev Yaroslavsky, Chairman, Los Angeles County Board of Supervisors, 500 West Temple Street, Room 856, Los Angeles, CA 90012.	Department of Public Works, 900 South Fremont Avenue, Alhambra, CA 91803.	*http://www.bakeraecom.com/index.php/california/los-angeles-county/.*	July 23, 2012	065043
Orange	City of Brea (12–09–0415P)	The Honorable Don Schweitzer, Mayor, City of Brea, 1 Civic Center Circle, Brea, CA 92821.	Civic and Cultural Center, 1 Civic Center Circle, Brea, CA 92821.	*http://www.bakeraecom.com/index.php/california/orange-3/.*	July 16, 2012	060214

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
San Diego	City of San Diego (12–09–0330P)	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, CA 92101.	Executive Complex, 1010 2nd Avenue, Suite 1100, San Diego, CA 92101.	*http://www.bakeraecom.com/index.php/california/san-diego-county/.*	July 20, 2012	060295
San Mateo	City of Redwood City (12–09–0320P)	The Honorable Alicia Aguirre, Mayor, City of Redwood City, P.O. Box 391, Redwood City, CA 94064.	City Hall, 1017 Middlefield Road, Redwood City, CA 94064.	*http://www.bakeraecom.com/index.php/california/san-mateo-county/.*	July 16, 2012	060325
Ventura	City of Oxnard (12–09–1132P)	The Honorable Thomas E. Holden, OD, Mayor, City of Oxnard, 305 West 3rd Street, Oxnard, CA 93030.	Planning Department, 214 South C Street, Oxnard, CA 93030.	*http://www.bakeraecom.com/index.php/california/ventura-county/.*	August 6, 2012 ..	060417
Colorado:						
Douglas	Town of Parker (12–08–0154P)	The Honorable David Casiano, Mayor, Town of Parker, 20120 East Main Street, Parker, CO 80138.	Public Works Department, 20120 East Main Street, Parker, CO 80138.	*http://www.bakeraecom.com/index.php/colorado/douglas-2/.*	July 13, 2012	080310
Jefferson	Unincorporated areas of Jefferson County (12–08–0141P).	The Honorable Donald Rosier, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, CO 80419.	Department of Planning and Zoning, 100 Jefferson County Parkway, Suite 3, Golden, CO 80419.	*http://www.bakeraecom.com/index.php/colorado/jefferson-5/.*	July 13, 2012	080087
Florida:						
Broward	City of Hollywood (12–04–0393P)	The Honorable Peter J. M. Bober, Mayor, City of Hollywood, 2600 Hollywood Boulevard, Hollywood, FL 33022.	City Hall, 2600 Hollywood Boulevard, Hollywood, FL 33022.	*http://www.bakeraecom.com/index.php/florida/broward/.*	July 9, 2012	125113
Broward	Town of Lauderdale-by-the-Sea (12–04–0897P).	The Honorable Roseann Minnet, Mayor, Town of Lauderdale-by-the-Sea, 4501 Ocean Drive, Lauderdale-by-the-Sea, FL 33308.	City Hall, 4501 Ocean Drive, Lauderdale-by-the-Sea, FL 33308.	*http://www.bakeraecom.com/index.php/florida/broward/.*	July 13, 2012	125123
Jackson	Town of Bascom (12–04–2176P)	The Honorable Ann Bryan, Mayor, Town of Bascom, 4967 Basswood Road, Bascom, FL 32423.	Town Hall, 4969 Basswood Road, Bascom, FL 32423.	*http://www.bakeraecom.com/index.php/florida/jackson-4/.*	August 16, 2012	120069
Jackson	Unincorporated areas of Jackson County (12–04–2176P).	The Honorable Chuck Lockey, Chairman, Jackson County Board of Commissioners, 2864 Madison Street, Marianna, FL 32448.	Chamber of Commerce, 4318 Lafayette Street, Marianna, FL 32446.	*http://www.bakeraecom.com/index.php/florida/jackson-4/.*	August 16, 2012	120125
Kentucky:						
Fayette	Lexington-Fayette Urban County Government, KY (12–04–2199P).	The Honorable Jim Gray, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.	Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507.	*http://www.bakeraecom.com/index.php/kentucky/fayette/.*	August 6, 2012 ..	210067
New Mexico:						
Sandoval	Unincorporated areas of Sandoval County (11–06–1258P).	The Honorable Darryl Madalena, Chairman, Sandoval County Commission, P.O. Box 40, Bernalillo, NM 87004.	711 Camino Del Pueblo, Bernalillo, NM 87004.	*http://www.rampp-team.com/lomrs.htm.*	July 6, 2012	350055
New York:						
Orange	Village of Goshen (11–02–1056P)	The Honorable Kyle P. Roddey, Mayor, Village of Goshen, Village Hall, 276 Main Street, Goshen, NY 10924.	Village Hall, 276 Main Street, Goshen, NY 10924.	*https://www.rampp-team.com/lomrs.htm.*	September 13, 2012.	361571
Westchester ...	City of Yonkers (10–02–2170P)	The Honorable Philip A. Amicone, Mayor, City of Yonkers, 40 South Broadway, Yonkers, NY 10701.	40 South Broadway, Yonkers, NY 10701.	*https://www.rampp-team.com/lomrs.htm.*	June 29, 2012	360936
Oklahoma:						
Cleveland	City of Norman (11–06–4261P)	The Honorable Cindy S. Rosenthal, Mayor, City of Norman, P.O. Box 370, Norman, OK 73070.	201 West Gray Street, Building A, Norman, OK 73069.	*http://www.rampp-team.com/lomrs.htm.*	August 1, 2012 ..	400046

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Mayes	City of Pryor Creek (12–06–0785P)	The Honorable Jimmy Tramel, Mayor, City of Pryor Creek, 6 North Adair Street, Pryor, OK 74361.	6 North Adair Street, Pryor, OK 74361.	*http://www.rampp-team.com/lomrs.htm.*	June 22, 2012	400117
Mayes	Unincorporated areas of Mayes County (12–06–0785P).	The Honorable Alva Martin, Commissioner, Mayes County, 1 Court Place, Suite 140, Pryor, OK 74361.	1 Court Place, Suite 140, Pryor, OK 74361.	*http://www.rampp-team.com/lomrs.htm.*	June 22, 2012	400458
Tulsa	City of Tulsa (11–06–1755P)	The Honorable Dewey F. Bartlett, Jr., Mayor, City of Tulsa, 175 East 2nd Street, Suite 690, Tulsa, OK 74103.	Stormwater Design Office, 2317 South Jackson Avenue, Suite 302, Tulsa, OK 74107.	*http://www.rampp-team.com/lomrs.htm.*	July 5, 2012	405381
Pennsylvania:						
Delaware	Township of Radnor (11–03–1189P)	The Honorable William A. Spingler, President of the Board of Commissioners, Township of Radnor, 301 Iven Avenue, Wayne, PA 19087.	Radnor Township Building, 301 Iven Avenue, Wayne, PA 19087.	*http://www.rampp-team.com/lomrs.htm.*	August 2, 2012	420428
South Carolina:						
Jasper	Town of Hardeeville (11–04–8141P)	The Honorable Bronco Bostick, Mayor, Town of Hardeeville, 205 East Main Street, Hardeeville, SC 29927.	City Hall, 205 East Main Street, Hardeeville, SC 29927.	*http://www.bakeraecom.com/index.php/southcarolina/jasper-2/.*	July 26, 2012	450113
Jasper	Unincorporated areas of Jasper County (11–04–8141P).	The Honorable Reverend Samuel Gregory, Chairman, Jasper County Council, P.O. Box 1149, Ridgeland, SC 29936.	Planning and Zoning Department, 358 3rd Avenue, Ridgeland, SC 29936.	*http://www.bakeraecom.com/index.php/southcarolina/jasper-2/.*	July 26, 2012	450112
Richland	Unincorporated areas of Richland County (11–04–6309P).	The Honorable Kelvin E. Washington, Sr., Chairman, Richland County Council, 2020 Hampton Street, Columbia, SC 29202.	Richland County Courthouse, 1701 Main Street, Columbia, SC 29202.	*http://www.bakeraecom.com/index.php/southcarolina/richland/.*	July 2, 2012	450170
Tennessee:						
Williamson	Unincorporated areas of Williamson County (11–04–4928P).	The Honorable Rogers Anderson, Mayor, Williamson County, 1320 West Main Street, Suite 125, Franklin, TN 37064.	Planning Department, 1320 West Main Street, Suite 400, Franklin, TN 37064.	*http://www.bakeraecom.com/index.php/tennessee/williamson/.*	July 9, 2012	470204
Texas:						
Bandera	Unincorporated areas of Bandera County (12–06–0946P).	The Honorable Richard Evans, Bandera County Judge, 500 Main Street, Bandera, TX 78003.	Bandera County Rural Addressing Office, 502 11th Street, Bandera, TX 78003.	*http://www.rampp-team.com/lomrs.htm.*	June 28, 2012	480020
Bell	City of Killeen. (11–06–4177P)	The Honorable Timothy L. Hancock, Mayor, City of Killeen, P.O. Box 1329, Killeen, TX 76541.	City Hall, 101 North College Street, Killeen, TX 76540.	*http://www.rampp-team.com/lomrs.htm.*	August 1, 2012	480031
Bell	Unincorporated areas of Bell County (11–06–4177P).	The Honorable Jon H. Burrows, Bell County Judge, 101 East Central Avenue, Belton, TX 76513.	Bell County Courthouse, 101 East Central Avenue, Belton, TX 76513.	*http://www.rampp-team.com/lomrs.htm.*	August 1, 2012	480706
Bexar	City of Converse. (11–06–0362P)	The Honorable Al Suarez, Mayor, City of Converse, 403 South Seguin Street, Converse, TX 78109.	City Hall, 403 South Seguin Street, Converse, TX 78109.	*http://www.rampp-team.com/lomrs.htm.*	June 29, 2012	480038
Bexar	City of Leon Valley (11–06–2731P)	The Honorable Chris Riley, Mayor, City of Leon Valley, 6400 El Verde Road, Leon Valley, TX 78238.	City Hall, 6400 El Verde Road, Leon Valley, TX 78238.	*http://www.rampp-team.com/lomrs.htm.*	June 6, 2012	480042
Bexar	City of San Antonio (12–06–0888P)	The Honorable Julian Castro, Mayor, City of San Antonio, City Hall, 100 Military Plaza, San Antonio, TX 78205.	Municipal Plaza, 114 West Commerce Street, 7th Floor, San Antonio, TX 78205.	*http://www.rampp-team.com/lomrs.htm.*	August 2, 2012	480045
Bexar	City of Shavano Park (12–06–0888P)	The Honorable A. David Marne, Mayor, City of Shavano Park, 900 Saddletree Court, Shavano Park, TX 78231.	City Hall, 900 Saddletree Court, Shavano Park, TX 78231.	*http://www.rampp-team.com/lomrs.htm.*	August 2, 2012	480047

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Bexar	Unincorporated areas of Bexar County (11–06–4323P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	July 13, 2012	480035
Bexar	Unincorporated areas of Bexar County (11–06–4222P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	July 20, 2012	480035
Bexar	Unincorporated areas of Bexar County (11–06–4494P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	July 20, 2012	480035
Bexar	Unincorporated areas of Bexar County (11–06–4594P).	The Honorable Nelson W. Wolff, Bexar County Judge, Paul Elizondo Tower, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Infrastructure Services Department, Public Works Division, 233 North Pecos La Trinidad Street, Suite 420, San Antonio, TX 78207.	*http://www.rampp-team.com/lomrs.htm.*	August 2, 2012	480035
Collin	City of Wylie (11–06–1847P)	The Honorable Eric Hogue, Mayor, City of Wylie, 300 Country Club Road, Building 100, Wylie, TX 75098.	300 Country Club Road, Building 100, 2nd Floor, Wylie, TX 75098.	*http://www.rampp-team.com/lomrs.htm.*	August 2, 2012	480759
Collin and Dallas.	City of Sachse (11–06–2894P)	The Honorable Mike Felix, Mayor, City of Sachse, 3815 Sachse Road, Building B, Sachse, TX 75048.	City Hall, 3815 Sachse Road, Building B, Sachse, TX 75048.	*http://www.rampp-team.com/lomrs.htm.*	July 6, 2012	480186
Comal	City of New Braunfels (11–06–3632P)	The Honorable Gale Pospisil, Mayor, City of New Braunfels, 424 South Castell Avenue, New Braunfels, TX 78130.	195 David Jonas Drive, New Braunfels, TX 78132.	*http://www.rampp-team.com/lomrs.htm.*	May 31, 2012	485493
Fort Bend	City of Sugar Land (11–06–0225P)	The Honorable James Thompson, Mayor, City of Sugar Land, 2700 Town Center Boulevard North, Sugar Land, TX 77479.	Public Works Department, 111 Gillingham Lane, Sugar Land, TX 77478.	*http://www.rampp-team.com/lomrs.htm.*	July 5, 2012	480234
Fort Bend	Unincorporated areas of Fort Bend County (11–06–0225P).	The Honorable Robert Hebert, Fort Bend County Judge, 301 Jackson Street, Richmond, TX 77469.	Engineer's Office, 1124 Blume Road, Rosenburg, TX 77471.	*http://www.rampp-team.com/lomrs.htm.*	July 5, 2012	480228
Guadalupe	City of Seguin (12–06–0870X)	The Honorable Betty Ann Matthies, Mayor, City of Seguin, 210 East Gonzales Street, Seguin, TX 78155.	City Hall, 205 North River Street, Seguin, TX 78155.	*http://www.rampp-team.com/lomrs.htm.*	August 1, 2012	485508
Parker	City of Weatherford (11–06–2911P)	The Honorable Dennis Hooks, Mayor, City of Weatherford, 303 Palo Pinto Street, Weatherford, TX 76086.	Department of Code Enforcement, City Hall, 303 Palo Pinto Street, Weatherford, TX 76086.	*http://www.rampp-team.com/lomrs.htm.*	June 13, 2012	480522
Wichita	City of Wichita Falls (11–06–2009P)	The Honorable Glenn Barham, Mayor, City of Wichita Falls, P.O. Box 1431, Wichita Falls, TX 76307.	1300 7th Street, Wichita Falls, TX 76301.	*http://www.rampp-team.com/lomrs.htm.*	June 28, 2012	480662
Virginia:						
Caroline	Unincorporated areas of Caroline County (11–03–2159P).	The Honorable Floyd W. Thomas, Chairman, Caroline County Board of Supervisors, 212 North Main Street, Bowling Green, VA 22427.	233 West Broaddus Avenue, Bowling Green, VA 22427.	*http://www.rampp-team.com/lomrs.htm.*	May 25, 2012	510249

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of Letter of Map Revision	Effective date of modification	Community No.
Loudoun	Town of Leesburg (11–03–1482P)	The Honorable Kristen C. Umstattd, Mayor, Town of Leesburg, 25 West Market Street, Leesburg, VA 20176.	Department of Plan Review, 25 West Market Street, Leesburg, VA 20176.	*http://www.rampp-team.com/lomrs.htm.*	July 12, 2012	510091
Prince William	Unincorporated areas of Prince William County (11–03–1518P).	The Honorable Melissa S. Peacor, County Executive, Prince William County, James J. McCoart Administration Building, 1 County Complex Court, Prince William VA 22192.	James J. McCoart Administration Building, 1 County Complex Court, Prince William, VA 22192.	*http://www.rampp-team.com/lomrs.htm.*	July 30, 2012	510119

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

Dated: July 18, 2012.

Sandra K. Knight,

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

[FR Doc. 2012–19219 Filed 8–6–12; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; United Keetoowah Band of Cherokee Indians of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 2.03 acres of land into trust for the United Keetoowah Band of Cherokee Indians of Oklahoma on July 30, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1 and is published to comply with the requirements of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On July 30, 2012, the Assistant Secretary—Indian Affairs decided to accept approximately 2.03 acres of land into trust for the United Keetoowah Band of Oklahoma Corporation under the authority of the Oklahoma Indian Welfare Act Reorganization Act of 1936, 25 U.S.C. 503.

The 2.03 acres are located approximately in Tahlequah, Cherokee County, Oklahoma, and described as follows:

A tract of land lying in and being a part of the S/2 NE/4 SE/4 SW/4 and part of the N/2 SE/4 SE/4 SW/4 of Section 4, T–16–N, R–22–E, Cherokee County, Oklahoma, more particularly described as follows, to-wit: BEGINNING at a point 175.0 feet South of the North boundary and 131.0 feet East of the West boundary of said S/2 NE/4 SE/4 SW/4; thence S 02°56′ W, 159.80 feet; thence N 89°12′ W, 24.80 feet; thence S 03°30′ W, 171.40 feet to a point 175.00 feet South of the North boundary of said N/2 SE/4 SE/4 SW/4; thence S 89°49′ E, 384.32 feet to a point on the West boundary of U.S. Highway No. 62; thence N 05°25′ W, along the West boundary of U.S. Highway No. 62, 332.00 feet; thence N 89°49′ W, 309.55 feet to the Point of Beginning. Containing 2.63 acres;

LESS AND EXCEPT A parcel of land BEGINNING 155.00 feet North and 84.80 feet East of the Southwest Corner of the N/2, SE/4 SE/4 SW/4; thence N3°30′ E a distance of 161.90 feet; thence S89°49′ E a distance of 161.90 feet; thence S3°30′ W a distance of 161.90 feet; thence N89°49′ W a distance of 161.90 feet to the Point of Beginning. Containing 0.60 acres more or less.

Dated: July 30, 2012.

Michael S. Black,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 2012–19205 Filed 8–6–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAC09000, 16100000.DQ; CACA 051408]

Public Land Order No. 7795; Withdrawal of Public Lands, Clear Creek Serpentine Area of Critical Environmental Concern; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 28,727 acres, more or less, of public lands from location and entry under the United States mining laws for a period of 20 years, to minimize impacts to human health, safety, and the environment from hazardous emissions of airborne asbestos fibers within the Clear Creek Serpentine Area of Critical Environmental Concern. In addition, approximately 3,889 acres of non-Federal lands located inside of the boundary of the withdrawal area, if acquired by or returned to the United States, will also be included in the withdrawal. The withdrawal will have no effect on the non-Federal lands until such time as title passes to the United States.

DATES: *Effective Date:* August 7, 2012.

FOR FURTHER INFORMATION CONTACT: Christine Sloand, Realty Specialist, Bureau of Land Management (BLM), Hollister Field Office, 20 Hamilton Court, Hollister, California 95023, 831–630–5022 or via email at *csloand@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours per day, 7 days per week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM ordered the temporary closure of the public lands in the Clear Creek

Serpentine Area of Critical Environmental Concern on May 1, 2008 (72 FR 24087 (2008)), in response to a human health risk assessment by the United States Environmental Protection Agency that concluded ''public use activities could expose an individual to excess lifetime cancer risks.''

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following-described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2), to minimize impacts to human health, safety, and the environment from hazardous emissions of airborne asbestos fibers within the Clear Creek Serpentine Area of Critical Environmental Concern.

(a) Federal Lands

Mount Diablo Meridian

T. 17 S., R. 11 E.,
- Sec. 25, lots 5, 6, and lots 10 to 15, inclusive;
- Sec. 26, lots 15, 16, and 20;
- Sec. 34, lots 16, 18, and 19, and Mineral Survey No. 5253, not patented;
- Sec. 35, lots 13 to 24, inclusive, Mineral Survey No. 5062, portions of Mineral Survey Nos. 5251, 5252 and 5957;
- Sec. 36, lots 10 to 16, inclusive.

T. 18 S., R. 11 E.,
- Sec. 1;
- Sec. 2, lots 1 to 9, inclusive, S½N½, NW¼SW¼, and N½SE¼;
- Sec. 3, S½NE¼, SE¼SW¼, and SE¼;
- Sec. 10, E½ and E½W½;
- Sec. 11, lots 1 to 4, inclusive, SW¼NE¼, W½, NW¼SE¼, and S½SE¼;
- Sec. 12, lots 1 to 5, inclusive, E½, NE¼SW¼, and S½SW¼;
- Sec. 13, lots 1 to 5, inclusive, NW¼NW¼, S½NW¼, and S½;
- Sec. 14;
- Sec. 15, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
- Sec. 23, N½NE¼, SE¼NE¼, and NE¼NW¼;
- Sec. 24, N½ and SE¼.

T. 17 S., R. 12 E.,
- Sec. 31, lots 3, 4, and lots 6 to 20, inclusive;
- Sec. 32, lots 11 to 14, inclusive, and lot 16;
- Sec. 33, W½W½ and SE¼SW¼.

T. 18 S., R. 12 E.,
- Sec. 3, SW¼NW¼, W½SW¼, and SE¼SW¼;
- Sec. 4, lots 1 to 17, inclusive, SW¼NW¼, SW¼, and S½SE¼;
- Secs. 5, 6, and 7;
- Sec. 8, lots 1, 2, 4, 5, 7, 8, 9, 11, and 12, NW¼SW¼, and S½SW¼;
- Secs. 9 and 10;
- Sec. 11, lots 2, 3, and 4, and SE¼;
- Sec. 12, SW¼;
- Sec. 13, lots 2 to 6, inclusive, lot 8, W½NE¼, NW¼, N½SW¼, and NW¼SE¼;
- Secs. 14 and 15;
- Sec. 17, lots 1 and 2, NE¼, NE¼NW¼, W½NW¼, and E½SE¼;
- Sec. 18, lots 1 to 14, inclusive, and N½NE¼;
- Sec. 19, lots 1 to 6, inclusive, S½NE¼, E½W½, and SE¼;
- Sec. 20, E½, S½NW¼, and SW¼;
- Sec. 21, N½;
- Sec. 22, NE¼NE¼, S½NE¼, NW¼, and S½;
- Secs. 23 and 24;
- Sec. 25, lot 1, lots 3 to 6, inclusive, lots 8, 9, 11, and 14, W½, and W½SE¼;
- Sec. 26, N½;
- Sec. 27, N½, N½S½, and S½SE¼;
- Sec. 28, NE¼ and SE¼NW¼;
- Sec. 29, N½N½;
- Sec. 30, lot 1 and NE¼NE¼;
- Sec. 34, NE¼NE¼;
- Sec. 35, N½, NE¼SW¼, and N½SE¼.

T. 18 S., R. 13 E.,
- Sec. 16, NW¼SW¼;
- Sec. 17, SW¼NE¼ and S½;
- Sec. 18, lots 2, 3, and 4, and E½SE¼;
- Sec. 19, lots 1 to 4, inclusive, and E½E½;
- Secs. 20 and 21;
- Sec. 22, NW¼NW¼, NE¼SW¼, and S½SW¼;
- Sec. 27, NW¼NE¼, NE¼NW¼, SW¼NW¼, W½SW¼, S½SE¼SW¼, and S½S½SE¼;
- Secs. 28 to 31, inclusive;
- Sec. 32, all excluding Mineral Survey Nos. 6696 and 6724, both patented;
- Sec. 33, all excluding that portion of Mineral Survey Nos. 6680, patented and contained therein;
- Sec. 34, N½ and N½S½ excluding that portion of Mineral Survey No. 6680, patented and contained therein;
- Sec. 35, N½N½NW¼.

T. 19 S., R. 13 E.,
- Sec. 2, lot 4 and SW¼NW¼;
- Sec. 3, lots 1 to 4, inclusive, S½N½, and SW¼;
- Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
- Sec. 5, lots 1 to 4, inclusive, S½N½, N½S½, and SE¼SE¼;
- Sec. 6, lot 1 and SE¼NE¼.

The areas described aggregate 28,727 acres, more or less, in Fresno and San Benito Counties.

(b) Non-Federal Lands

The following described non-Federal lands are located within the boundaries of the withdrawal. In the event that these non-Federal lands return to public ownership, they would be subject to the terms and conditions described above.

Mount Diablo Meridian

T. 18 S., R. 11 E.,
- Sec. 2, portion of Mineral Survey No. 29, patented;
- Sec. 11, portion of Mineral Survey No. 29, patented, portion of Mineral Survey No. 504, patented;
- Sec. 12, portion of Mineral Survey No. 29, patented, portion of Mineral Survey No. 504, patented;
- Sec. 13, portion of Mineral Survey No. 1417, patented.

T. 18 S., R. 12 E.,
- Sec. 4, Mineral Survey Nos. 1087, 1099, and 1185, patented;
- Sec. 7, portion of Mineral Survey No. 1417, patented;
- Sec. 8, lots 3, 6, and 10, and NE¼SW¼;
- Sec. 13, lot 7, S½SW¼, and SW¼SE¼;
- Sec. 16;
- Sec. 17, SE¼NW¼, E½SW¼, and W½SE¼, portion of Mineral Survey No. 1418, patented;
- Sec. 18, portion of Mineral Survey No. 1417, patented, portion of Mineral Survey No. 1418, patented;
- Sec. 19, portion of Mineral Survey No. 1417, patented, portion of Mineral Survey No. 1418, patented;
- Sec. 20, lot 1, NE¼NW¼, and portion of Mineral Survey No. 1418, patented;
- Sec. 22, NW¼NE¼;
- Sec. 25, lots 2, 7, 10, 12, and 13, and Mineral Survey No. 4976, patented;
- Sec. 26, S½;
- Sec. 36.

T. 18 S., R. 13 E.,
- Sec. 32, Mineral Survey Nos. 6696 and 6724, both patented;
- Sec. 33, portion of Mineral Survey No. 6680, patented;
- Sec. 34, portion of Mineral Survey No. 6680, patented;
- Sec. 34, S½S½.

The areas described aggregate 3,889 acres, more or less, in Fresno and San Benito Counties.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 1, 2012.

David J. Hayes,

Deputy Secretary.

[FR Doc. 2012–19242 Filed 8–2–12; 4:15 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUTC03.14300000.EU0000; UTU–87604 et al.]

Notice of Realty Action; Proposed Competitive Sale of Public Lands in Washington County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) is considering the competitive sale of seven parcels of public lands totaling approximately 271.57 acres in Washington County, Utah, at not less than appraised fair market value. The sale would be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA) and BLM regulations.

DATES: In order to ensure consideration in the environmental analysis of the proposed sale, comments must be received by September 21, 2012.

ADDRESSES: Address all written comments concerning this notice to the St. George Field Office, Attn: Shered Mullins, 345 East Riverside Drive, St. George, Utah 84790.

FOR FURTHER INFORMATION CONTACT: Shered Mullins, Realty Specialist, 435–688–3225, at the above address or email to *s5mullin@blm.gov.* Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The following described public lands in Washington County, Utah, are being considered for competitive sale under the authority of Sections 203 and 209 of the FLPMA 90 Stat. 2750, 43 U.S.C. 1713 and 1719, respectively, and the regulations at 43 CFR 2710 and 2720.

Salt Lake Meridian

Coral Canyon

T. 42 S., R. 15 W.,
Sec. 13, lots 2 and 3, and SW¼NW¼SW¼SE¼.

The area described contains 9.15 acres in Washington County.

Green Valley

T. 42 S., R. 16 W.,
Sec. 35, lot 2 and E½NW¼SE¼NW¼.

The area described contains 12.56 acres in Washington County.

Landfill

T. 42 S., R. 14 W.,
Sec. 17, SE¼NE¼NE¼, NE¼SW¼NE¼,S½SW¼NE¼, and SE¼NE¼.

The area described contains 80 acres in Washington County.

Mesa Palms

T. 43 S., R. 16 W.,
Sec. 1, lot 16.

The area described contains 10 acres in Washington County.

Sand Hollow East

T. 42 S., R. 13 W.,
Sec. 18, S½SE¼SE¼SE¼.

The area described contains 5 acres in Washington County.

Santa Clara 1

T. 42 S., R. 16 W.,
Sec. 15, a portion of the NW¼NW¼ as described in the quit claim deed to the United States recorded in Washington County on February 21, 2008 as document No. 20080007148.

The area described contains 8.008 acres in Washington County.

Santa Clara 2

T. 42 S., R. 16 W.,
Sec. 15, a portion of lot 3 as described in the quit claim deed to the United States recorded in Washington County on February 21, 2008 as document No. 20080007147.

The area described contains 1.848 acres in Washington County.

Washington Dome

T. 42 S., R. 15 W.,
Sec. 25, lots 1,4, 6, and 7, SW¼NE¼, E½SE¼NW¼, and N½NW¼SE¼NW¼.

The area described contains 145.01 acres in Washington County.

The areas described aggregate 271.57 acres, more or less, in Washington County.

The sale is in conformance with the BLM St. George Field Office Resource Management Plan approved in March 1999. The lands are also identified as suitable for disposal and are in compliance with Subtitle O of Omnibus Public Land Management Act of 2009 (Pub. L. 111–11). Conveyance of the identified public lands will be subject to valid existing rights and encumbrances of record, including but not limited to, rights-of-way for roads and public utilities. Conveyance of any mineral interests pursuant to Section 209 of the FLPMA will be analyzed during processing of the proposed sale. On August 7, 2012, the above-described lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of the FLPMA. Until completion of the sale, the BLM is no longer accepting land use applications affecting the identified public lands, except applications for the amendment of previously filed right-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. The segregative effect will terminate upon issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or August 7, 2014 unless extended by the BLM Utah State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

For a period until September 21, 2012, interested parties and the general public may submit in writing any comments concerning the land being considered for sale, including notification of any encumbrances or other claims relating to the identified land, to the Field Manager, BLM St. George Field Office, at the above address. In order to ensure consideration in the environmental analysis of the proposed sale, comments must be in writing and postmarked or delivered within 45 days of the initial date of publication of this notice. Electronic mail (email) will also be accepted and should be sent to *UT_SGFO_Comments@blm.gov* with ''St. George Land Sale'' inserted in the subject line. Comments, including names and street addresses of respondents, will be available for public review at the BLM St. George Field Office during regular business hours, except holidays. Individual respondents may request confidentiality. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised 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 from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authority: 43 CFR 2711.1–2.

Shelley J. Smith,
Acting Associate State Director.

[FR Doc. 2012–19263 Filed 8–6–12; 8:45 am]
BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR932000.L102000000.PH0000]

Notice of Re-Establishment of the Secure Rural Schools Resource Advisory Committees

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice is published in accordance with Section 9(a)(2) of the Federal Advisory Committee Act of 1972. Notice is hereby given that the Secretary of the Interior (Secretary) has re-established the Bureau of Land

Management's (BLM) Secure Rural Schools Resource Advisory Committees.

FOR FURTHER INFORMATION CONTACT: Allison Sandoval, BLM, Correspondence, International, and Advisory Committee Office, 1849 C Street NW., MS–MIB 5070, Washington, DC 20240; (202) 208–4294.

SUPPLEMENTARY INFORMATION: The purpose of the Committees is to provide recommendations to the Secretary for project funding, as required by the Secure Rural Schools and Community Self-Determination Act of 2000, Public Law 106–393, as amended by Public Law 110–343, Title VI (2008) and Public Law 112–557, Division F (2012).

Certification Statement

I hereby certify that the re-establishment of the Secure Rural Schools Resource Advisory Committees is necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Dated: July 31, 2012.

Ken Salazar,

Secretary of the Interior.

[FR Doc. 2012–19284 Filed 8–6–12; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0068]

Notice of Determination of No Competitive Interest

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Notice of Determination of No Competitive Interest for Proposed Right-of-Way Grant Area

SUMMARY: This notice provides BOEM's determination of no competitive interest (DNCI) for the area requested by the Deepwater Wind Block Island Transmission System, LLC, application for a Right-of-Way (ROW) grant for renewable energy purposes on the Outer Continental Shelf (OCS) off the coast of Rhode Island as described in the May 23, 2012, Notice of Proposed Grant Area and Request for Competitive Interest (RFCI) in the Area of the Deepwater Wind Block Island Transmission System (BITS) Proposal (77 FR 30551).

DATES: Effective August 7, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Jessica Bradley, Project Coordinator, BOEM, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170. (703) 787–1320.

SUPPLEMENTARY INFORMATION:

Authority

This DNCI is published pursuant to subsection 8(p)(3) of the OCS Lands Act, which was added by section 388 of the Energy Policy Act of 2005 (EPAct) (43 U.S.C. 1337(p)(3)), and the implementing regulations at 30 CFR Part 585. Subsection 8(p)(3) of the OCS Lands Act requires that OCS renewable energy leases, easements, and ROWs be issued ''on a competitive basis unless the Secretary determines after public notice of a proposed lease, easement, or ROW that there is no competitive interest.'' The authority to make such determinations has been delegated to BOEM.

Determination and Next Steps

This DNCI provides notice to the public that BOEM has determined there is no competitive interest in the proposed ROW grant area, as no indications of competitive interest were submitted in response to the RFCI.

In the RFCI, BOEM also solicited public comment on site conditions and multiple uses within the ROW grant area that would be relevant to the proposed project or its impacts. BOEM received public comment submissions from two (2) parties in response. The comments received in response to the RFCI will be used to inform BOEM in subsequent agency decisions. After the publication of this DNCI, BOEM will proceed with the noncompetitive ROW grant process outlined at 30 CFR 585.306(b).

Environmental Review Process

The U.S. Army Corps of Engineers (USACE) New England District and BOEM both have jurisdiction by law for portions of the BITS. The BITS would support Deepwater Wind's proposed Block Island Wind Farm (BIWF), a proposed 30-megawatt offshore wind energy project located in Rhode Island State waters approximately 2.5 nautical miles southeast of Block Island. Since the majority of the activities and permanent structures related to the BIWF and the BITS will be sited in state waters and on state lands, the USACE will be the lead agency for the National Environmental Policy Act (NEPA) environmental analysis of both projects. The portion of the BITS that would be located on the OCS requires a ROW grant from BOEM, and BOEM will be a cooperating agency in the NEPA process led by the USACE. BOEM will consider all relevant information produced from the NEPA process and, if appropriate, adopt the USACE's NEPA document prior to the issuance of any ROW grant.

BOEM and the USACE intend to conduct consultations required by Federal law or executive order jointly during the NEPA process. These consultations include, but are not limited to, those required by the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, the National Historic Preservation Act, and Executive Order 13175—''Consultation and Coordination with Tribal Governments.''

Map of the Area

A map of the area proposed for a ROW grant can be found at the following URL: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx.*

Dated: July 27, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–19256 Filed 8–6–12; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–772]

Certain Polyimide Films, Products Containing Same, and Related Methods; Notice of Commission Determination to Partially Review and Partially Vacate the Final Initial Determination of the Administrative Law Judge

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to partially review and partially vacate the final initial determination (''final ID'' or ''ID'') of the presiding administrative law judge (''ALJ'') in the above-captioned investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''). The ALJ found no violation of section 337.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3065. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S.

International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 4, 2011, based on a complaint filed on behalf of Kaneka Corporation of Osaka, Japan (''Kaneka''). 76 FR 25373 (May 4, 2011). The complaint alleges violations of Section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the sale for importation, importation, or sale after importation of certain polyimide films, products containing same, and related methods by reason of infringement of one or more of claims 1–3 and 9–10 of U.S. Patent No. 6,264,866 (''the '866 patent''); claims 1–6 of U.S. Patent No. 6,746,639 (''the '639 patent''); claims 1–5 of U.S. Patent No. 7,018,704 (''the '704 patent''); and claims 1–20 of U.S. Patent No. 7,691,961 (''the '961 patent''). The Commission's notice of investigation named as respondents SKC Kolon PI, Inc. of Gyeonggi-do, South Korea and SKC Corporation of Covington, Georgia (''collectively, ''SKC'').

On February 23, 2012, the Commission issued notice of its determination not to review an ID (Order No. 26) that Kaneka has satisfied the importation requirement with respect to all versions of the following SKC products: IN30 (75 um), IN70 (19um), IN 70 (25um), IN70 (50um), IF30 (7.5um), IF70 (12.5um), LV100, LV200, and LV300.

On February 27, 2012, the Commission issued notice of its determination not to review an ID (Order No. 25) terminating the investigation with respect to claims 4–5 of the '704 patent and claims 4, 11, 16, 17, and 20 of the '961 patent.

An evidentiary hearing was held from March 12, 2012, to March 16, 2012.

On May 10, 2012, the ALJ issued a final ID finding no violation of section 337 in the above-identified investigation. Specifically, the ALJ found that there was no violation with respect to the '866 patent, the '639 patent, the '704 patent, or the '961 patent by SKC. The ALJ also issued a recommended determination on remedy and bonding.

On May 22, 2012, Kaneka filed a petition for review of the final ID and on May 23, 2012, SKC filed a contingent petition for review. On May 30, 2012, SKC filed a response to Kaneka's petition, and on May 31, 2012, Kaneka filed a response to SKC's contingent petition.

Having examined the final ID, the petitions for review, the responses thereto, and the relevant portions of the record in this investigation, the Commission has determined to partially review the final ID as follows. With respect to the '866 patent, the Commission has determined to review the finding that Kaneka does not satisfy the technical prong of the domestic industry requirement. With respect to the '704 patent, the Commission has determined to review and vacate as moot the ALJ's alternative findings that the accused products do not infringe, that claim 1 is not invalid for anticipation or obviousness, and that Kaneka does not satisfy the technical prong or the economic prong of the domestic industry requirement. The Commission has determined not to review the ALJ's conclusion that the asserted claims of the '704 patent are invalid for indefiniteness. With respect to the '961 patent, the Commission has determined to review the ALJ's finding that certain of the accused products infringe and certain of the accused products do not infringe claim 9. The Commission has determined not to review the remainder of the ID.

The parties are requested to brief their positions on only the following questions, with reference to the applicable law and the evidentiary record:

With respect to the '866 patent, would a complainant satisfy the technical prong of the domestic industry requirement if the products offered to satisfy the requirement met the elements of the asserted claims only intermittently or occasionally? *See* ID at 302.

(1) With respect to claim 9 of the '961 patent, would a person of ordinary skill in the art require all replicates to be within the claimed range? Is there any evidence of record to indicate how a person of ordinary skill in the art would use confidence intervals or other statistical methods of working with variance to compare replicates with a claimed range?

The Commission does not request briefing on remedy, the public interest, and bonding at this time.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues under review. The submissions should be concise and thoroughly referenced to the record in this investigation, including references to exhibits and testimony. The written submissions must be filed no later than the close of business on August 15, 2012. Reply submissions must be filed no later than the close of business on August 22, 2012. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must do so in accordance with Commission rule 210.4(f), 19 CFR 210.4(f), which requires electronic filing. The original document and eight true copies thereof must also be filed on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and under Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: August 2, 2012.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2012–19218 Filed 8–6–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1105–0085]

Agency Information Collection Activities: Collection; Comments Requested; Application for Approval as a Provider of a Personal Financial Management Instructional Course

ACTION: 30-Day notice of application under review.

The Department of Justice, Executive Office for United States Trustees, has submitted the following application to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. The application is published to obtain comments from the public and affected agencies. This application was previously published in the **Federal Register** Volume 77, Number 106, page 32671, on June 1, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 6, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and suggestions from the public and affected agencies concerning the application are encouraged. Your comments should address one or more of the following four points:

1. Evaluate whether the application is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the 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 the Information

Type of information collection:	Application form.
The title of the form/collection:	Application for Approval as a Provider of a Personal Financial Management Instructional Course.
The agency form number, if any, and the applicable component of the department sponsoring the collection:	No form number. Executive Office for United States Trustees, Department of Justice.
Affected public who will be asked or required to respond, as well as a brief abstract:	Primary: Individuals who wish to offer instructional courses to student debtors concerning personal financial management. Other: None. Congress passed a bankruptcy law that requires individuals who file for bankruptcy to complete an approved personal financial management instructional course as a condition of receiving a discharge.
An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:	It is estimated that 275 respondents will complete the application in approximately five (5) hours.
An estimate of the total public burden (in hours) associated with the collection:	The estimated total annual public burden associated with this application is 1,375 hours.

If additional information is required, contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Washington, DC 20530.

Dated: August 1, 2012.

Jerri Murray,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2012–19227 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–40–P

DEPARTMENT OF JUSTICE

Notice of Lodging of First Amendment to Consent Decree Under the Comprehensive Environmental *Response, Compensation, and Liability Act*

Notice is hereby given that on July 26, 2012, a proposed first amendment to consent decree with Schlumberger Technology Corporation (''Consent Decree Amendment'') in *United States* vs. *Schlumberger Industries, Inc.,* Civil Action No. 91-cv-04222 was lodged with the United States District Court for the Southern District of Illinois.

In this action, the United States sought injunctive relief and cost recovery claims under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675, against Schlumberger Industries Inc. Schlumberger Technology Corporation (''STC'') was subsequently substituted as Defendant and real party in interest. Under the Consent Decree Amendment, STC will perform the selected remedy under a May 2007 Record of Decision Amendment to address chlorinated volatile organic compound contaminated groundwater for areas known as Plume 1 and Plume 3 at the PCBs Operable Unit of the Crab Orchard National Wildlife Refuge in Williamson, Jackson, Union, and Johnson Counties, Illinois. This work is valued at $6,236,400 and is subject to a cost-sharing agreement between STC and the U.S. Department of the Interior.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Consent Decree Amendment. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Schlumberger Industries, Inc.,* D.J. Ref. 90–11–3–643.

During the public comment period, the Consent Decree Amendment may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree Amendment may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.ENRD@usdoj.gov,*) fax no. (202) 514–0097, phone confirmation number (202) 514–0097. If requesting a copy from the Consent Decree Library by mail, please enclose a check in the amount of $35.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if requesting by email or fax, forward a check in that amount to the Consent Decree Library at the address given above. In requesting a copy exclusive of exhibits and defendants' signatures, please enclose a check in the amount of $2.00 (25 cents

per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–19250 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the Park System Resource Protection Act

Notice is hereby given that the U.S. Department of Justice, on behalf of the U.S. Department of Interior, National Park Service has reached a settlement with University of Miami, on behalf of itself and the R/V F.G. Walton Smith regarding claims for response costs and damages under the Park System Resource Protection Act, 16 U.S.C. 19jj.

The United States' claims arise from the grounding of the vessel F.G. Walton Smith in Biscayne National Park on October 13, 2007. The grounding injured Park resources. Pursuant to the Agreement, the United States will recover a total of $508,708.

The U.S. Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either emailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 and should refer to the Settlement Agreement between the United States and University of Miami and the R/V F.G. Walton Smith, DJ No. 90–5–1–1–10168.

The proposed settlement agreement may be examined at Biscayne National Park, at 9700 SW 328 Street, Homestead, Florida 33033, and at the Department of the Interior, Office of the Solicitor, Southeast Regional Office, Richard B. Russell Federal Building, 75 Spring Street SW., Atlanta, Georgia 30303. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or emailing a request to ''Consent Decree Copy'' (*EESCDCopy.enrd@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–5271. In requesting a copy from the Consent Decree Library, please refer to the Settlement Agreement between the United States and University of Miami and the R/V F.G. Walton Smith (proposed Settlement Agreement, DOJ Ref. No. 90–5–1–1–10168), and enclose a check in the amount of $3.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–19251 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117–0014]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Application for Registration; Application for Registration Renewal; Affidavit for Chain Renewal; Application for Modification of Registration for Online Pharmacies DEA Forms 224, 224a, 224b, 224c

ACTION: 60-Day Notice of Information Collection Under Review.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 9, 2012. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact John W. Partridge, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152; (202) 307–7297.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- 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 agencies' 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.

Overview of Information Collection 1117–0014

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Registration; Application for Registration Renewal; Affidavit for Chain Renewal; Application for Modification of Registration for Online Pharmacies.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* DEA Forms 224, 224a, 224b, 224c. Component: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit.

Other: Not-for-profit institutions; State, local, or tribal government.

Abstract: All firms and individuals who dispense controlled substances must register with the DEA under the Controlled Substances Act. Pharmacies wishing to be online pharmacies must apply to modify their registrations. Such registration is mandatory under the law and needed for control measures over legal handlers of controlled substances and to monitor their activities.

(4) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

	Number of annual respondents	Average time per response	Total annual hours
DEA–224 (paper)	5,867	0.2 hours (12 minutes)	1,173.4
DEA–224 (electronic)	79,057	0.13 hours (8 minutes)	10,540.9
DEA–224a (paper)	66,200	0.2 hours (12 minutes)	13,240
DEA–224a (electronic)	323,758	0.07 hours (4 minutes)	21,583.8
DEA–224b (chain renewal)*	32	5 hours	160
DEA–224c	0	0.25 hours (15 minutes)	0
Total	474,914		46,698.1

* In total, 64 chain pharmacies represent 36,660 individual pharmacy registrants. Pharmacies register for a three-year registration period. In calendar year 2011, the year for which estimates are calculated, 32 chains registered 6,472 individual pharmacies.

(6) *An estimate of the total public burden (in hours) associated with the collection:* It is estimated that there are 46,698 annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Two Constitution Square, 145 N Street NE., Suite 2E–508, Washington, DC 20530.

Dated: August 1, 2012.

Jerri Murray,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2012–19228 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 11–52]

Physicians Pharmacy, L.L.C.; Decision and Order

On December 15, 2011, Administrative Law Judge Timothy D. Wing issued the attached recommended decision.[1] Thereafter, the Government filed Exceptions to the ALJ's decision.

Having carefully considered the ALJ's recommended decision and the record in light of the Government's Exceptions, I have decided to adopt the ALJ's rulings, findings of fact, and conclusions of law except as discussed below.[2] Accordingly, I will order that Respondent's application be granted.

The Government's Exceptions

The Government's principal contention is that Mr. Lawrence James, Respondent's pharmacist-in-charge, ''will not adequately fulfill his corresponding responsibility to prevent drug diversion.'' Exceptions at 1. Ignoring that Mr. James has nearly forty years of experience as a registered pharmacist and has never been cited for any violation of state or federal laws, the Government argues that various portions of Mr. James' testimony support its contention.

First, the Government's argues that ''[i]n testifying how he would prevent diversion and fraud, [its pharmacist-in-charge's] testimony focused on fraudulent prescriptions, including prescriptions that had been altered, stolen or forged by the prospective patient.'' *Id.* at 1–2 (citing Tr. 51). Continuing, the Government argues that ''Mr. James did not address the significant diversion problem that exists with pill-pushing physicians and [which] is the exact type of pernicious drug diversion that plagues southern Ohio and surrounding areas.'' *Id.* at 2. The Government based this contention on the following colloquy:

> Q [by Government Counsel]: Are you aware of any diversion schemes where the doctor was in cahoots with the patient to issue a prescription that wasn't for a legitimate medical purpose?
>
> A That question is also very tough because it relies upon basically the equivalent of hearsay evidence. I have heard of and been told of some of those things, but at the same difference—and I am sure somewhere in Ohio, somewhere in the United States, there probably are doctors, like down in Florida, that will have an arrangement with a patient where they will supposedly—the doctor will write them a prescription, they'll get it filled, and the doctor either gets a cut of the pills or whatever. Have I ever actually seen any of that or am I totally aware of like any specifics? No, I am not.

Tr. 52.

While the Government finds this testimony remarkable in light of Mr. James' extensive experience as a Registered Pharmacist and the scope of the diversion problem in southern Ohio, it did not ask Mr. James any further questions regarding his awareness of doctors writing unlawful prescriptions. Nor did the Government pose to Mr. James any hypothetical questions regarding how he would handle prescriptions which raise red flags due to the quantity and strength of the drug or combination of drugs prescribed, as well as other relevant circumstances. Thus, to the extent Mr. James did not address to the Government's satisfaction the problems posed by prescriptions issued by pill-pushing physicians, the Government ignores that it (and not Respondent) had the burden of proof in this proceeding, *see* 21 CFR 1301.44(d), and that Mr. James was only required to

[1] All citations to the ALJ's opinion are to the slip opinion as originally issued.

[2] I do not, however, adopt footnote 20 of the ALJ's opinion. *See Kwan Bo Jin,* 77 FR 35021, 35021 n.2 (2012). Moreover, to the extent the ALJ's decision suggests that a practitioner does not have an obligation to maintain effective controls against diversion of controlled substances because this is not a statutory factor under the public interest standard of section 823(f), *see* ALJ at 25–26, it should be noted that factor four authorizes the Agency to consider an applicant's compliance with applicable federal and state laws ''relating to controlled substances'' and DEA regulations require that an applicant or registrant ''provide effective controls and procedures to guard against theft and diversion of controlled substances.'' 21 CFR 1301.71(a).

However, I agree with the ALJ's rejection of the Government's contention that ''in assessing the public interest, the nature and amount of diversion of controlled substances in a geographical area is a legitimate area of inquiry and concern when determining whether an applicant should be granted a DEA registration.'' ALJ at 25 (quoting Gov. Br. 4). Contrary to the Government's understanding, DEA has held that the public interest inquiry is not a free-wheeling inquiry but is guided by the specific factors set forth by Congress for the applicable category of registration. *Gregory D. Owens,* 74 FR 36751, 36757 (2009). With respect to a practitioner (which includes a pharmacy), *see* 21 U.S.C. 823(f), these factors primarily focus on an applicant's past conduct and the likelihood of future compliance. Nothing in the texts of any of the five factors set forth in section 823(f) remotely suggests that Congress granted the Agency the authority to deny an application based on its assessment of ''the nature and amount of diversion of controlled substances in a geographical area.'' Gov. Br. 4.

Indeed, this is simply the other side of the community impact coin. However, in multiple cases, DEA has held that such evidence is not relevant to any of the public interest factors and further noted that a rule which takes into account the impact on the community caused by not registering (or de-registering through a revocation proceeding) a particular practitioner is completely unworkable. *See Linda Sue Cheek,* 76 FR 66972, 66973 n.4 (2011) (quoting *Owens,* 74 FR at 36757) (''the ALJ's reasoning begs the question of how many patients from underserved areas would a practitioner have to treat to claim the benefit of the rule'').

answer those questions posed by the Government.[3]

The Government also argues that ''Mr. James testified that, in his view, the corresponding responsibility requirement [of 21 CFR 1306.04(a)] exists so the Government can 'nail pharmacists and not go after doctors.''' *Id.* While that is true, Mr. James then acknowledged that this ''may be incorrect assumption'' but that it seemed to him ''that they are much harder on pharmacists than they ever are on doctors until very recently.'' Tr. 53. Contrary to the Government's view, Mr. James' expression of opinion, whether correct or not, is not probative of whether he is likely to violate federal law.

The Government further contends that Mr. James ''testified that he would fill any prescription written by a properly licensed physician unless he had a 'personal reason' not to do so.'' *Id.* (citing Tr. 52). No such statement occurs at the cited portion of the transcript and the Government ignores the following answer Mr. James gave when asked to describe the responsibilities and duties of a pharmacist:

> A pharmacist's duties and responsibilities are to fill all legitimate and legal prescriptions. We are allowed at any point to refuse to fill any prescriptions that our own personal conscience thinks is not correct * * * we don't even really have to have a reason. I think I've only turned down two in my life for personal purposes. But to verify that the prescription is legal, legitimate for lawful use, and then to fill the prescriptions, counsel the patient, make sure they understand what they're taken for, answer any questions they may have. That's the rough idea.

Tr. 36.

Indeed, the only evidence that supports the contention that Mr. James would fill any prescription as long as it was written by a licensed physician, was the testimony of a DI regarding a round-table discussion he had with the various principals of Respondent:

> Throughout the discussions, we talked heavily about diversion. I talked to Mr. James or asked Mr. James with regards to his opinion of the diversion problem in southern Ohio, and he alluded basically that he didn't think there was a diversion problem. I asked him about other pharmacists not filling prescriptions for pain management clinics that were located in southern Ohio. Mr. James was clear that he thought that was totally wrong of the pharmacist to even turn down the prescriptions as it's a legitimate prescription and pharmacists need not to turn those away.

Id. at 138–39.

The DI offered no further testimony to the effect that he discussed with Mr. James the nature of the prescriptions that were being issued by the pain management clinics (the drugs, strength, and quantities, as well as other relevant circumstances which support a finding that the prescriptions were not legitimate) and which pharmacists were refusing to fill.[4] Thus, this testimony does not support a finding that Mr. James will fill prescriptions even when he has reason to know that they have not been issued for a legitimate medical purpose.

While in determining the public interest, DEA is entitled to consider the likelihood of an applicant's future compliance with federal and state laws related to controlled substances, *see* 21 U.S.C. 823(f)(4), federal law requires that the finding be based ''on consideration *of the whole record''* and ''supported by * * * the reliable, probative, and substantial evidence.'' 5 U.S.C. 556(d) (emphasis added). The Government's Exceptions do not provide a persuasive reason to reject the ALJ's credibility findings with respect to Mr. James or his conclusion that Mr. James ''demonstrate[d] a sufficient understanding of a pharmacist's corresponding duties'' under 21 CFR 1306.04.[5] Accordingly, I adopt the ALJ's ultimate conclusion that the Government has not proved ''by substantial evidence that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f),'' ALJ at 29, and will order that Respondent's application for a DEA Certificate of Registration as a retail pharmacy be granted.[6]

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 28 CFR 0.100(b), I order that the application of Physicians Pharmacy, L.L.C., for a DEA Certificate of Registration as a retail pharmacy, be, and it hereby is, granted. This Order is effective immediately.

Dated: July 25, 2012.

Michele M. Leonhart,

Administrator.

Paul E. Soeffing, Esq.,
D. Linden Barber, Esq., for the Government

Steven E. Hillman, Esq., for the Respondent

Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge

I. Introduction

This proceeding is an adjudication pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq., to

[3] However, it is also noted that prior to this colloquy, Mr. James testified that he believed that diversion of controlled substances is ''a major problem'' in both Ohio and nationally. Tr. 44. Mr. James then explained: ''[j]ust look at the state of Florida where they have six doctors who basically from what I understand work out of the back of their house, back of their car, writing prescriptions for anybody who has $200 to give them whatever they want.'' *Id.* This testimony would seem to address the problem of pill-pushing physicians.

[4] In its Exceptions, the Government argues that the DI ''provided an example of this model of drug diversion by one particular doctor in Ohio who prescribed large amounts of oxycodone and other controlled substances to individuals that resulted in numerous deaths.'' Exceptions at 3 (Tr. 130–31). Continuing, the Government argues ''[t]hese are the types of the prescriptions that Mr. James indicated that he would fill when he was interviewed by [the] DI.'' *Id.* (citing Tr. 138–39).

It is true that the DI testified regarding the prescribing practices of Dr. Paul Volkman, an ex-registrant and now-convicted federal drug felon. However, the DI offered no testimony that he even discussed the type of prescriptions Volkman wrote with Mr. James, Tr. 130–31, let alone that Mr. James said he would fill such prescriptions. *See id.* at 138–39. Accordingly, there is no basis in the record to support the Government's contention.

[5] The Government also takes exception to the ALJ's finding that Mr. Hillman, one of Respondent's owners ''was generally credible.'' Exceptions at 4. It argues that there are ''inconsistencies between Mr. Hillman's answers to DEA's written questions * * * and his testimony at the hearing.'' *Id.* More specifically, the Government argues that while Mr. Hillman answered ''no'' to a written question as to whether he had ''any interest, either personally or professionally'' in one of nine listed pain clinics, he testified at the hearing ''that he had a professional relationship with several clinics as their attorney.'' *Id.* (citing GX 2, at 4; GX 3, at 4; Tr. 123). Even ignoring that the written question is laced with ambiguity, on the questionnaire, Mr. Hillman answered ''yes'' to the question of whether he had ''ever represented owners and/or physicians in the above list in any civil or criminal procedures.'' *See* GX 2, at 5; GX 3, at 4.

Furthermore, the Government offers no explanation as to why Mr. Hillman's representation of pain clinics in legal proceedings is relevant under any of the public interest factors.

[6] The Government takes exception to the ALJ's exclusion of a video recording on the ground that the Government failed to provide a written transcript of the recording as required by the ALJ's pre-hearing ruling. Exceptions at 6. The Government contends that ''[t]here is no statutory or regulatory requirement that a written transcript be provided.'' *Id.* However, under the Administrative Procedure Act, the ALJ is authorized to ''regulate the course of the hearing,'' 5 U.S.C. 556(c), and requiring the production of a transcript for a recording which a party seeks to admit into the record, clearly falls within this power. While it appears that this case was reassigned to the lawyer who tried it, the pre-hearing ruling was issued more than three months before the hearing, and thus, the Government had ample time to comply with the Judge's ruling. Moreover, while the Government noted that Respondent stipulated to the admission of the exhibit, it is the Judge (and not the parties) who runs the proceeding.

Nor is it clear why the video, which according to the Government is of a meeting between Mr. Hillman and members of the community during which the latter expressed their concerns about diversion, is relevant to any of the public interest factors. In any event, the DVD was corrupted and could not be played. I therefore reject this exception.

determine whether the Drug Enforcement Administration (DEA, Agency or Government) should deny an application for a DEA Certificate of Registration (COR) as a retail pharmacy, pursuant to 21 U.S.C. 823(f) and 824(a)(4), on the grounds that such registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). Without this registration, the applicant, Physicians Pharmacy, LLC (Respondent) of Piketon, Ohio, will be unable to lawfully distribute, dispense or otherwise handle controlled substances.

On May 11, 2011, the Deputy Assistant Administrator, DEA, issued an Order to Show Cause (OSC) to Respondent. The OSC provided notice to Respondent of an opportunity to show cause as to why the DEA should not deny Respondent's application for a DEA COR as a pharmacy, pursuant to 21 U.S.C. 824(a)(4), alleging that such registration would be inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f). (ALJ Ex. 1, at 1.) The OSC alleged [1] as a basis the following:

1. On January 12, 2011, [Respondent] applied to be registered with DEA as a pharmacy with a registered location of 727 Second Street, Piketon, Ohio.

2. The owners and corporate officers of the pharmacy have no experience owning or operating a pharmacy.

3. On behalf of [Respondent], corporate officer Steven Hillman told the mayor of Piketon and members of the public that prescriptions presented to the pharmacy will be filled so long as they contain a diagnostic code from the physician and match a facsimile or electronic version of the prescription that will be sent to the pharmacy by the physician. This statement fails to acknowledge the full scope of the ''corresponding responsibility'' of the pharmacist. *See* 21 CFR 1306.04(a).

4. On behalf of [Respondent], corporate officer Steven Hillman, in response to DEA's request to explain the owners' understanding of diversion in the Piketon region, stated, ''I never have been told.'' The remainder of his response was not relevant to the question. The corporate officers were either deceptively avoiding answering the question or were willfully ignorant of the rampant pharmaceutical drug abuse problem in southern Ohio. The response by Mr. Hillman on behalf of [Respondent] evinces a likelihood that [Respondent] will ignore signs of diversion and abuse.

5. [Respondent]'s pharmacist, Lawrence James, in response to DEA's asking if he was aware of the diversion of controlled substances in southern Ohio, stated that much of the problem stems from pharmacies not filling prescriptions from pain clinics. Mr. James stated that prescriptions from pain clinics were valid and should be filled.

6. On behalf of [Respondent], corporate officer William Caserta advised DEA that [Respondent] would serve clinics south of Columbus, Ohio. Columbus is approximately 67 miles from Piketon. When asked if there were concerns over chronic pain patients travelling from significant distances to obtain controlled substances, corporate officer Don Wolery asserted that the problem was local pharmacies refusing to fill prescriptions because pharmacists believe that the some [sic] prescriptions are not for legitimate medical problems.

7. The statements made by the corporate officers and pharmacist demonstrate a lack of understanding about the diversion and illicit use of pharmaceutical controlled substances. The statements indicate that [Respondent] will fill prescriptions issued by individual practitioners under circumstances that are indicative that the prescriptions are not issued in the usual course of professional practice or for a legitimate medical purpose.

Following prehearing procedures, a hearing was held in Cincinnati, Ohio on October 4, 2011, with both parties represented by counsel.[2] The Government called five witnesses and introduced documentary evidence. Respondent did not put on any evidence. After the hearing, both parties filed proposed findings of fact, conclusions of law, and argument. All of the evidence and post-hearing submissions have been considered, and to the extent the parties' proposed findings of fact have been adopted, they are substantively incorporated into those set forth below.

II. Issue

Whether the record establishes that Respondent's application for a DEA COR as a retail pharmacy should be denied on the grounds that such registration would be inconsistent with the public interest pursuant to 21 U.S.C. 824(a)(4) and 823(f).

III. Evidence and Incorporated Findings of Fact [3]

I find, by a preponderance of the evidence, the following facts:

A. Background

with a registered address of 727 Second Street, Piketon, Ohio 45661. (Tr. 136; Gov't Ex. 1.) The application contains Mr. Hillman's e-signature and lists Mr. Caserta as the Respondent is a Limited Liability Company (LLC) that was initially formed in or about 2010 with three members, Don Wolery (Mr. Wolery), Steven Hillman (Mr. Hillman), and William Caserta (Mr. Caserta). (Tr. 14, 25–26, 96–97.) Respondent currently has two members, Mr. Hillman and Mr. Caserta, who each hold a one-half ownership interest. (Tr. 26, 97.) Respondent is currently licensed as a retail pharmacy with the Ohio State Board of Pharmacy.[4] (Tr. 123; ALJ Ex. 2, at 4.) Lawrence James (Mr. James) is listed on Respondent's state pharmacy license as the ''Responsible Person.'' (Tr. 40–41; ALJ Ex. 2, at 4.) On January 12, 2011, Respondent submitted an electronic application for a DEA COR as a retail pharmacy in Schedules II through V, contact person. (Tr. 136; Gov't Ex. 1.)

B. The Government's Evidence

The Government's evidence included testimony from five witnesses: Mr. Wolery; Mr. Caserta; Mr. James; Mr. Hillman; and DEA Diversion Investigator (DI) Christopher Kresnak (DI Kresnak). In addition to testimonial evidence, the Government also introduced various documentary exhibits, to include: Respondent's master information for electronic application; [5] correspondence between DEA and Respondent; [6] an agenda and sign-in sheet for a regional meeting on prescription drug overdoses; [7] Mr. James's work history; [8] and three documents produced by Mr. James for use by Respondent, including a note to its customers, its mission statement, and information for physicians with pain patients.[9]

Mr. Wolery testified that he is an attorney, and that he and Mr. Hillman came up with the concept of opening a pharmacy. (Tr. 14.) He decided to become a member of Respondent because he wanted to make money and thought ''[i]t was a good business idea.'' (Tr. 14, 15.) Mr. Wolery testified that he contributed $1,330 to the business. (Tr. 18.) Mr. Wolery testified that he has no experience as a pharmacist, nor has he ever owned or operated a pharmacy. (Tr. 16.) He testified that he had no intentions of running the pharmacy: ''Mr. James had been chosen as a pharmacist to run it and had been given the latitude to run it as he saw fit, and given his experience in this matter, we felt that he was a good choice to run this operation in a lawful manner.'' (*Id.*)

[1] Represented to be a ''non-exhaustive summary of facts and law'' in support of the OSC. ALJ Ex.1, at 1.

[2] Respondent was represented by Steven Hillman, a member of Respondent with a fifty percent ownership interest. Mr. Hillman also testified in this matter.

[3] In addition to the evidence discussed in this Section, additional evidence and findings of fact are discussed in later Sections of this Recommended Decision.

[4] Respondent's state pharmacy license was issued in or about February 2011. (Tr. 123–24.)

[5] Gov't Ex. 1.

[6] Gov't Exs. 2–4.

[7] Gov't Ex. 6.

[8] Gov't Ex. 7.

[9] Gov't Exs. 8–10.

Rather, Mr. Wolery's role in the business was ''helping set it up. I met with the Ohio Pharmacy Board to make sure that plans and specifications * * * met with their [sic] approval.'' (Tr. 16–17, 18.) In speaking with representatives at the Ohio Pharmacy Board, Mr. Wolery testified that he asked them

> what they would require for a pharmacy, what they would like to see as far as security for the pharmacy, the type of safe and things like that, show them the potential schematic of what it would look like and ask them if there was anything that they would like to see in order for this pharmacy to be licensed, * * *

(Tr. 23.)

Mr. Wolery testified that he ended his membership on March 16, 2011, for personal reasons, and expressly stated that he did not leave the business for financial reasons. (Tr. 15–16.) Mr. Wolery provided a resignation letter and walked away without getting any of his initial investment back. (Tr. 17–18.) Mr. Wolery testified that he told Mr. Hillman that if Respondent gets a DEA COR and eventually makes a profit, he'd like to get his $1,330 investment back. (Tr. 18.) Although Mr. Wolery stated that he would not become a member should Respondent be granted a DEA COR, he testified that he believes the business will be profitable because ''there's a need for it. * * * People can't get scripts filled, even those that deserve them. So there's a need and I think the pharmacy will meet that need, as any pharmacy.'' (Tr. 18.)

Mr. Caserta testified that he has no experience as a pharmacist and has never owned or operated a pharmacy, but he became a member of Respondent after he was approached by Mr. Wolery and Mr. Hillman. (Tr. 25–26.) He did not make an initial investment, but he currently owns a fifty-percent share and serves as a managing partner. (*Id.*) Mr. Caserta testified that part of his job with Respondent included interviewing applicants to serve as Respondent's pharmacist. (Tr. 29.) After interviewing several applicants, Mr. Caserta and the other members hired Mr. James ''because of his work record, it was impeccable. His background was very good. And he had a lot of experience in managing a pharmacy, * * *'' (*Id.*)

Mr. Caserta testified that he spoke to the chief of police, the planning board, the zoning board, and the ''Assistant—to the County Attorney, the City Attorney'' for Piketon to ensure that they had no objections to Respondent opening in Piketon. (Tr. 30.) He testified that the chief of police told Mr. Caserta that if Respondent was not going to have a doctor and it was simply going to be an apothecary, then he had no objections. Similarly, none of the other people who Mr. Caserta spoke to had any objections. (*Id.*) Mr. Caserta testified that if Respondent receives a DEA COR, it will fill both non-controlled and controlled substance prescriptions for customers between an eighteen and forty-mile radius. (Tr. 27–28.) Mr. Caserta testified that the Kentucky border is approximately thirty miles away, but he ''ha[s] no idea'' if Respondent will get customers from Kentucky. (Tr. 28.)

Mr. James testified that he completed two years of pre-pharmacy studies at Ohio Dominican College and then earned a Bachelor of Science degree in pharmacy from Ohio State University. (Tr. 32.) He graduated in June 1975, and has been a registered pharmacist in Ohio since August 2, 1975. (*Id.*) Mr. James has worked continuously as a pharmacist in Ohio since he was registered, with the exception of ''no more than three weeks' break between any jobs.'' (Tr. 33; *see* Gov't Ex. 7.[10]) Mr. James has worked at seven retail pharmacies, one in-house pharmacy organization that filled prescriptions for patients released from the James Cancer Center, and one community hospital as the staff pharmacist. (Tr. 35; Gov't Ex. 7.) Mr. James has also worked for a company called HealthPro Staffing Agency, where he was given a nine-month assignment to the Ohio Department of Mental Health, filling prescriptions for twenty-three prisons in central and south-central Ohio. (Tr. 43, 44.)

Mr. James testified that he was put in touch with Mr. Caserta through an employment agent. (Tr. 38.) After speaking to Mr. Caserta and going to see Respondent's location, Mr. James agreed to work as the main pharmacist. (*Id.*) Mr. James testified that Respondent is located in an old brick building in Piketon, Ohio. (Tr. 48.) He believes there are approximately four other pharmacies within five or ten miles of Respondent's location. (Tr. 42.) None of the pharmacies in the area, however, are set up as ''strictly an apothecary-type business,'' as Respondent, but are all ''traditional pharmacies, including over-the-counter drugs, * * * greeting cards, * * * deodorants and other things.'' (Tr. 91–92.) Although Mr. James is not involved in the business plan since he is not an owner, (Tr. 85), Mr. James testified that when he was hired, he understood that decisions as to how the pharmacy will operate will have to be approved by Mr. Hillman and Mr. Caserta. (Tr. 84, 92–93.) He testified, however, that ''nothing has yet been turned down by either'' of them. (Tr. 93.)

Mr. James testified that Respondent currently has one other employee, Theresa Putnam (Ms. Putnam), but that if Respondent obtains a DEA COR, Mr. James and Mr. Caserta will likely hire a pharmacy technician as well. (Tr. 41.) Mr. James explained that when he and Mr. Caserta were previously looking to hire a technician, they both interviewed the candidates. Mr. James then ''ranked them in the order that I felt the people would be of interest to us.'' (*Id.*) Mr. Caserta then ranked the candidates ''and then he made the decision ultimately of which one [they] would hire.'' (Tr. 41–42.)

Although Mr. James accepted the pharmacist position with Respondent in January 2011, he and Ms. Putnam have been furloughed since March 17, 2011, because Respondent is non-operational. (Tr. 39, 40–41.) Mr. James testified that although Respondent has a pharmacy license from the state, it is unable to operate even in non-controlled substances because the wholesaler does not want to sell just non-controlled substances to Respondent. (Tr. 67; 80.) The wholesaler ''didn't want to sell anything to us until we got all licenses taken care of, including the DEA license.'' (Tr. 67.) Mr. James testified that he was ready and willing to start working for Respondent, selling just non-controlled substances. (*Id.*) The last he spoke with the wholesaler, it was ready to sell to Respondent, but Mr. Caserta later informed Mr. James that the wholesaler would not sell any drugs until Respondent got its DEA registration. (Tr. 82.)

Mr. James testified that ''[a] pharmacist's duties and responsibilities are to fill all legitimate and legal prescriptions. We are allowed at any point to refuse to fill any prescription that our own personal conscience thinks is not correct according to—we don't even really have to have a reason.'' (Tr. 36.) Mr. James testified that he refused to fill two prescriptions during his career ''[f]or personal reasons.'' (Tr. 36.) He clarified later that he turned down two for ''personal purposes,'' but that he turned down ''many forged prescriptions * * * not for personal

[10] Mr. James testified that Government Exhibit 7 shows where he was working on September 15th of each year when he renewed his state pharmacy license. (Tr. 33.) Mr. James testified that the document accurately portrays his work history, with the following exceptions. First, ''for exactly one year to the day, I worked for a company called Ultimate Care Home Health Care, between Knox Community Hospital [in 1992] and Meijer [in 1993].'' (Tr. 34–35.) Second, Mr. James testified that he did not work at CVS Pharmacy in 2010. He actually worked for HealthPro Staffing Agency in 2010. (Tr. 43.)

purposes.'' (Tr. 60.) Mr. James explained that he turned down those prescriptions for ''legal purposes'' because he was confident that the prescriptions were fraudulent. (Tr. 60–61.)

Mr. James testified that diversion is ''a major problem'' not only in southeastern Ohio, but across the entire country. (Tr. 44.) In addition to testifying that some patients try to alter prescriptions or bring in forged prescriptions, (Tr. 51), Mr. James testified that in Florida, for instance, ''they have six doctors who basically * * * work out of the back of their house, back of their car, writing prescriptions for anybody who has $200 to give them whatever they want, and then those people wind up coming all over the United States trying to get them filled.'' (Tr. 44–45.) Mr. James also testified that he is aware that there are some doctors who ''will have an arrangement with the patient where they will supposedly—the doctor will write them a prescription, they'll get it filled, and the doctor either gets a cut of the pills or whatever.'' (Tr. 52.) Mr. James has never ''actually seen any of that,'' nor is he ''totally aware of * * * any specifics.'' (*Id.*)

Mr. James testified that he is aware of a pharmacist's corresponding responsibility under 21 CFR 1306.05. (Tr. 53.) He testified, however, that he does not believe that certain pharmacists are more diligent than others in checking prescriptions. (Tr. 77.) He agreed that some pharmacists are more fearful of the inspectors from the State Board of Pharmacy than others. (Tr. 77–78.) Mr. James later testified that ''I believe there are good pharmacists, I believe there are also bad pharmacists. I believe that people get themselves into situations that they sometimes think they can't control even though they really can control them.'' (Tr. 79.) He also testified that he ''absolutely'' believes that some pharmacists fill bad prescriptions. (*Id.*) The Government attempted to clarify with the following colloquy:

> Q But you wouldn't characterize them as being less diligent than any other pharmacist?
>
> A In one case, he was more fearful that his supervisor would find out that he didn't fill it, and the supervisor would raise Cain for, ''Why didn't you fill this prescription?'' It didn't matter that it was a very questionable prescription for a very questionable quantity.
>
> The field of pharmacy is not a pretty field anymore. It has changed so much since the DEA laws of 1976 and what insurances did around that time that it's a whole different ballgame than it was back in my early years.

(Tr. 79–80.)

Mr. James testified that he fulfills his corresponding responsibility by verifying that each prescription contains the customer's name and address, and by asking each customer for a valid phone number even though the law does not require that information. (Tr. 54–55.) Mr. James testified that he also observes each prescription to see what drug the customer is getting, and ''[s]ometimes I'll ask the person questions like as to what they got this prescription for on controlled substances, * * * .'' (Tr. 55.) He explained: '' 'It's my license,' I keep telling everybody. I don't care what these companies say to keep doing, it's my rear end that's on the line here. If my license gets suspended, it's my job. * * * I want guidelines for the actual pharmacist to be able to have honest input so he can decide whether this is really a legitimate prescription, * * * .'' (Tr. 53–54.)

Mr. James testified that he would like to employ five additional safeguards as the pharmacist for Respondent. First, he would like to ask the prescribing physicians to provide an IDC–9 diagnosis code for each prescription so that Mr. James can ''verify that the prescription was indeed for a legal, legitimate purpose, which has always been a problem.'' (Tr. 46.) Mr. James testified that the IDC–9 code is typically used by insurance companies for billing purposes, and he has never seen it used by a pharmacy. (Tr. 47–48.) He explained, however, that he thinks it will be useful to pharmacists. (Tr. 47.) Although none of the pharmacies that Mr. James previously worked for implemented his idea, he testified that Mr. Hillman responded, ''You're the boss of the pharmacy, and if you think we need it, then we need it basically.'' (Tr. 86–87.)

Second, Mr. James testified that he would like to request that the prescribing physicians fax a copy of each prescription directly to the pharmacy so that Mr. James can verify that nothing has been changed on the prescription carried into the pharmacy by the customer. (Tr. 47, 87.) Mr. James testified that Mr. Hillman and Mr. Caserta agreed to implement this policy as well. (Tr. 87.)

Third, Mr. James testified that he would like to use OARRS [11] to help him determine if a prescription is valid by checking OARRS to see if the customer has had other controlled substances prescriptions issued and filled. (Tr. 90.) According to Mr. James, Mr. Hillman and Mr. Caserta liked this idea as well. (Tr. 91.) Mr. James testified that OARRS hasn't typically been used in this fashion, explaining that some of his colleagues think his idea is ''blasphemous'' and that he's ''gotten some indication from the State Board of Pharmacy that they didn't like the idea that I was going to be checking with OARRS.'' (Tr. 90–91.)

Fourth, Mr. James testified that he would like to require that each customer provide a valid state-issued license or ID when picking up a prescription that Mr. James can keep on file. (Tr. 46.) He further explained that if a customer is unable to pick up a prescription, the customer will have to notify Respondent that another person will pick up the prescription on the customer's behalf and that person will have to provide a valid form of identification. (Tr. 46–47.) Mr. James will keep a copy of that identification in the customer's file, and testified that there were copiers for him to do that. (Tr. 87.)

Finally, Mr. James testified that in addition to keeping a log of all Schedule II drugs, he would also like to keep a log of all other controlled substances, so that ''[a]ll controlled substances would have an exact inventory at all times.'' (Tr. 47, 88.)

Mr. James also testified that in late February 2009, he prepared three documents for potential use by Respondent. (Tr. 57–58, 70–71, 71–72.) Mr. James testified that he gave the documents to Mr. Caserta and Mr. Hillman to consider, but he did not think the documents had been approved for use, stating that ''until the other day when I saw these things inside the folder, as far as I was concerned, they were thrown away.'' (Tr. 58.)

First, Mr. James created a document entitled ''Note to Our Customers with Pain'' that he would like to give to pain medication customers so that the customers ''understand exactly what were [sic] going to do to verify that their prescriptions were legitimate, legal, valid and under what circumstances I possibly would tell them, 'Sorry, I cannot fill your prescription.' '' (Tr. 58; *see* Gov't Ex. 8.) Mr. James testified that the document informs customers that they need to fill all of their prescriptions with Respondent, not just their controlled substances prescriptions. (Tr. 58; *see also* Gov't Ex. 8.) He explained that this will help him identify any potential drug interactions and also demonstrates that he is not operating a pill mill. (Tr. 63.) He also testified that the document informs customers that if the insurance company ''rejects the claim as too early, we will not fill the

[11] OARRS refers to the Ohio Automated Rx Reporting System, a drug database established and maintained pursuant to Ohio law. Ohio Admin. Code R. 4731–11–11 (2011).

prescription until the proper time. Do not think that you can just pay cash and get it filled.'' (Tr. 65–66.) He also testified that the document informs customers that the prescribing physicians ''can speed up the process by faxing all prescriptions in advance to the pharmacy, along with the proper IDC–9 diagnosis code.'' (Tr. 68; *see also* Gov't Ex. 8.) He explained that this will save time for the customers because otherwise he will have to contact the prescribing physician after the customer comes into the pharmacy. (Tr. 68.) Mr. James testified that he assumes some form of this document will be used. (Tr. 59.)

Second, Mr. James testified that he created a document entitled ''Our Mission Statement.'' (Tr. 70–71; *see* Gov't Ex. 9.) Mr. James proposed that Respondent provide the mission statement to customers ''to indicate to people what our business was, what we were and what we hoped to do.'' (Tr. 71.) The document informs customers that Respondent wants to be their ''local pharmacy for all of your prescription needs.'' (Gov't Ex. 9.) It also informs customers that Respondent does not offer over-the-counter medications and does not have a doctor on staff. (*Id.*)

Third, Mr. James testified that he created a document entitled ''Information for Doctors with Pain Customers.'' (Tr. 71–72; *see* Gov't Ex. 10.) Mr. James testified that this document was not approved for use yet. The draft document sets forth the security measures that Mr. James ''would like to put into place to protect the doctor, the patient and myself[.]'' (Tr. 73; *see* Gov't Ex. 10.)

Mr. James also testified to the physical security measures implemented by Respondent. He testified that the main gate to the building has a ''good major gated lock, so it's harder to get into[.]'' (Tr. 48.) Once inside, the pharmacy department is to the right and the waiting area is to the left. (*Id.*) Mr. James testified that the ''pharmacy has a thick door which has an opening, which has * * * bulletproof glass. * * * The windows into the pharmacy also have bars which I believe were actually requested by the State Board of Pharmacy.'' (Tr. 49.) Mr. James also testified that there is a walk-in safe in the pharmacy, approximately three feet deep, six or seven feet wide and tall enough for him to stand inside without ducking his head. He stated that it is the ''biggest safe I've ever seen inside a pharmacy.'' (*Id.*) Mr. James testified that this is the ''best security I've ever seen'' at a pharmacy. (Tr. 50.) He testified that when the inspector from the State Board of Pharmacy observed the safe, he made no negative comments, but simply said '' 'Yes, that will do,' or something to that effect.'' (Tr. 88–89.)

Mr. James did not know if the size of the safe was indicative of the volume of controlled substances that will be kept on hand. (Tr. 50.) He did indicate, however, that he will keep all of the controlled substances, rather than just the Schedule II controlled substances, in the safe. (*Id.*) Mr. James testified that he does ''not really'' know what the percentage breakdown will be for controlled and non-controlled substances filled by Respondent once it opens for business. (Tr. 73.) Although Mr. James testified that he hopes the percentage is acceptable, he indicated that it has been ''rather confusing'' to determine what an acceptable percentage might be. (Tr. 73, 74.) For instance, he testified that the State Board of Pharmacy suggested that no more than twenty-five percent of all prescriptions filled by Respondent should be for controlled substances, but the wholesaler indicated that no more than thirty or thirty-five percent should be for controlled substances. Then, when Mr. James spoke to DI Kresnak, he got ''a different percentage.'' (Tr. 74.)

Mr. Hillman testified that on October 21, 2009, he attended a regional meeting in Scioto County, Ohio entitled ''Epidemic of Prescription Drug Overdoses: A Call to Action.'' (Tr. 109–10; Gov't Ex. 6.) Mr. Hillman explained that the meeting ''was mostly political. * * * And they talked about * * * having to get better control over the prescription drugs.'' (Tr. 110.) Mr. Hillman testified that he did not find the meeting to be educational, explaining that ''I don't know a lot about drugs, but the people who were speaking knew less than I did.'' (Tr. 111.) Mr. Hillman initially planned to attend the meeting because ''somebody has to be blind not to understand that there's some serious drug problems,'' so he wanted to get involved. (*Id.*) Mr. Hillman explained that he wanted to get involved by talking with various officials about the fact that there were no laws in place at the time regarding licensing for businesses that treated pain patients. (Tr. 111–12.) He also informed the officials that he believed OARRS was inadequate, suggesting that it should be interactive so that pharmacists can enter a patient's personal information to determine what other prescriptions the patient has had filled with other pharmacies. (Tr. 112–13.) Mr. Hillman eventually started to work with a state representative who ''wound up sponsoring the bill,'' [12] but the representative eventually stopped returning Mr. Hillman's calls. (Tr. 113–14.) Mr. Hillman testified that he was not contemplating opening a pharmacy at the time of the town meeting. (Tr. 114.)

Mr. Hillman further testified that he has no experience as a pharmacist and has never owned or operated a pharmacy. (Tr. 98.) Mr. Hillman also testified that he is not familiar with DEA's Controlled Substance Ordering System (CSOS), explaining that he ''would never order controlled substances,'' so he has ''[n]o reason to become familiar.'' (Tr. 98–99.) Mr. Hillman explained that he will have ''very little'' to do with running the pharmacy. (Tr. 97.) Rather, Mr. James will be the pharmacist in charge and that he ''will be 100 percent in control'' of verifying prescriptions. (Tr. 99.)

Mr. Hillman testified that he was aware of pain management clinics in southern Ohio, but that all except for one of the clinics have closed. (Tr. 103–04.) The pain management clinic that Mr. Hillman believes is still open is located about forty or fifty miles from Respondent. (Tr. 104.) Mr. Hillman does not know if Respondent will get customers from that pain management clinic, but he testified that Respondent will not advertise in that area. (*Id.*) Mr. Hillman testified that he does not know where the patients of the other pain clinics now receive medical care; nor does he know where the patients of those clinics filled their prescriptions before the pain clinics closed. (Tr. 105.)

Mr. Hillman testified that Respondent is located in ''a 160-year old farmhouse'' that has two rooms on the first floor and two rooms on the second floor. (Tr. 101.) Upon entering the front door, there is a room to the right, which will be the actual pharmacy, and a room to the left, which will be the waiting area. (Tr. 101.) Mr. Hillman testified that he contacted the City Attorney for Piketon and invited him to look around the pharmacy and ask any questions. (Tr. 116–17.) The City Attorney accepted the invitation, and went to the pharmacy with the chief of police, the mayor, some city council members, as well as some citizens.[13] (Tr. 118.)

[12] While not entirely clear from the record which ''bill'' Mr. Hillman is referring to, his testimony is consistent with a 2011 Ohio House Bill Number 93, which is now codified at Ohio Rev. Code Ann. § 4729.51 (2011).

[13] The Government offered a video recording of the meeting, obtained from the Internet, arguing that the recording was relevant to show ''the diversion problems in southern Ohio, concerns expressed by the community and the knowledge * * * of Mr. Hillman and the steps that he had

Continued

Mr. Hillman testified that Respondent has been licensed by the Ohio Board of Pharmacy since early 2011. (Tr. 123–24.) Respondent has not opened for business yet, however, because the wholesaler will not even supply Respondent with the non-controlled drugs until it obtains its DEA COR. (Tr. 124.) If Respondent obtains a DEA COR, Mr. Hillman testified that, at the outset, Respondent will not sell anything other than prescription drugs. (Tr. 100.) If, however, Mr. James determines that there is a need for any over-the-counter medications, then Respondent may start to sell those medications. (Tr. 100–01.) Mr. Hillman testified that all of the medication will still be kept behind the glass with Mr. James, and there will be no displays in the waiting area. (Tr. 101.)

Mr. Hillman testified that ''if 'diversion' is controlled substances going to someplace they shouldn't be,'' then he believes it exists in southern Ohio, citing a 2008 case where twenty-two people died from prescription drug overdoses even though none of them had a lawful prescription. (Tr. 106, 107–08.) Mr. Hillman was not aware of any other specific incidents, claiming that ''[o]nce Scioto County gave me that information, they stopped giving me any additional information.'' (Tr. 108.) He stated, however, that ''when people walk into our pharmacy, those people that the medications are sold to will be sold to appropriate people, period. If the pharmacist believes for one second that there's something wrong, he'll deal with it.'' (*Id.*) Mr. Hillman also testified that to prevent diversion, he would like Respondent to maintain contact with the prescribing physicians. (Tr. 100.) He also stated that Respondent has ''adopted'' all of Mr. James's suggestions, including requiring prescribing physicians to fax a copy of all prescriptions to the pharmacy and requiring customers to present photo identification before obtaining their medications. (*Id.*)

DI Kresnak [14] testified that southern Ohio, northeastern Kentucky, and West Virginia, were formerly ''thriving'' with labor-intense jobs, leading to a population of coal miners, railroad workers, and steel workers. (Tr. 130.) According to DI Kresnak, these industries have left the area over the past couple of decades, and ''a population of drug dealers moved in the area.'' (*Id.*) Many of the drug dealers are supplied by questionable doctors in the area. (*Id.*) DI Kresnak testified that he obtained information from local coroners and law enforcement officials indicating that ''Kentucky is averaging almost three bodies a day for prescription drug overdose. The State of Ohio has indicated they're close to that number for prescription overdose.'' (Tr. 131–32.) DI Kresnak also testified that from approximately 2005 to 2008, southern Ohio had an increase of prescription drug overdoses of approximately 280 percent. (Tr. 132.)

In addressing Mr. Hillman's testimony that most of the pain clinics in the area had closed, DI Kresnak explained that prior to summer 2011, when House Bill 93 was enacted by the Ohio Legislature, the majority of the pain clinics in southern Ohio were owned by convicted felons who would bring in physicians who had previously faced disciplinary action. (Tr. 132–33.) House Bill 93, however, required that ''if you were a pain clinic, you had to be a licensed practitioner. I believe you had to be associated with a hospital. There were several other caveats to the law that I'm not familiar with.'' (Tr. 132.) DI Kresnak explained now that ''there are individuals trying to undermine the current law.'' [15] (Tr. 132.)

DI Kresnak testified that he became familiar with Respondent's application for a DEA COR, which was filled out by Mr. Hillman. (Tr. 135; *see* Gov't Ex. 1.) Although DI Kresnak does not typically conduct an on-site visit for a new retail pharmacy application, he did conduct one in this case. (Tr. 136–37.) DI Kresnak contacted Mr. James and went to the pharmacy in February 2011. (Tr. 137.) DI Kresnak had a round-table discussion with Mr. James, Mr. Caserta, Mr. Wolery, and Ms. Putnam. (*Id.*) He did not interview them individually, but instead discussed as a group ''why the pharmacy was going to be open, the need for the pharmacy in the area.'' (Tr. 138.) They also talked about diversion, and according to DI Kresnak, Mr. James ''alluded basically that he didn't think there was a diversion problem.'' DI Kresnak testified that Mr. James thought it was wrong that other pharmacists would not fill prescriptions for pain management clinics located in southern Ohio. (*Id.*)

DI Kresnak testified that he discussed the procedures that Mr. James would implement at the pharmacy, including ''the need for doctors to fax the prescriptions over to verify correctness and accuracy.'' (Tr. 139.) DI Kresnak testified that Mr. James also wants to request IDC–9 codes from prescribing physicians. (Tr. 148.) DI Kresnak refused to ''comment on'' whether he thought it was a good idea ''because it's above what DEA requires.'' (*Id.*) DI Kresnak also refused to comment on whether it was a good idea to have the prescribing physician fax the prescription to Mr. James to compare to the prescription brought in by the customer, stating ''I'm not a pharmacist. I don't run pharmacies.'' (*Id.*) He agreed, however, that this would ''help get the ultimate user the prescription.'' (Tr. 148–49.)

DI Kresnak also testified that Mr. Caserta informed him that Respondent would fill prescriptions for ''anything south of Columbus.'' (Tr. 139.) When DI Kresnak asked how they would feel about pain patients traveling so far to have their prescriptions filled, ''Mr. Wolery stated that he felt that it was a shame that they had to travel that far, that they were legitimate prescriptions and that it's just a darned shame they have to travel that far.'' (*Id.*) This concerned DI Kresnak because ''there isn't a pharmacist that is filling for these pain clinics with exception to one or two, and the ones that were filling for the one or two, people were traveling great distances. * * * These customers all of a sudden weren't going to have to be traveling much longer because there was going to be a pharmacy opening up in the area.'' (Tr. 140.)

DI Kresnak testified that he is not aware of a guideline setting forth the percentage of controlled substances that should be sold out of a pharmacy. (Tr. 149.) He testified that ''the DEA is not going to put limits or percentages within a business.'' (Tr. 150.) DI Kresnak explained security measures in place at Respondent, based on his inspection of the building. (Tr. 138, 141.) DI Kresnak testified that there are numerous cameras on the outside of the building, pointing in all directions. (Tr. 141.) The windows of the building are secured by iron bars on the inside. (Tr. 143.) DI Kresnak testified, however, that having bars on the windows does not ''bother[] me.'' (Tr. 156.) The front door to the

proposed to take to remain in compliance with the requirements of DEA in stemming diversion and satisfying the local community.'' (Tr. 119–20.) I excluded the exhibit as both irrelevant and noncompliant with the June 28, 2011 Prehearing Ruling, (Tr. 120), which required that ''[a]ny audio or video recordings must include a written transcript.'' (ALJ Ex. 6, at 2 n.3.)

[14] DI Kresnak has been a DI with DEA for approximately eight-and-one-half years in Cincinnati. (Tr. 127–28.) Prior to working with the DEA, DI Kresnak received a four-year degree in management from Park University, and then completed work in a master's program at Central Michigan University. (Tr. 128.) DI Kresnak also spent twenty-two years in the United States Marine Corps, where he retired as a Master Sergeant. (*Id.*)

[15] Respondent's counsel questioned DI Kresnak what he meant by that statement, asking whether DI Kresnak meant these individuals were actually violating the law ''or just that they're obeying it to the extent that you don't like it?'' (Tr. 151–52.) DI Kresnak testified that ''it's not a matter of I don't like it. There's probably more to that answer that I'm not at liberty to say at this time, sir.'' (Tr. 152.)

building is ''gated with an iron gate with a padlock.'' (Tr. 141.) Once inside the building, DI Kresnak testified that the pharmacy is to the right, and the waiting room is to the left. Beyond the waiting room is an office where Ms. Putnam ''would be accepting the prescriptions and payment.'' (*Id.*) DI Kresnak testified that there is a door and ''heavily fortified, very thick, almost bulletproof glass with a sliding drawer to allow the payment and the prescription to come through.'' (Tr. 141.) DI Kresnak testified that there is another ''heavily fortified'' door with several glass windows leading to the pharmacy section. (*Id.*) The door contains a speaker hole so the pharmacist can communicate with customers, as well as a four-inch hole where the pharmacist pushes the medication through to a basket on the customer's side of the door. (Tr. 142.)

DI Kresnak testified that inside of the pharmacy area, there is a very large vault, approximately ''eight feet wide and four feet deep [with] a Class V door on it, which is a very heavy steel door with a combination lock on it.'' (Tr. 142.) DI Kresnak testified that he's never seen a vault in a pharmacy; he's only seen safes in pharmacies. (Tr. 143.) He added, ''This is a distributor's vault. This is something that a small mom and pop distributor would have for their Schedule II narcotics.'' (*Id.*) ''[P]harmacies typically have ''3x3 combination safes with a door on the front.'' (Tr. 144.) DI Kresnak testified, however, that with regards to diversion, ''[t]here's nothing wrong with being cautious, * * * .'' (Tr. 147.) He also testified that there is nothing wrong with having that kind of security. (Tr. 156.)

DI Kresnak testified that Mr. Hillman was not present when he conducted the roundtable and site inspection of Respondent's location. (Tr. 152–53.) DI Kresnak arranged to meet Mr. Hillman in person, but DI Kresnak did not show up. (Tr. 155.) As a result, DI Kresnak submitted written questions to Mr. Hillman. (Tr. 152; *see also* Gov't Ex. 2.) On March 7, 2011, Mr. Hillman submitted his responses to DI Kresnak. (Gov't Ex. 3.) [16]

Notably, when Government counsel asked DI Kresnak if he believed granting a DEA COR to Respondent will threaten the public health and safety, DI Kresnak responded:

> I worked in an area which diversion—I claim it as a pandemic when it comes to prescription drugs. I have seen what it's done to families. We talked about the history of Portsmouth in regards to when industry was there. That was a town that you could leave your bicycle on the sidewalks. It was a town where everybody knew everybody. It's a ghost town when it comes to neighborly love anymore because you have to lock everything up. You cannot leave anything out.
>
> The diversion problem is so bad. It's an underground economy, sir. The underground economy is that of pills. When people have to make their mortgage payment or their rent payment or their utility payments and they're short, they know they can trade their medicines for cash, for something that will help them continue to survive until the next payday.
>
> There is just countless numbers of incidents that I've been involved in. I've sat at the tables and talked to the family members of overdose victims, and yes, they'll all say that, ''Yes, they took their pills.'' But the physicians and the pharmacists that filled those, two of them are in prison right now. It is a major problem in that area.
>
> It was a long answer to your question sir. It is not in the—I've talked to civic leaders, I've talked to the police chief. They don't want this, they feel that it is not in the best public interest to have this apothecary in their community.

(Tr. 144–45.) After Respondent's counsel interposed a relevance objection, stating that ''this has absolutely nothing to do with Physicians Pharmacy in Piketon, Ohio,'' (Tr. 145), Government counsel effectively conceded the point and again asked DI Kresnak specifically, ''why will giving a registration to Physicians Pharmacy, this specific pharmacy, in your opinion, why would that pose a threat to the public health and safety?'' (Tr. 146.) DI Kresnak stated, ''I know from the addicts I've talked to, they can't wait for it to open.'' (*Id.*)

C. Respondent's Evidence

As noted above, Respondent did not produce any testimonial or documentary evidence at the hearing, relying instead on the testimony and evidence introduced during the Government's presentation of its case, the majority of which involved testimony by witnesses affiliated with Respondent.

IV. Discussion

A. The Applicable Statutory and Regulatory Provisions

The Controlled Substances Act (CSA) provides that any person who dispenses a controlled substance must obtain a registration issued by the DEA in accordance with applicable rules and regulations.[17] The CSA further provides that the ''Attorney General shall register practitioners (including pharmacies, as distinguished from pharmacists) to dispense, or conduct research with, controlled substances * * * if the applicant is authorized to dispense, or conduct research with respect to, controlled substances under the laws of the State in which he practices.'' [18] An application for registration may be denied if the ''Attorney General determines that the issuance of such registration * * * would be inconsistent with the public interest.'' [19]

B. The Public Interest Standard

The CSA, at 21 U.S.C. 824(a)(4), provides, insofar as pertinent to this proceeding, that the Administrator may deny an application for a COR if she finds that an applicant has committed such acts as would render his registration inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). Pursuant to 21 U.S.C. 823(f), the Administrator may deny an application for a DEA COR if she determines that such registration would be inconsistent with the public interest. In determining the public interest, the Administrator is required to consider the following factors:

> (1) The recommendation of the appropriate state licensing board or professional disciplinary authority.
>
> (2) The applicant's experience in dispensing or conducting research with respect to controlled substances.
>
> (3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution or dispensing of controlled substances.
>
> (4) Compliance with applicable state, federal or local laws relating to controlled substances.
>
> (5) Such other conduct which may threaten the public health and safety.[20]

As a threshold matter, the factors specified in Section 823(f) are to be considered in the disjunctive: The Administrator may properly rely on any one or a combination of those factors, and give each factor the weight she deems appropriate, in determining whether a registration should be revoked or an application for registration denied. *See David H. Gillis, M.D.,* 58 FR 37,507, 37,508 (DEA 1993); *see also D & S Sales,* 71 FR 37,607,

[16] Although Government Exhibits 2 and 3 were admitted into evidence by stipulation, (Tr. 7), the Government offered no testimony pertaining to these exhibits. Nor are they addressed in the Government's post-hearing brief. I find these exhibits generally consistent with other evidence of record.

[17] 21 U.S.C. 802(10), 822(a)(2).

[18] 21 U.S.C. 823(f).

[19] *Id.* The Attorney General has delegated this authority by regulation to the Administrator of the Drug Enforcement Administration. 28 C.F.R. § 0.100(b). *See e.g. Lawrence Lerner, M.D.,* 54 FR 8,014, 8,015 (DEA 1989).

[20] I conclude that the reference to ''other conduct which may threaten the public health and safety'' would as a matter of statutory interpretation logically encompass the factors listed in § 824(a). *See Kuen H. Chen, M.D.,* 58 FR 65,401, 65,402 (DEA 1993).

37,610 (DEA 2006); *Joy's Ideas,* 70 FR 33,195, 33,197 (DEA 2005); *Henry J. Schwarz, Jr., M.D.,* 54 FR 16,422, 16,424 (DEA 1989). Application of the public interest factors requires an individualized determination and assessment ''tethered securely to state law * * * and federal regulations.'' *Volkman* v. *DEA,* 567 F.3d 215, 223 (6th Cir. 2009). Additionally, in an action to deny a practitioner-registrant's[21] application for a COR, the DEA has the burden of proving that the requirements for denial are satisfied.[22] The burden of proof shifts to a respondent once the Government has made its prima facie case.[23]

D. The Factors To Be Considered

Factors 1 and 3: The Recommendation of the Appropriate State Licensing Board or Professional Disciplinary Authority and Conviction Record Under Federal or State Laws Relating to the Manufacture, Distribution or Dispensing of Controlled Substances

In this case, regarding Factor One, it is undisputed that Respondent currently holds a valid unrestricted pharmacy license in Ohio. (Tr. 123.) Although not dispositive, Respondent's possession of a valid retail pharmacy license in Ohio weighs against a finding that Respondent's registration would be inconsistent with the public interest. *See Robert A. Leslie, M.D.,* 68 FR 15,227, 15,230 (DEA 2003) (state license is a necessary, but not a sufficient condition for registration, and therefore, this factor is not dispositive).

Regarding Factor Three, there is no evidence that any of the members of Respondent, including Respondent's Ohio-licensed pharmacist, have ever been convicted under any federal or state law relating to the manufacture, distribution or dispensing of controlled substances. I therefore find that this factor, although not dispositive, *see Leslie,* 68 FR at 15,230, weighs against a finding that Respondent's registration would be inconsistent with the public interest.

Factors 2, 4 and 5: Respondent's Experience in Handling Controlled Substances; Compliance With Applicable State, Federal or Local Laws Relating to Controlled Substances; and Such Other Conduct Which May Threaten the Public Health and Safety

Regarding Factors Two and Four, the Government argues in substance that Respondent's application for registration is inconsistent with the public interest because Respondent's owners do not have ''experience as a pharmacist or as the owner or operator of a pharmacy,'' further arguing that they have ''demonstrated a limited knowledge of diversion and the issues surrounding diversion.'' [24] (Gov't Br. at 4.) Additionally, while facially acknowledging that Respondent's pharmacist ''does have experience,'' the Government argues in substance that his testimony at hearing ''did not address the significant diversion problem that exists with pill-pushing physicians,'' nor did he have sufficient experience with refusing to fill prescriptions from ''unscrupulous physicians'' over his thirty-six-year career. (*Id.*)

The credible evidence of record with regard to Respondent's ownership, operation, and employees, as it pertains to experience in handling controlled substances, does not support a finding by a preponderance of the evidence that registration would be inconsistent with the public interest. As an initial factual matter, it is undisputed that Respondent is licensed by the State of Ohio as a retail pharmacy, and Respondent's pharmacist-in-charge, Mr. James, has been a registered pharmacist in Ohio since 1975. (Tr. 32, 67, 80.)

Agency precedent establishes the relevant parameters of assessing the conduct of individuals associated with a pharmacy-applicant. ''DEA has consistently held that a pharmacy operates under the control of owners, stockholders, pharmacists, or other employees, and the conduct of these individuals is relevant in evaluating a pharmacy's fitness to be registered with DEA.'' *Bradford's Pharmacy Conditional Grant of Registration,* 63 FR 58,418, 58,420 (DEA 1998) (pharmacist-owner convicted of felony conduct). For example, DEA has consistently held that a corporate registration may be revoked or denied where ''a natural person who is an owner, officer, or key employee, or who has some responsibility for the operation of the registrant's controlled substance business, has been convicted of a felony offense relating to controlled substances.'' *Spoon's Pharmacy,* 50 FR 46,520, 46,520–21 (DEA 1985).

The evidence of record pertaining to Respondent's LLC members and key personnel is undisputed. One former member, Mr. Wolery, credibly testified that he is an attorney but ended his relationship with Respondent in March 2011, but had no intention of having an active role in the operation of Respondent. (Tr. 16.) With regard to the operation of the pharmacy, Mr. Wolery testified in pertinent part:

> Mr. James had been chosen as a pharmacist to run [Respondent] and had been given the latitude to run it as he saw fit, and given his experience in this matter, we felt that he was a good choice to run this operation in a lawful manner. He had no dings, he had no problems. He had been a manager of a pharmacy. He knew all the ins and outs. He knew everything that needed to be known in a pharmacy, and so we felt that he would be the right person to run it. We're not pharmacists. We had no intentions of running the pharmacy or telling him how to do his job.

(Tr. 16.)

A second member of the LLC, Mr. Caserta, credibly testified that he is a retired pilot and businessman, and currently owns a fifty-percent share in Respondent, serving as a managing partner. (Tr. 24–26.) A third member, Mr. Hillman, credibly testified that he is a self-employed attorney, and a current member of Respondent, having half-ownership along with Mr. Caserta. (Tr. 97.) The testimony by Mr. Caserta and Mr. Hillman unequivocally and credibly maintained that Mr. James, Respondent's pharmacist, will be responsible for the handling of all controlled substances. Testimony by Mr. James was fully consistent. (Tr. 86–87, 92–93.) There is simply no evidence of record of any misconduct or other ''acts'' by any past or current member-owner of Respondent, or employee that is inconsistent with the public interest. *See* 21 U.S.C. 824(a)(4). Nor is there any evidence that anyone other than Respondent's pharmacist will have an active role in the handling of controlled substances, unless under the direct supervision of the pharmacist.

The Government correctly acknowledges the extensive experience of Respondent's pharmacist, Mr. James, which spans over three decades. I find the Government's argument that Mr. James did not adequately address in testimony the ''significant diversion problem that exists with pill-pushing physicians'' or demonstrate a sufficient understanding of a pharmacist's

[21] The term ''practitioner'' includes pharmacy. 21 U.S.C. 802(21).

[22] *See* 21 CFR 1301.44(d). ''The Government has the burden of proof in a hearing for the denial of an application for registration by a practitioner.'' (Gov't Br. at 3.)

[23] *See Medicine Shoppe—Jonesborough,* 73 FR 364, 380 (DEA 2008); *see also Thomas E. Johnston,* 45 FR 72,311, 72,311 (DEA 1980).

[24] The Government conceded at hearing that the relevant consideration under Factor Two would be the experience of the pharmacist rather than the experience of owners or members who have no expected operational role in the handling of controlled substances. (Tr. 161.)

corresponding duties pursuant to 21 CFR 1301.04, (Gov't Br. at 4), to be both legally and factually unpersuasive, given the evidence of record. Of significance, it is the Government that bears the initial burden of proof in this proceeding, not Respondent. 21 CFR 1301.44(d).

Mr. James credibly and consistently testified at hearing that diversion is a major problem not only in southeastern Ohio, but across the entire country. (Tr. 44.) Mr. James further testified that over his career he has turned down two prescriptions for ''personal reasons,'' explaining that to mean a refusal ''to fill any prescription that our own personal conscience thinks is not correct.'' (Tr. 36.) Of significance, Mr. James further testified that over the course of his career he has turned down many prescriptions for legal reasons, such as forged prescriptions. (Tr. 60–61.) With regard to his corresponding duty as a pharmacist, Mr. James credibly testified that he fully understands the parameters of applicable regulations. (*See e.g.* Tr. 53–60, 69–70, 85–94.) In addition to the required safeguards, Mr. James also explained in detail his intent to employ five additional safeguards to ''verify that the prescription was indeed for a legal, legitimate purpose, which has always been a problem.'' (Tr. 46.)

In addition to the foregoing testimony, the record also reflects that Mr. James has extensive experience as a pharmacist in Ohio, to include recent employment as a pharmacist at CVS Pharmacy, Columbus, Ohio, from 2003 to 2009.[25] (Gov't Ex. 7.) The record is devoid of any evidence that Mr. James has had any issues pertaining to his professional qualifications or practice as a pharmacist in Ohio from 1975 to present. Mr. James presented his testimony in a serious and professional manner. His testimony was internally consistent and consistent with other credible evidence of record. I find Mr. James's testimony fully credible and in accord with his over thirty-year, unblemished record as a licensed pharmacist in Ohio.

The Government also argues with regard to Factors Two and Five that ''in assessing the public interest, the nature and amount of diversion of controlled substances in a geographical area is a legitimate area of inquiry and concern when determining whether an applicant should be granted a DEA registration,''[26] citing by analogy *Southwood Pharmaceuticals, Inc.,* 72 FR 36,487, 36,491 (DEA 2007) (requirement for manufacturer of controlled substances to manifest due diligence in approving new customer). While not addressed in the Government's brief, the statutory requirements for a manufacturer with regard to ''due diligence for new customers'' differ markedly from those imposed on a practitioner-applicant. For example, in the case of manufacturers of controlled substances in Schedules III through V, the public interest factors include consideration of ''maintenance of effective controls against diversion of particular controlled substances * * * [and] the existence in the establishment of effective controls against diversion.'' 21 U.S.C. 823(d)(1) and (5). In addition to the statutory differences, there are numerous material regulatory differences in the treatment of different categories of registrants.[27] Finally, unlike a practitioner-applicant, ''[a]t any hearing on an application to manufacture any controlled substance listed in Schedule I or II, the applicant shall have the burden of proving that the requirements of such registration * * * are satisfied.'' 21 CFR 1301.44(a).

For the foregoing reasons, I decline to apply public interest factors applicable to other categories of registrants by analogy or otherwise, since to do so would conflict with the clear and unambiguous statutory language that sets forth specific public interest factors that Congress directed be considered for distinct categories of registrants.[28] *Robinson* v. *Shell Oil Co.,* 519 U.S. 337, 340 (1997) (''[I]nquiry must cease if the statutory language is unambiguous and 'the statutory scheme is coherent and consistent.''' (citation omitted)).

In light of the foregoing, I have carefully considered the Government's various arguments along with the evidence of record pursuant to the applicable factors under 21 U.S.C. 823(f). In so doing, the paucity of evidence in support of the OSC's allegations that Respondent's registration is inconsistent with the public interest was striking. The only Government witness called to testify in support of the allegations contained within the OSC was DI Kresnak, who testified in substance that he was the investigator that handled Respondent's application for a DEA registration as a pharmacy.[29] (Tr. 134–35.) While generally credible, DI Kresnak offered little to no substantive evidence as to why Respondent's registration would be inconsistent with the public interest. On direct examination, Government counsel asked DI Kresnak in substance why Respondent posed a threat to the public health and safety. Initially, DI Kresnak provided a lengthy and non-responsive answer, essentially concluding that members of the community informed him ''they don't want this.''[30] (Tr. 144–45.) Government counsel again asked DI Kresnak to explain specifically why Respondent posed a threat to the public health and safety, to which DI Kresnak responded: ''I know from the addicts I've talked to, they can't wait for it to open.''[31] (Tr. 146.)

DI Kresnak's testimony demonstrates a remarkable lack of evidence of any articulable reason to support a finding that Respondent's application for registration may be inconsistent with the public interest. DI Kresnak's reference to statements by ''addicts'' was devoid of context or any evidence to support the basis, let alone credibility, for such vague hearsay statements. On cross-examination, DI Kresnak offered little more in the way of substantive testimony other than to suggest there might be other evidence that he was not at liberty to share at hearing. (Tr. 152.) While DI Kresnak credibly testified to a serious drug abuse and diversion problem in Ohio, not unlike other regions of the United States, he offered no testimony linking that issue specifically to Respondent or anyone associated with Respondent. Nor did the testimony substantively address the fact that Respondent possesses all requisite state authority to operate as a pharmacy in Ohio.

The Government's public interest argument relative to illicit drug abuse and diversion problems within a given

[25] In 2010, Mr. James worked as a pharmacist at HealthPro Staffing Agency. *See supra* note 10.

[26] Gov't Br. at 4.

[27] *Compare, e.g.,* 21 CFR 1301.74(a) and (b), with § 1301.75.

[28] *Cf. Cynthia M. Cadet, M.D.,* 76 FR 19,450, 19,450 n.3 (DEA 2011).

[29] Presumably, DI Kresnak's investigative findings would have informed the Agency's initial decision not to approve Respondent's application for registration, but rather to issue an OSC ''as to why DEA should not deny [Respondent's] application for a DEA registration.'' (ALJ Ex. 1, at 1.)

[30] Notably, other credible evidence of record establishes that local community leaders were consulted in advance by Respondent but apparently voiced no significant objections. (Tr. 29–30.) Of greater relevance, Respondent is actively licensed by the Ohio Board of Pharmacy, and also has obtained all requisite local permits. (Tr. 30, 123.) Testimony at hearing also revealed that some of the security measures employed by Respondent, including the vault, were put in place at the specific direction of the Ohio Board of Pharmacy, prior to granting Respondent a license. (Tr. 16–17; 23; 49–50.) (''From what I've been told, State Board of Pharmacy said that they wanted a certain kind of safe, and that's the one they bought.'' Tr. 50.) The Government did not call any local or state officials from Ohio to testify at hearing.

[31] This served as DI Kresnak's full answer to the serious and very relevant question asked by Government counsel, which was not posed a third time. (Tr. 146, 157.)

community, without linkage to specific conduct by a proposed registrant, is also at odds with analogous Agency precedent. For example, in *East Main Street Pharmacy,* 75 FR 66,149 (DEA 2010), the Agency rejected as irrelevant evidence that the respondent was located in a high crime area to include the fact that the owner-pharmacist carried a gun. The ''principle issue * * * was whether [the r]espondent was dispensing controlled-substance prescriptions which it either knew or had reason to know lacked a legitimate medical purpose and were issued outside the usual course of professional practice.'' *Id.* at 66,155. In other contexts, the Agency has also rejected an expansive reading of the public interest factors, focusing instead on specific conduct or acts by the registrant. ''The public interest standard of 21 U.S.C. [§] 823(f) is not a freewheeling inquiry but is guided by the five specific factors which Congress directed the Attorney General to consider * * * which focus primarily on the acts committed by a practitioner.'' *Gregory D. Owens, D.D.S.* 74 FR 36,751, 36,757 (DEA 2009).

In the instant case, the Government's evidence of a serious diversion problem in Ohio was credibly established through the testimony of DI Kresnak, but there is simply no credible evidence of record establishing that Respondent will be a contributing source of drug diversion through any acts or omissions by any owner-member or employee of Respondent. As the record evidence reveals, Respondent's Ohio-licensed pharmacist-in-charge has over thirty years of unblemished experience and expects to adhere to standards of dispensing above those required by existing law and regulation.

The Government's further argument that the size of the ''walk-in vault'' alone supports a finding by a preponderance of the evidence ''that the pharmacy intends to do a large business in controlled substances and this, coupled with the diversion problem that exists in southern Ohio, would not be in the public interest'' [32] is equally unpersuasive. The credible testimony at hearing from Respondent's pharmacist, Mr. James, established that he did not know the volume of controlled substances that would be kept at the pharmacy, since there was no way to know that until the pharmacy was operational. (Tr. 50.) Similarly, Mr. Hillman testified that he did not know the volume of expected sales of controlled substances until the business was operational. (Tr. 100.) He credibly explained that he believed there was enough business in the area for the pharmacy to be successful, noting that if ''there's not enough business, I'll go broke.'' (Tr. 122.)

Although Respondent did not establish a specific quantity of controlled substances expected to be sold once operational, it had no burden to do so. 21 CFR 1301.44(d). The Government's argument that a walk-in vault constitutes de facto evidence of the volume of controlled substances Respondent will handle, and further proof that this will contribute to the diversion problem in southern Ohio is at best speculative. ''Speculation is, of course, no substitute for evidence, and a decision based on speculation is not supported by substantial evidence.'' *White ex rel. Smith* v. *Apfel,* 167 F.3d 369, 375 (7th Cir. 1999) (citing *Erhardt* v. *Sec'y, DHS,* 969 F.2d 534, 538 (7th Cir. 1992)). More importantly, the Government did not prove by a preponderance of evidence at hearing that Respondent's handling of controlled substances, whether in a large volume or small, would be contrary to applicable state and federal law. In fact, testimony from DI Kresnak pertaining to various precautions Respondent's pharmacist intended to take to prevent the diversion of controlled substances were ''above what DEA requires.'' (Tr. 148.) DI Kresnak also testified that there was nothing wrong with the kind of security measures taken by Respondent to protect against diversion. (Tr. 147.)

After careful consideration of the entire record, I find that the Government has failed to establish by a preponderance of the evidence any acts or demonstrable conduct by any member or employee of Respondent, that would support a finding by substantial evidence that Respondent's registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f). I therefore find that Respondent's registration under Factors Two, Four, and Five would not be inconsistent with the public interest.

V. Conclusion and Recommendation

I find that the Government has not established by substantial evidence a prima facie case in support of denying Respondent's application for a DEA COR as a retail pharmacy. The Government has failed to demonstrate by a preponderance of the evidence that such registration would be inconsistent with the public interest as that term is used in 21 U.S.C. 824(a)(4) and 823(f). Accordingly, I recommend approval of Respondent's application for a DEA COR as a retail pharmacy pursuant to 21 U.S.C. 823(f).

Dated: December 15, 2011.

Timothy D. Wing,
Administrative Law Judge.

[FR Doc. 2012–19221 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

[32] Gov't Br. at 5.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; SA INTL GMBH C/O., Sigma Aldrich Co. LLC

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on May 2, 2012, SA INTL GMBH C/O., Sigma Aldrich Co. LLC., 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Ethylamphetamine (1475)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010)	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I

Drug	Schedule
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4–Bromo-2,5-dimethoxyamphetamine (7391)	I
4–Bromo-2,5-dimethoxyphenethylamine (7392)	I
4–Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5–Dimethoxyamphetamine (7396)	I
3,4–Methylenedioxyamphetamine (7400)	I
N–Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4–Methylenedioxy-N-ethylamphetamine (7404)	I
3,4–Methylenedioxymethamphetamine (MDMA) (7405)	I
4–Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2–Thienyl)cyclohexyl]piperidine (7470)	I
N–Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

In regard to the non-narcotic raw material, any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act (21 U.S.C. 952(a)(2)(B)) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 6, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic classes of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR § 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19191 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Lipomed

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on June 13, 2012, Lipomed, One Broadway, Cambridge, Massachusetts 02142, made application by letter to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
1-Piperidinocyclohexanecarbonitrile (8603)	II

The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 6, 2012

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19196 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Cerilliant Corporation

Pursuant to Title 21 Code of Federal Regulations 1301.34 (a), this is notice that on July 6, 2012, Cerilliant Corporation, 811 Paloma Drive, Suite A, Round Rock, Texas 78665–2402, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4-Methyl-N-methylcathinone (1248)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Fenethylline (1503)	I
Gamma Hydroxybutyric Acid (2010)	I
JWH–018 (7118)	I
JWH–073 (7173)	I
JWH–200 (7200)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
CP–47497 (7297)	I
CP–47497 C8 Homologue (7298)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431)	I
Alpha-methyltryptamine (7432)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I

Drug	Schedule
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Benzylpiperazine (7493)	I
3,4-Methylenedioxypyrovalerone (7535)	I
3,4-Methylenedioxy-N-methylcathinone (7540)	I
Desomorphine (9055)	I
Etorphine (except HCl)(9056)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Normorphine (9313)	I
Pholcodine (9314)	I
Dextromoramide (9613)	I
Dipipanone (9622)	I
Racemoramide (9645)	I
Trimeperidine (9646)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Poppy Straw Concentrate (9670)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to import small quantities of the listed controlled substances for the manufacture of analytical reference standards.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Comments and requests for hearing on applications to import narcotic raw material are not appropriate. 72 FR 3417(2007).

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952 (a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR § 1301.43 and in such form as prescribed by 21 CFR § 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 6, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR § 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19199 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Clinical Supplies Management Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on July 3, 2012, Clinical Supplies

Management Inc., 342 42nd Street South, Fargo, North Dakota 58103, made application by renewal to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Methylphenidate (1724)	II
Sufentanil (9740)	II

The company plans to import the listed controlled substances for packaging, labeling, and distributing to customers which are qualified clinical sites, conducting FDA-approved clinical trials.

The import of the above listed basic classes of controlled substances would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR § 1301.43, and in such form as prescribed by 21 CFR § 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 6, 2012

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the Federal Register on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19197 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; R & D Systems, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on May 4, 2012, R & D Systems, Inc., 614 McKinley Place NE., Minneapolis, Minnesota 55413, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
1-Pentyl-3-(1-naphthoyl)indole (7118)	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
3,4-Methylenedioxymethamphetamine (7405)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Oxycodone (9143)	II
Thebaine (9333)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in dosage form to distribute to researchers.

In reference to drug codes 7360 and 7370, the company plans to import a synthetic cannabidiol and a synthetic Tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

The import of the above listed basic classes of controlled substances would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than September 6, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substances in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21

CFR § 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: July 31, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19193 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Research Triangle Institute

By Notice dated May 31, 2012, and published in the **Federal Register** on June 8, 2012, 77 FR 34069, Research Triangle Institute, Hermann Building, East Institute Drive, P.O. Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
1-(1-Phenylcyclohexyl)pyrrolidine (7458)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470)	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine (7473)	I
1-Butyl-3-(1-naphthoyl)indole (7173)	I
1-Pentyl-3-(1-naphthoyl)indole (7118)	I
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole (7200)	I
1-Methyl-4-phenyl-4-propionoxypiperidine (9661)	I
1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine (9663)	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297)	I
5-(1,1-Dimethylloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7298)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
2,5-Dimethoxyamphetamine (7396)	I
3,4,5-Trimethoxyamphetamine (7390)	I
3,4-Methylenedioxyamphetamine (7400)	I
3,4-Methylenedioxymethamphetamine (7405)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3-Methylfentanyl (9813)	I
3-Methylthiofentanyl (9833)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
4-Methylaminorex (cis isomer) (1590)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
Acetorphine (9319)	I
Acetyl-alpha-methylfentanyl (9815)	I
Acetyldihydrocodeine (9051)	I
Acetylmethadol (9601)	I
Allylprodine (9602)	I
Alphacetylmethadol except levo-alphacetylmethadol (9603)	I
Alpha-ethyltryptamine (7249)	I
Alphameprodine (9604)	I
Alphamethadol (9605)	I
Alpha-methylfentanyl (9814)	I
Alpha-methylthiofentanyl (9832)	I
Alpha-methyltryptamine (7432)	I
Aminorex (1585)	I
Benzethidine (9606)	I
Benzylmorphine (9052)	I
Betacetylmethadol (9607)	I
Beta-hydroxy-3-methylfentanyl (9831)	I
Beta-hydroxyfentanyl (9830)	I
Betameprodine (9608)	I
Betamethadol (9609)	I
Betaprodine (9611)	I
Bufotenine (7433)	I
Cathinone (1235)	I
Clonitazene (9612)	I
Codeine methylbromide (9070)	I
Codeine-N-Oxide (9053)	I
Cyprenorphine (9054)	I
Desomorphine (9055)	I
Dextromoramide (9613)	I
Diampromide (9615)	I
Diethylthiambutene (9616)	I
Diethyltryptamine (7434)	I
Difenoxin (9168)	I
Dihydromorphine (9145)	I
Dimenoxadol (9617)	I
Dimepheptanol (9618)	I
Dimethylthiambutene (9619)	I

Drug	Schedule
Dimethyltryptamine (7435)	I
Dioxaphetyl butyrate (9621)	I
Dipipanone (9622)	I
Drotebanol (9335)	I
Ethylmethylthiambutene (9623)	I
Etonitazene (9624)	I
Etorphine except HCl (9056)	I
Etoxeridine (9625)	I
Fenethylline (1503)	I
Furethidine (9626)	I
Gamma Hydroxybutyric Acid (2010)	I
Heroin (9200)	I
Hydromorphinol (9301)	I
Hydroxypethidine (9627)	I
Ibogaine (7260)	I
Ketobemidone (9628)	I
Levomoramide (9629)	I
Levophenacylmorphan (9631)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Mecloqualone (2572)	I
Mescaline (7381)	I
Methaqualone (2565)	I
Methcathinone (1237)	I
Methyldesorphine (9302)	I
Methyldihydromorphine (9304)	I
Morpheridine (9632)	I
Morphine methylbromide (9305)	I
Morphine methylsulfonate (9306)	I
Morphine-N-Oxide (9307)	I
Myrophine (9308)	I
N,N-Dimethylamphetamine (1480)	I
N-Benzylpiperazine (7493)	I
N-Ethyl-3-piperidyl benzilate (7482)	I
N-Ethylamphetamine (1475)	I
N-Ethyl-1-phenylcyclohexylamine (7455)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
Nicocodeine (9309)	I
Nicomorphine (9312)	I
N-Methyl-3-piperidyl benzilate (7484)	I
Noracymethadol (9633)	I
Norlevorphanol (9634)	I
Normethadone (9635)	I
Normorphine (9313)	I
Norpipanone (9636)	I
Para-Fluorofentanyl (9812)	I
Parahexyl (7374)	I
Peyote (7415)	I
Phenadoxone (9637)	I
Phenampromide (9638)	I
Phenomorphan (9647)	I
Phenoperidine (9641)	I
Pholcodine (9314)	I
Piritramide (9642)	I
Proheptazine (9643)	I
Properidine (9644)	I
Propiram (9649)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Racemoramide (9645)	I
Tetrahydrocannabinols (7370)	I
Thebacon (9315)	I
Thiofentanyl (9835)	I
Tilidine (9750)	I
Trimeperidine (9646)	I
1-Phenylcyclohexylamine (7460)	II
1-Piperidinocyclohexanecarbonitrile (8603)	II
4-Anilino-N-phenethyl-4-piperidine (8333)	II
Alfentanil (9737)	II
Alphaprodine (9010)	II
Amobarbital (2125)	II
Amphetamine (1100)	II
Anileridine (9020)	II
Bezitramide (9800)	II

Drug	Schedule
Carfentanil (9743)	II
Coca Leaves (9040)	II
Cocaine (9041)	II
Codeine (9050)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273)	II
Dihydrocodeine (9120)	II
Dihydroetorphine (9334)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Etorphine HCl (9059)	II
Fentanyl (9801)	II
Glutethimide (2550)	II
Hydrocodone (9193)	II
Hydromorphone (9150)	II
Isomethadone (9226)	II
Levo-alphacetylmethadol (9648)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Lisdexamfetamine (1205)	II
Meperidine (9230)	II
Meperidine intermediate-A (9232)	II
Meperidine intermediate-B (9233)	II
Meperidine intermediate-C (9234)	II
Metazocine (9240)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Metopon (9260)	II
Moramide intermediate (9802)	II
Morphine (9300)	II
Nabilone (7379)	II
Opium, raw (9600)	II
Opium extracts (9610)	II
Opium fluid extract (9620)	II
Opium tincture (9630)	II
Opium poppy/Poppy Straw (9650)	II
Poppy Straw Concentrate (9670)	II
Opium, granulated (9640)	II
Oxycodone (9143)	II
Oxymorphone (9652)	II
Pentobarbital (2270)	II
Phenazocine (9715)	II
Phencyclidine (7471)	II
Phenmetrazine (1631)	II
Phenylacetone (8501)	II
Piminodine (9730)	II
Powdered opium (9639)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II
Remifentanil (9739)	II
Secobarbital (2315)	II
Sufentanil (9740)	II
Tapentadol (9780)	II
Thebaine (9333)	II

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse (NIDA) for research activities.

Comments and requests for hearings on applications to import narcotic raw material are not appropriate. 72 FR 3417 (2007).

Regarding all other basic classes of controlled substances, no comments or objections have been received.

DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Research Triangle Institute to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated Research Triangle Institute to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19208 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Catalent Pharma Solutions, Inc.

By Notice dated April 17, 2012, and published in the **Federal Register** on April 26, 2012, 77 FR 24984, Catalent Pharma Solutions, Inc., 10381 Decatur Road, Philadelphia, Pennsylvania 19114, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of Noroxymorphone (9668), a basic class of controlled substance listed in schedule II.

The company plans to import the listed controlled substance in finished dosage form for clinical trials.

The import of the above listed basic class of controlled substance would be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of Catalent Pharma Solutions, Inc. to import the basic class of controlled substance is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971.

DEA has investigated Catalent Pharma Solutions, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic class of controlled substance listed.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19202 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Halo Pharmaceutical Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 6, 2012, Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

Dihydromorphine is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution. The company plans to manufacture Hydromorphone HCl for sale to other manufacturers and to manufacture other controlled substances for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 9, 2012.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19184 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; AMRI Rensselaer, Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 5, 2012, AMRI Rensselaer, Inc., 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Amphetamine (1100)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Drug Schedule.	
4–Anilino-N-phenethyl-4–Piperidine (8333)	II
Meperidine (9230)	II
Fentanyl (9801)	II

The company plans to manufacture bulk controlled substances for use in product development and for distribution to its customers.

In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol as a synthetic intermediate, which will be further synthesized to bulk manufacture a synthetic THC (7370). No other activity for this drug code is authorized for this registration.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 9, 2012.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19174 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Cayman Chemical Company

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 1, 2012, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
4-Methyl-N-methylcathinone (1248)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
4-Methylaminorex (cis isomer) (1590)	I
Gamma Hydroxybutyric Acid (2010)	I
1-Pentyl-3-(1-naphthoyl)indole (7118)	I
1-Butyl-3-(1-naphthoyl)indole (7173)	I
1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl) indole (7200)	I
Alpha-ethyltryptamine (7249)	I
5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7297)	I
5-(1,1-Dimethyloctyl)-2-[(1R,3S)-3-hydroxycyclohexyl]-phenol (7298)	I
Lysergic acid diethylamide (7315)	I
2,5-Dimethoxy-4-(n)-propylthiophenethylamine (7348)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3,4,5-Trimethoxyamphetamine (7390)	I
4-Bromo-2,5-dimethoxyamphetamine (7391)	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
4-Methyl-2,5-dimethoxyamphetamine (7395)	I
2,5-Dimethoxyamphetamine (7396)	I
2,5-Dimethoxy-4-ethylamphetamine (7399)	I
3,4-Methylenedioxyamphetamine (7400)	I
5-Methoxy-3,4-methylenedioxyamphetamine (7401)	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402)	I
3,4-Methylenedioxy-N-ethylamphetamine (7404)	I
3,4-Methylenedioxymethamphetamine (7405)	I
4-Methoxyamphetamine (7411)	I
5-Methoxy-N-N-dimethyltryptamine (7431)	I
Alpha-methyltryptamine (7432)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
5-Methoxy-N,N-diisopropyltryptamine (7439)	I
N-Benzylpiperazine (7493)	I
3,4-Methylenedioxypyrovalerone (7535)	I
3,4-Methylenedioxy-N-methylcathinone (7540)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II

The company plans to manufacture small quantities of marihuana derivatives for research purposes. In reference to drug code 7360 (Marihuana), the company plans to bulk manufacture cannabidiol. In reference to drug code 7370 (Tetrahydrocannabinols), the company will manufacture a synthetic THC. No other activity for this drug code is authorized for this registration.

The company plans to manufacture the remaining listed controlled substances to supply these materials to the research and forensics community for drug testing and analysis.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR § 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 9, 2012

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012-19194 Filed 8-6-12; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Chemtos, LLC.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on June 14, 2012, Chemtos, LLC, 14101 W. Highway 290, Building 2000B, Austin, Texas 78737–9331, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine-intermediate-A (9232)	II
Meperidine-intermediate-B (9233)	II
Meperidine-intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers for use as reference standards.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than October 9, 2012.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19187 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Penick Corporation

By Notice dated April 17, 2012, and published in the **Federal Register** on April 26, 2012, 77 FR 24986, Penick Corporation, 33 Industrial Park Road, Pennsville, New Jersey 08070, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Hydrocodone (9193)	VII
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II

The company plans to manufacture the listed controlled substances as bulk controlled substance intermediates for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Penick Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated Penick Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19189 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Cambrex Charles City, Inc.

By Notice dated April 17, 2012, and published in the **Federal Register** on April 26, 2012, 77 FR 24986, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50616, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Cocaine (9041)	II
Opium tincture (9630)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Cambrex Charles City, Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time.

DEA has investigated Cambrex Charles City, Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: July 30, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–19180 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0009]

Agency Information Collection Activities: Proposed Collection; Comments Requested Revised Application for Suspension of Deportation (EOIR–40)

ACTION: 30-Day notice of information collection under review.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 77, Number 103, page 31641 on May 29, 2012, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 6, 2012. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Suspension of Deportation (EOIR–40).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–40, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual aliens determined to be deportable from the United States. Other: None. Abstract: This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be deportable from the United States for suspension of their deportation, pursuant to former section 244 of the Immigration and Nationality Act and 8 CFR 1240.55 (2011), as well as to provide information relevant to a favorable exercise of discretion.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 178 respondents will complete the form annually with an average of 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,023.50 total annual burden hours associated with this collection annually.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE., Room 2E–508, Washington, DC 20530.

Dated: August 1, 2012.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2012–19229 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (NIJ) Docket No. 1579]

Chemical, Biological, Radiological, Nuclear (CBRN) Protective Ensemble Standard, Certification Program Requirements, and Selection and Application Guide

AGENCY: National Institute of Justice.

ACTION: Notice and request for comments.

SUMMARY: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public (at *www.justnet.org*) three draft documents related to Chemical, Biological, Radiological, Nuclear (CBRN) protective ensembles used by law enforcement agencies.

DATES: The comment period will be open until September 21, 2012.

FOR FURTHER INFORMATION CONTACT: For further information, see *www.justnet.org,* or contact David Otterson by telephone at 301–519–5498 or by email at *dotterson@justnet.org.*

SUPPLEMENTARY INFORMATION: In an effort to obtain comments from interested parties, the U.S. Department of Justice, Office of Justice Programs, National Institute of Justice (NIJ) will make available to the general public (at *www.justnet.org*) three draft documents related to Chemical, Biological, Radiological, Nuclear (CBRN) protective ensembles used by law enforcement agencies:

1. Draft *CBRN Protective Ensemble Standard for Law Enforcement.*
2. Draft *Law Enforcement CBRN Protective Ensemble Certification Program Requirements.*
3. Draft *Law Enforcement CBRN Protective Ensemble Selection and Application Guide.*

The opportunity to provide comments on these documents is open to industry technical representatives, law enforcement agencies and organizations, research, development and scientific communities, and all other stakeholders and interested parties. Those individuals wishing to obtain and provide comments on the draft documents under consideration are directed to the following Web site: *http://www.justnet.org.*

Please note that all comments received are considered part of the public record and may be made available for public inspection online. Such information includes personal

identifying information (such as name and address) voluntarily submitted by the commenter.

If you wish to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not wish for it to be posted online, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You also must locate all the personal identifying information you do not wish to be posted online in the first paragraph of your comment and clearly identify what information you would like redacted.

If you wish to submit confidential business information as part of your comment but do not wish for it to be posted online, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You also must 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.

Personal identifying information and confidential business information identified and located as set forth above will be placed in the agency's public docket file (which will be made available for public inspection upon request), but not posted online.

John H. Laub,

Director, National Institute of Justice.

[FR Doc. 2012–19206 Filed 8–6–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Foreign Currency Transactions Prohibited Transaction Class Exemption

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Foreign Currency Transactions Prohibited Transaction Class Exemption,'' 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 6, 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: The Foreign Currency Transactions Prohibited Transaction Class Exemption permits, under circumstances the Employee Retirement Income Security Act of 1974 would otherwise preclude, the purchase and sale of foreign currencies between an employee benefit plan and a bank or a broker dealer or an affiliate thereof that is a party in interest with respect to such plan. The exemption imposes recordkeeping and disclosure requirements.

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 1210–0085. 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 60250).

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 1210–0085. 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: Foreign Currency Transactions Prohibited Transaction Class Exemption.

OMB Control Number: 1210–0085.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 271.

Total Estimated Number of Responses: 1,355.

Total Estimated Annual Burden Hours: 226.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 31, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–19172 Filed 8–6–12; 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; Collective Investment Funds Conversion Transactions Prohibited Transaction Class Exemption

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Collective Investment Funds Conversion Transactions Prohibited Transaction Class Exemption,'' 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 6, 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: The Collective Investment Funds Conversion Transactions Prohibited Transaction Class Exemption permits an employee benefit plan to purchase shares of an open-end registered investment company in exchange for plan assets transferred in-kind from a collective investment fund maintained by a bank or plan adviser, where the bank or plan adviser is the investment adviser of the investment company and a fiduciary of the plan, provided specified conditions are met. The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the mutual funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in the exemption.

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 1210–0104. 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 1210–0104. 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: Collective Investment Funds Conversion Transactions Prohibited Transaction Class Exemption.

OMB Control Number: 1210–0104.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 50.

Total Estimated Number of Responses: 105.

Total Estimated Annual Burden Hours: 1,760.

Total Estimated Annual Other Costs Burden: $356,000.

Dated: July 31, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–19175 Filed 8–6–12; 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; Bank Collective Investment Funds Prohibited Transaction Class Exemption

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Bank Collective Investment Funds Prohibited Transaction Class Exemption,'' 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 6, 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: The Bank Collective Investment Funds Prohibited Transaction Class Exemption exempts from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 certain transactions between a bank collective investment fund and parties in interest to a plan, provided that the plan's participation in the collective investment fund does not exceed a specified percentage of the total assets in the collective investment fund and that the bank maintains and makes available certain records.

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 1210–0082. 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 1210–0082. 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: Bank Collective Investment Funds Prohibited Transaction Class Exemption.

OMB Control Number: 1210–0082.

Affected Public: Private Sector—Businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 4,200.

Total Estimated Number of Responses: 4,200.

Total Estimated Annual Burden Hours: 700.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 31, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–19176 Filed 8–6–12; 8:45 a.m.]

BILLING CODE 4510–29–P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 2012–3 CRB DD 2011]

Distribution of 2011 DART Sound Recordings Fund Royalties

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice soliciting comments on motion for partial distribution.

SUMMARY: The Copyright Royalty Judges solicit comments on a motion for partial distribution in connection with 2011 DART Sound Recordings Fund royalties.

DATES: Comments are due on or before September 6, 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 July 11, 2012, the Alliance of Artists and Recording Companies (''AARC''), on behalf of itself and claimants with which it has reached settlements (the ''Settling Claimants'') filed with the Judges a *Notice of Settlement and Request for Partial Distribution of the 2011 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties* (''Notice and Request''). In the Notice and Request, AARC states that the Settling Claimants have reached a settlement among themselves concerning distribution of the 2011 DART Sound Recordings Fund Royalties. With respect to the Featured Recording Artists Subfund, AARC represents that it has reached settlements with all but two claimants for that subfund and that the nonsettling claimants have sales totaling 2,517 in a universe of over one billion claimants' sound recordings sold in 2011. *Notice and Request* at 3. With respect to the Copyright Owners Subfund, AARC represents that it has reached settlements with all but five claimants. AARC represents that the nonsettling claimants have combined sales of 2,531 in a universe of over one billion claimants' record sales in 2011. *Id.* AARC requests a partial distribution of 98% from each of the subfunds

pursuant to Section 801(b)(3)(C) of the Copyright Act. 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 98% of the 2011 DART Sound Recordings Royalty funds (Featured Recording Artists Subfund and Copyright Owners Subfund) to the Settling 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 Notice and Request is posted on the Copyright Royalty Board Web site at *http://www.loc.gov/crb.*

Dated: August 1, 2012.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2012–19155 Filed 8–6–12; 8:45 am]

BILLING CODE 1410–72–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 29, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit application received. The permit was issued on August 1, 2012 to:

Diane H. Tuft—Permit No. 2013–010

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–19258 Filed 8–6–12; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of a permit modification issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit modifications 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 21, 2012, the National Science Foundation published a notice in the **Federal Register** of a permit modification request received. The permit modification was issued on August 1, 2012 to:

David Ainley—Permit No. 2011–002 Mod. #2.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 2012–19259 Filed 8–6–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318; NRC–2012–0183]

Calvert Cliffs Nuclear Power Plant, LLC; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, LLC (the licensee) is the holder of Renewed Facility Operating License Nos. DPR–53 and DPR–69, which authorizes operation of the Calvert Cliffs Nuclear Power Plant, Units 1 and 2 (Calvert Cliffs). The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors (PWRs) located in Calvert County, Maryland.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, Subpart I requires licensees to establish a policy for the management of fatigue for all individuals who are subject to the licensee's fitness for duty program. Regulatory Guide 5.73, ''Fatigue Management for Nuclear Power Plant Personnel,'' endorses the Nuclear Energy Institute (NEI) report NEI 06–11, revision 1, ''Managing Personnel Fatigue at Nuclear Power Plants,'' with clarifications, additions and exceptions. NRC staff has endorsed this guidance for use during a plant emergency. After exiting the emergency, the licensee is immediately subject to the scheduling requirements of 10 CFR 26.205(c) and the work hour/rest break/minimum day off requirements of 10 CFR 26.205(d). All time worked during the emergency must be tracked to help ensure that individuals are not fatigued on the first day of reinstated work hour controls per 10 CFR 26.205(b)(3). On June 2, 2010, during a lessons learned public meeting regarding Part 26 Subpart I exemption request submissions, work hour controls during periods of severe winds such as a tropical storm or hurricane, the NRC staff indicated that it finds NEI 06–11 Section 7.5 ''Reset from Deviations'' to be an acceptable method for resuming work hour controls after the recovery period.

Section 26.205(b) contains the requirement to count work hours and days worked; and (b)(2) was reviewed to understand if the licensee had provided a reasonable opportunity and accommodations for restorative sleep.

Calvert Cliffs is located along the western shore of the Chesapeake Bay and can be impacted by tropical storms and hurricanes during the hurricane season and severe winter precipitation conditions during January and February. By letter dated July 21, 2011 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML11203A513), as supplemented by letter dated March 1, 2012 (ADAMS Accession No. ML12065A182) and electronic mail dated July 10, 2012 (ADAMS Accession No. ML12193A488), the licensee requested an exemption from the requirements of 10 CFR 26.205(c) and (d) for meeting work hour rule controls during declarations of severe weather conditions involving tropical storm or hurricane force winds or severe winter precipitation. According to the application, adherence to work hour control requirements could impede the ability to respond to an emergency condition at the site when travel to and from the site may be impeded. Specifically, the exemption would allow Calvert Cliffs to sequester sufficient individuals to staff two 12-hour shifts to maintain safe and secure operation during severe weather conditions.

3.0 Discussion

Pursuant to 10 CFR 26.9, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 26 when the exemptions are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

3.1 Exemption From Sections 26.205(c) and (d)

Pursuant to 10 CFR 26.207(d), licensees need not meet the requirements of Section 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. The entry condition for the Calvert Cliffs declaration of an Unusual Event is a sustained wind speed greater than 75 miles per hour (mph). The criteria for sequestering essential personnel include travel conditions forecasted to be hazardous for employee commutes to and from the site such as sustained wind speeds greater than 40 mph as determined by the National Weather Service. Therefore, the exemption request covers a period which precedes the declared emergency, as individuals need to be sequestered before the severe weather conditions. Similarly, the entry conditions for severe winter weather are based on forecasts issued by the National Weather Service. The entry conditions include the issuance of a winter storm watch, a blizzard warning or an ice storm warning by the National Weather Service. A winter storm watch is issued by the National Weather Service when there is a potential for heavy snow or significant ice accumulations, usually 24 to 36 hours in advance. A winter storm warning is issued by the National Weather Service when a winter storm is producing or is forecasted to produce heavy snow or significant ice accumulations. Blizzard warnings are issued for winter storms with sustained or frequent winds of 35 mph or higher with considerable falling and/or blowing snow that frequently reduces visibility to ¼ mile or less. An example of the severity of a winter storm that would likely rise to the level of a winter storm warning or watch for the area surrounding Calvert Cliffs is one that is expected to produce an accumulation of 12 inches or more of snow.

3.2 Recovery Exemption Immediately Following a Severe Weather Exemption

The period immediately following the severe weather conditions may require a recovery period. Also, high winds and inadequate road conditions that make travel unsafe, but fall below the threshold of an emergency, could be present for several days. After the severe weather condition has passed, sufficient numbers of personnel may not be able to access the site to relieve the sequestered individuals. An exemption during these conditions is consistent with the intent of the 10 CFR 26.207(d).

3.3 Fatigue Management

Calvert Cliffs plans to establish a 12-hour duty schedule comprised of a day shift and a night shift. When personnel are to be sequestered on site, Calvert Cliffs provides arrangements for onsite reliefs and bunking in order to allow for a sufficient period of restorative sleep for personnel. The relief and bunking areas will be developed prior to sequestering personnel. The NRC staff finds the actions presented are consistent with the practice of fatigue management.

3.4 Maintenance

The exemption request stated that it would only apply to individuals involved in severe weather response activities that perform duties identified in 10 CFR 26.4(a)(1) through (5). The exemption does not apply to discretionary maintenance activities. The exemption allows the licensee to provide for the use of whatever plant staff and resources are necessary to respond to a plant emergency and ensure that Calvert Cliffs achieves and maintains a safe and secure status and can be safely restarted. Suspension of work hour controls is for site preparation activities and those deemed critical for plant and public safety only. This does not include activities required to actually restart the units following any severe weather condition.

3.5 Returning to Work Hour Controls

Calvert Cliffs must return to work hour controls when the plant management determines that adequate personnel are available, and both onsite and relief crews have had sufficient time off before resuming their normal work duties. Upon exiting the exemption, the work hour controls in Section 26.205(c) and (d) apply, and the requirements in Section 26.205(3)(b) must be met.

3.6 Authorized by Law

This exemption would allow Calvert Cliffs to sequester sufficient individuals to staff two 12-hour shifts to maintain safe and secure operation during severe weather conditions. As stated above, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR Part 26. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

3.7 Will Not Endanger Life or Property

Section 26.207 provides an exception to the requirements of 10 CFR 26.205(c) and (d) during declared emergencies as defined in the licensee's Emergency Response Plan. The proposed exemption expands that allowance for severe weather conditions involving tropical storm or hurricane force winds or severe winter precipitation that may or may not result in the declaration of an emergency. Such an allowance supports sequestering enough required personnel to provide for shift relief, which is necessary to provide a safe and secure status of the units and ensure adequate protection of the health and safety of plant personnel and the public. Therefore, granting this exemption will not endanger life or property.

3.8 Will Not Endanger the Common Defense and Security

The proposed exemption would allow Calvert Cliffs to sequester sufficient individuals to staff two 12-hour shifts to maintain safe and secure operation during severe weather conditions. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and security is not impacted by this exemption.

3.9 In the Public Interest

The proposed exemption expands an exception already provided in 10 CFR 26.207, which allows the requirements of 10 CFR 26.205(c) and (d) to not be met during declared emergencies as defined in the licensee's Emergency Response Plan. The exemption is needed for a unique set of circumstances to (1) ensure that the control of work hours and management of worker fatigue does not impede the ability to use available staff resources to respond to severe weather threat and (2) ensure that the plant maintains a safe and secure status. Therefore, the public interest is served by this focus on nuclear safety and security.

4.0 Environmental Consideration

The exemption would authorize exemption from the requirements of 10 CFR 26.205(c) and (d) to allow Calvert Cliffs to sequester sufficient individuals to staff two 12-hour shifts to maintain safe and secure operation during severe weather conditions. Using the standard set forth in 10 CFR 50.92 for

amendments to operating licenses, the NRC staff determined that the subject exemption sought involves employment suitability requirements. The NRC has determined that this exemption involves no significant hazards considerations:

(1) The proposed exemption is administrative in nature and is limited to allowing a temporary exception from meeting the requirements of 10 CFR 26.205(c) and (d) during severe weather to ensure that work hour controls do not impede the ability to use available staff resources to respond to a severe weather event. The proposed exemption does not make any physical changes to the facility and does not alter the design, function or operation of any plant equipment. Therefore, issuance of this exemption does not significantly increase the probability or consequences of an accident previously evaluated.

(2) The proposed exemption does not make any changes to the facility and would not create any new accident initiators. Therefore, this exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed exemption does not alter the design, function or operation of any plant equipment. Therefore, this exemption does not involve a significant reduction in the margin of safety.

Based on the above, the NRC has concluded that the proposed exemption does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92, and accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has also determined that the exemption involves no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite; that there is no significant increase in individual or cumulative occupational radiation exposure; that there is no significant construction impact; and there is no significant increase in the potential for or consequences from a radiological accident. Furthermore, the requirement from which the licensee will be exempted involves scheduling requirements. Accordingly, the exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(25). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment is required to be prepared in connection with the issuance of the exemption.

5.0 Conclusion

The Commission has determined that granting these exemptions is consistent with 10 CFR 26.207(d), ''Plant Emergencies,'' which allows the licensee to not meet the requirements of 10 CFR 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. The 10 CFR Part 26 Statement of Consideration (73 FR 17148; March 31, 2008), states that ''Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of § 26.205(c) and (d).''

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.9, the exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the licensee an exemption from the requirements of 10 CFR 26.205(c) and (d) for Calvert Cliffs.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of July 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–19268 Filed 8–6–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0181]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 12, 2012 to July 25, 2012. The last biweekly notice was published on July 24, 2012 (77 FR 43374).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0181. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0181. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0181 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0181.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS

by performing a search on the document date and docket number.

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0181 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the

application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Carolina Power and Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit 2, (HBRSEP) Darlington County, South Carolina

Date of amendment request: June 8, 2012.

Description of amendment request: The proposed change would revise the Technical Specifications (TSs) 3.1.4, ''Rod Group Alignment Limits,'' and TS 3.1.7, ''Rod Position Indication,'' to allow up to 1 hour of soak time following substantial rod movement during which individual rod position indicators may not be within its limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This license amendment request proposes to allow up to one hour of soak time following substantial rod movement during which time the rod position indication may be outside its limits. This would allow an additional hour for rod position indication to be inoperable or a control rod to be misaligned prior to entry into a TS LCO [Limiting Condition for Operation] Condition and Required Actions. RPI [Rod Position Indicators] instrumentation is not an assumed accident initiator; however, the HBRSEP, Unit No. 2 safety analyses consider two types of rod misalignment events, static misalignment and a dropped rod.

The safety analyses show that for the static misalignment event, without any operator intervention, a single fully withdrawn rod event does not result in any fuel pin failure; therefore, the static rod misalignment event is not time dependent and an additional hour, with the misalignment undetected and unmitigated does not increase the consequences of the event. Multiple rod misalignment events are bounded by the single rod misalignment analyses and therefore an additional hour would not have any impact on this event.

The safety analyses also show that a single dropped rod event, without any operator intervention, does not result in any fuel pin failure; therefore, the rod drop event is not time dependent and an additional hour with the misalignment undetected and unmitigated does not increase the consequences of the event. Multiple rod drop events cause the reactor to trip and therefore an additional hour would not have any impact on that event.

Although this license amendment request may allow a misaligned rod to be undetected for an additional hour, the additional time for discovery does not change the probability of a misaligned control rod event because the one hour time extension does not affect the control rod drive system features that would result in either type of misalignment.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. No new equipment performance burdens are imposed.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The RPI system is an instrumentation system that provides indication to the operators that a control rod may be misaligned. Inoperable individual RPI instrumentation does not, by itself in any way, harm or impact reactor operation. Inoperable rod position indication may impair the ability of the operators to detect a misaligned rod. However, the impact of inoperable RPI instrumentation may be offset by availability of other indications that a rod is misaligned such as nuclear instrumentation indication that reactor power has shifted to one side of the core or thermocouple indication that the core temperatures increased in one region of the core and/or decreased in another region of the core. Based on plant experience, the likelihood of a misaligned rod at HBRSEP, Unit No. 2 is considered to be small and the likelihood of a misaligned rod coincident with inoperable rod position indication during the allowed one hour extension is even smaller. In addition, these proposed changes may enhance plant safety and reliability because the one hour soak time will allow the operators and engineers to focus on monitoring the reactor performance without unnecessary entry into TS LCO Conditions and Required Actions.

The proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Manager—Senior Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Acting Branch Chief: Jessie F. Quichocho.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Miami-Dade County, Florida

Date of amendment request: April 30, 2012.

Description of amendment request: This amendment request proposes to permanently revise technical specification (TS) 6.8.4.j, Steam Generator (SG) Surveillance Program, to exclude portions of the SG tube below the top of the SG tubesheet from periodic tube inspections.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

The previously analyzed accidents are initiated by the failure of plant structures, systems, or components. The proposed change that alters the SG inspection and reporting criteria does not have a detrimental impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase the failure probability of any plant equipment that initiates an analyzed accident.

Of the applicable accidents previously evaluated, the limiting transients with consideration to the proposed change to the SG tube inspection and repair criteria are the SG tube rupture (SGTR) event and the steam line break (SLB) postulated accident.

Addressing the SGTR event, the required structural integrity margins of the SG tubes and the tube-to-tubesheet joint over the H* distance will be maintained. Tube rupture in tubes with cracks within the tubesheet is precluded by the constraint provided by the presence of the tubesheet and the tube-to-tubesheet joint. Tube burst cannot occur within the thickness of the tubesheet. The tube-to-tubesheet joint constraint results from the hydraulic expansion process, thermal expansion mismatch between the tube and

tubesheet, and from the differential pressure between the primary and secondary side, and tubesheet rotation. The structural margins against burst, as discussed in Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR [Pressurized-Water Reactors] Steam Generator Tubes'' [Reference 7] and NEI [Nuclear Energy Institute] 97–06, ''Steam Generator Program Guidelines'', [Reference 3] are maintained for both normal and postulated accident conditions.

For the portion of the tube outside of the tubesheet, the proposed change also has no impact on the structural or leakage integrity. Therefore, the proposed change does not result in a significant increase in the probability of the occurrence of a SGTR accident.

At normal operating pressures, leakage from primary water stress corrosion cracking below the proposed limited inspection depth is limited by the tube-to-tubesheet crevice. Consequently, negligible normal operating leakage is expected from degradation below the inspected depth within the tubesheet region. The consequences of an SGTR event are not affected by the primary to secondary leakage flow during the event as primary to secondary leakage flow through a postulated tube that has been pulled out of the tubesheet is essentially equivalent to a tube rupture. Therefore, the proposed change does not result in a significant increase in the consequences of an SGTR. In addition, the selected H* value envelopes the depth within the tubesheet required to prevent a tube pullout.

The probability of a SLB is unaffected by the potential failure of a SG tube as the failure of a tube is not an initiator for a SLB event.

The leak rate factor of 1.82 for Turkey Point Units 3 and 4, for a postulated SLB, has been calculated as shown in References 2, 9 and 19. Turkey Point Units 3 and 4 will apply the factor of 1.82 to the normal operating leakage associated with the tubesheet expansion region in the condition monitoring (CM) and operational assessment (OA). Through application of the limited tubesheet inspection scope, the existing operating leakage limit provides assurance that excessive leakage (i.e., greater than accident analysis assumptions) will not occur. Multiplying the TS operational leak rate limit of 150 gpd (at room temperature) through any one SG by a factor of 1.82 shows that the maximum primary to secondary accident induced leak rate is limited to 273 gpd. This leakage rate is bounded by the current licensing basis assumed primary to secondary accident leak rate of 0.20 gpm (288 gpd) through any one SG for SLB. Since the existing limit on operational leakage continues to ensure that the SLB assumed accident induced leakage will not be exceeded, the consequences of a SLB accident are not increased.

For the CM assessment, the component of leakage from the prior cycle from below the H* distance will be multiplied by a factor of 1.82 and added to the total leakage from any other source and compared to the allowable accident induced leak rate. For the OA, the difference in the leakage between the allowable leakage and the calculated accident induced leakage from sources other than the tubesheet expansion region will be divided by 1.82 and compared to the observed operational leakage.

Based on the above, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed change that alters the SG inspection and reporting criteria does not introduce any new equipment, create new failure modes for existing equipment, or create any new limiting single failures. Plant operation will not be altered, and all safety functions will continue to perform as previously assumed in accident analyses. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No

The proposed change defines the safety significant portion of the tube that must be inspected and repaired. WCAP–17345, Rev. 2 [Reference 9] identifies the specific inspection depth below which any type of tube degradation is shown to have no impact on the performance criteria in NEI 97–06 Rev. 3, ''Steam Generator Program Guidelines'' [Reference 3] and TS 6.8.4.j, ''Steam Generator (SG) Program.''

The proposed change that alters the SG inspection and reporting criteria maintains the required structural margins of the SG tubes for both normal and accident conditions. Nuclear Energy Institute 97–06, ''Steam Generator Program Guidelines'' [Reference 3], and NRC Regulatory Guide (RG) 1.121, ''Bases for Plugging Degraded PWR Steam Generator Tubes'' [Reference 7], are used as the bases in the development of the limited tubesheet inspection depth methodology for determining that SG tube integrity considerations are maintained within acceptable limits. RG 1.121 describes a method acceptable to the NRC for meeting General Design Criteria (GDC) 14, ''Reactor Coolant Pressure Boundary,'' GDC 15, ''Reactor Coolant System Design,'' GDC 31, ''Fracture Prevention of Reactor Coolant Pressure Boundary,'' and GDC 32, ''Inspection of Reactor Coolant Pressure Boundary,'' by reducing the probability and consequences of a SGTR. RG 1.121 concludes that by determining the limiting safe conditions for tube wall degradation, the probability and consequences of a SGTR are reduced. This RG uses safety factors on loads for tube burst that are consistent with the requirements of Section III of the American Society of Mechanical Engineers (ASME) Code.

For axially oriented cracking located within the tubesheet, tube burst is precluded due to the presence of the tubesheet. For circumferentially oriented cracking, Westinghouse WCAP–17091–P, Rev. 0 [Reference 2] and WCAP–17345, Rev. 2 [Reference 9] define a length of degradation-free expanded tubing that provides the necessary resistance to tube pullout due to the pressure induced forces, with applicable safety factors applied. Application of the limited hot and cold leg tubesheet inspection criteria will preclude unacceptable primary to secondary leakage during all plant conditions. The SLB leak rate factor for Turkey Point Units 3 and 4 is 1.82 (Table 9–7 in WCAP–17091–P). Multiplying the TS operational leak rate limit of 150 gpd through any one SG by the leak rate factor of 1.82 shows that the maximum primary to secondary accident induced leak rate is limited to 273 gpd. This leakage rate is bounded by the current licensing basis assumed primary to secondary accident leak rate of 0.20 gpm (288 gpd) through any one SG for SLB.

Therefore, the proposed change does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Acting Branch Chief: Jessie F. Quichocho.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: May 30, 2012.

Description of amendment request: The proposed amendment would revise Technical Specification Section 2.0, ''Safety Limits.'' Specifically, the proposed amendment would revise two recirculation loop and single recirculation loop Safety Limit Minimum Critical Power Ratio (SLMCPR) values to reflect results of a cycle-specific calculation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Four accidents have been evaluated previously as reflected in the CNS [Cooper Nuclear Station] Updated Safety Analysis Report (USAR). These four accidents are (1) loss-of-coolant, (2) control rod drop, (3) main steam line break, and (4) fuel handling. The probability of an evaluated accident is derived from the probabilities of the

individual precursors to that accident. Changing the SLMCPR values does not increase the probability of an evaluated accident. The change does not require any physical modifications to the plant or any components, nor does it require a change in plant operation. Therefore, no individual precursors of an accident are affected.

The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. This proposed change makes no modification to the design or operation of the systems that are used in mitigation of accidents. Limits have been established, consistent with Nuclear Regulatory Commission (NRC) approved methods, to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change to the values of the SLMCPR continues to conservatively establish this safety limit such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Based on the above, NPPD [Nebraska Public Power District] concludes that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Creation of the possibility of a new or different kind of accident from an accident previously evaluated would require creation of precursors of that accident. New accident precursors may be created by modification of the plant configuration or changes in how the plant is operated. The proposed change does not involve a modification of the plant configuration or in how the plant is operated. The proposed change to the SLMCPR values assures that safety criteria are maintained.

Based on the above, NPPD concludes that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The values of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1% of fuel rods are expected to be in boiling transition if the Minimum Critical Power Ratio limit is not violated. The proposed change will ensure the appropriate level of fuel protection is maintained. Additionally, operational limits are established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria are met (i.e., that at least 99.9% of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences).

Based on the above, NPPD concludes that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John C. McClure, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Branch Chief: Michael T. Markley.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: February 10, 2012.

Description of amendment request: The proposed amendment would establish the limiting condition for operation (LCO) requirements for the reactor protective system (RPS) actuation circuits in Technical Specification (TS) 2.15, ''Instrumentation and Control Systems.'' Specifically, the proposed change: renumbers LCO 2.15(1) through 2.15(4) to 2.15.1(1) through 2.15.1(4), renumbers LCO 2.15(5) to LCO 2.15.3 with an associated Table 2–6, and implements a new LCO 2.15.2 for the RPS logic and trip initiation channels. The Table of Contents will also be revised to reflect the renumbering and addition of the LCO for the RPS logic and trip initiation channels and the new Table 2–6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The reactor protective system logic and trip initiation channels meets Criterion 3 of 10 CFR 50.36 for inclusion into Technical Specification (TS) as a component that is part of the primary success path and which functions or actuates to mitigate a design basis accident or transient. The TSs currently does not have limiting conditions for operations (LCO) specific for this circuitry, but does contain surveillance requirements. The addition of LCOs provides additional restrictions on the operation of the plant and provides required actions and time limits if these components are incapable of performing their function. As such, the proposed change does not increase the probability of an accident. The proposed changes do not alter the physical design of the RPS, or any other plant structure, system or component (SSC) at Fort Calhoun Station (FCS).

The proposed changes conform to the Nuclear Regulatory Commission's (NRC's) regulatory guidance regarding the content of plant TS as identified in 10 CFR 50.36 and NRC publication NUREG 1432.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes do not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Hence, the proposed changes do not introduce any new accident initiators, nor do they reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The TS operability requirements for the RPS logic and trip initiation channels ensure there is adequate components operable to assure safe reactor operation and are necessary to ensure safety systems accomplish their safety function for design basis accident events. The proposed TS would revise the applicability for when the RPS logic and trip initiation channels are required to be operable to include whenever control element assemblies (CEAs) are capable of being withdrawn and the reactor coolant system (RCS) is not at refueling boron concentration. When the RCS boron concentration is at refueling boron concentration, or when no more than one trippable control rod is capable of being withdrawn, the RPS function is already fulfilled. These proposed TS changes for the RPS are aligned with the applicability and operability requirements provided in NUREG 1432.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

ZionSolutions LLC, Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station (Zion), Units 1 and 2, Lake County, Illinois

Date of amendment request: May 31, 2012.

Description of amendment request: The proposed amendments would approve methods of analysis, use of the upgraded fuel handling building crane system as a single-failure proof crane, and a NUREG 0612 compliant heavy loads handling program.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The existing DSAR [Defueled Safety Analysis Report] analysis assumes that a spent fuel cask drop occurs. In this analysis, the physics of the drop, coupled with concrete bumpers on the cask loading pit and pool edge were used to demonstrate that a postulated drop of the spent fuel cask near the Spent Fuel Pool neither impacted the spent fuel directly nor damaged the pool structure in a manner that adversely affected the spent fuel, when a cask was to be handled in the cask loading pit. The proposed License Amendment Request to operate a single-failure proof Fuel Building Crane demonstrates that no analysis is required for the cask drop event based on the design and the associated programmatic controls. A drop of the spent fuel cask handled with a single-failure proof crane (designed to ASME NOG–1 [''Rules for Construction of Overhead and Gantry Cranes (Top Running Bridge, Multiple Girder)''] and compliant with NUREG–0554 [''Single-Failure-Proof Cranes for Nuclear Power Plants'', ML110450636]), operated in accordance with the administrative controls of NUREG–0612 [''Control of Heavy Loads at Nuclear Power Plants,'' ML070250180] has an acceptably low probability so as to effectively preclude consideration of the event. The risk of such a drop event using the new single-failure proof crane operated in accordance with the Heavy Loads Program procedures, qualitatively, is lower than the event previously analyzed which postulate the event without evaluation of its likelihood.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The location and design functions of the Fuel Building crane are not changed from those currently described in the DSAR. Because the new crane has a single-failure proof design the uncontrolled lowering, or drop, of a heavy load will not be considered credible. Evaluations show that individual malfunctions or component failures of the crane will not result in load drop. The new single-failure proof crane['s] primary use[s] will be to move a loaded or unloaded MAGNASTOR transfer cask between the cask loading pit [and] the decontamination pit, and transfer [the cask] to the low profile cart rail transport in the Fuel Handling Building. No components that are classified as Important to the Defueled Condition, other than the Fuel Building crane, will be affected by these movements. Based on the design and programmatic controls on the crane, no load will lower uncontrollably or drop in or around the spent fuel pool or near an open cask containing spent fuel nor will a cask containing spent fuel drop or be lowered uncontrollably during operation of the crane. Hence no new accidents will be initiated.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Response: No.

This proposed License Amendment Request involves the replacement of the existing non-single-failure proof Fuel Building Crane with a new single-failure proof crane. The new crane has been designed to meet the specifications found in ASME NOG–1–2004, which has been endorsed by the NRC in RIS 2005–25, as supplemented, as an acceptable means of meeting the criteria in NUREG–0554, ''Single-failure Proof Cranes for Nuclear Power Plants.'' to provide adequate protection and safety margin against the uncontrolled lowering of the lifted load. The occurrence of a cask load drop accident is considered not credible when the load is lifted with a single-failure proof lifting system meeting the guidance in NUREG–0612, ''Control of Heavy Loads at Nuclear Power Plants'' Section 5.1.6, ''Single-Failure-Proof Handling Systems.'' As a result, the proposed change, replacing the existing non-single-failure proof crane, has no adverse impact on stored spent fuel, or structural integrity of the pool.

The configuration of the crane and the primary load, a spent fuel cask containing spent fuel, is changed from that of the DSAR. The specific analysis dealing with a drop of the cask will no longer be applicable and [will be] removed from the DSAR, since the new single-proof crane makes that event of low enough probability to not be considered credible. The maximum critical lift capacity of the crane has not been changed, though the load to be lifted is larger. The structural analyses of the crane and its support structure, however, show acceptable margin under the acceptance criteria of NOG–I for operation of the crane.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Russ Workman, Deputy General Counsel, EnergySolutions, 423 West 300 South, Suite 200, Salt Lake City, UT 84101.

NRC Branch Chief: Bruce Watson.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov*.

Duke Energy Carolinas, LLC, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 21, 2011.

Brief description of amendments: The amendments revised Technical Specifications 3.3.2, ''Engineered Safety Feature Actuation System (ESFAS) Instrumentation,'' 3.5.4, ''Refueling Water Storage Tank (RWST),'' and 3.6.6, ''Containment Spray System.''

Date of issuance: July 25, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–269 and Unit 2–265.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the licenses and the technical specifications.

Date of initial notice in Federal Register: March 20, 2012 (77 FR 16274).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 25, 2012.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247 and 50–286, Indian Point Nuclear Generating Units 2 and 3 (IP2 and IP3), Westchester County, New York

Date of application for amendment: July 8, 2009, as supplemented by letters dated September 28, 2009, October 26, 2009, October 5, 2010, October 28, 2010, July 28, 2011, August 23, 2011, October 28, 2011, December 15, 2011, January 11, 2012, March 2, 2012, April 23, 2012, and May 7, 2012.

Brief description of amendment: The amendment authorizes the transfer of spent fuel from the IP3 spent fuel pool to the IP2 spent fuel pool, using a newly-designed shielded transfer canister, for further transfer to the on-site Independent Spent Fuel Storage Installation.

Date of issuance: July 13, 2012.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 268 and 246.

Facility Operating License Nos. DPR–26 and DPR–64: The amendment revised the License and the Technical Specifications.

Date of initial notice in ***Federal Register***: January 21, 2010 (75 FR 3497).

The supplements provided additional information that clarified the application but did not expand the scope of the application as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 13, 2012.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: September 8, 2010, as supplemented by letters dated November 18, 2010, November 23, 2010, February 23, 2011 (four letters), March 9, 2011 (two letters), March 22, 2011, March 30, 2011, March 31, 2011, April 14, 2011, April 21, 2011, May 3, 2011, May 5, 2011, May 11, 2011, June 8, 2011, June 15, 2011, June 21, 2011, June 23, 2011, July 6, 2011, July 28, 2011, August 25, 2011, August 29, 2011, August 30, 2011, September 2, 2011, September 9, 2011, September 12, 2011, September 15, 2011, September 26, 2011, October 10, 2011, October 24, 2011, November 14, 2011, November 25, 2011, November 28, 2011, December 19, 2011, February 6, 2012, February 15, 2012, February 20, 2012, March 13, 2012, March 21, 2012, April 5, 2012, April 18, 2012 (two letters), April 26, 2012, May 9, 2012, and June 12, 2012.

Brief description of amendment: The amendment increased the maximum steady-state reactor core power level from 3,898 megawatts thermal (MWt) to 4,408 MWt, which is an increase of approximately 15 percent from the original licensed thermal power level of 3,833 MWt. The proposed increase in power level is considered an extended power uprate.

Date of issuance: July 18, 2012.

Effective date: As of the date of issuance and shall be implemented within 120 days of issuance.

Amendment No: 191.

Facility Operating License No. NPF–29: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: January 10, 2011 (76 FR 1464). The supplemental letters dated November 18, 2010, November 23, 2010, February 23, 2011 (four letters), March 9, 2011 (two letters), March 22, 2011, March 30, 2011, March 31, 2011, April 14, 2011, April 21, 2011, May 3, 2011, May 5, 2011, May 11, 2011, June 8, 2011, June 15, 2011, June 21, 2011, June 23, 2011, July 6, 2011, July 28, 2011, August 25, 2011, August 29, 2011, August 30, 2011, September 2, 2011, September 9, 2011, September 12, 2011, September 15, 2011, September 26, 2011, October 10, 2011, October 24, 2011, November 14, 2011, November 25, 2011, November 28, 2011, December 19, 2011, February 6, 2012, February 15, 2012, February 20, 2012, March 13, 2012, March 21, 2012, April 5, 2012, April 18, 2012 (two letters), April 26, 2012, May 9, 2012, and June 12, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 18, 2012.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket Nos. 50–220, and 50–410, Nine Mile Point Nuclear Station, Units 1 and 2, Oswego County, New York

Date of application for amendments: July 20, 2011, as supplemented on November 3, 2011, and January 12, 2012.

Brief description of amendments: The amendments revised the NMP1 Technical Specification (TS) Section 5.1, ''Site,'' and associated TS Figure 5.1–1, ''Site Boundaries, Nine Mile Point–Unit 1,'' and the NMP2 TS Figure 4.1–1, ''Site Area and Land Portion of Exclusion Area Boundaries,'' to reflect the transfer of a portion of the Nine Mile Point Nuclear Station, LLC (NMPNS) site real property located outside of the NMPNS Protected Area but within the current NMPNS Owner Controlled Area, as well as specified easements over the remainder of the NMPNS site, to Nine Mile Point 3 Nuclear Project, LLC (NMP3), a subsidiary of UniStar Nuclear Energy, LLC.

Date of issuance: July 12, 2012.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 212 for Unit 1 and 142 for Unit 2.

Renewed Facility Operating License Nos. DPR–63 and NPF–69: Amendments revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: December 27, 2011 (76 FR 80977).

The supplements dated November 3, 2011, and January 12, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission (NRC) staff's initial proposed no significant hazards consideration determination noticed in

the **Federal Register** on December 27, 2011 (76 FR 80977).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 12, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 26th day of July 2012.

For the Nuclear Regulatory Commission.

Louise Lund,

Deputy Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–19004 Filed 8–6–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Notice of Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of August 6, 13, 20, 27, September 3, 10, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

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*.

9 a.m. Briefing on the Status of Lessons Learned from the Fukushima Dai-ichi Accident (Public Meeting) (Contact: John Monninger, 301–415–0610)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of August 13, 2012—Tentative

There are no meetings scheduled for the week of August 13, 2012.

Week of August 20, 2012—Tentative

There are no meetings scheduled for the week of August 20, 2012.

Week of August 27, 2012—Tentative

There are no meetings scheduled for the week of August 27, 2012.

Week of September 3, 2012—Tentative

There are no meetings scheduled for the week of September 3, 2012.

Week of September 10, 2012—Tentative

Tuesday, September 11, 2012

9 a.m. Briefing on Economic Consequences (Public Meeting) (Contact: Richard Correia, 301–251–7430)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—301–415–1292. Contact person for more information: Rochelle Bavol, 301–415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

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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: August 2, 2012.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2012–19380 Filed 8–3–12; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, August 9, 2012 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Gallagher, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, August 9, 2012 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

A litigation matter; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: August 2, 2012.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2012–19340 Filed 8–3–12; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67552; File No. SR–NYSEArca–2012–55]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of the STAR™ Global Buy-Write ETF Under NYSE Arca Equities Rule 8.600

August 1, 2012.

I. Introduction

On May 31, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or

''Exchange Act'') [1] and Rule 19b-4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the STAR™ Global Buy-Write ETF (''Fund'') under NYSE Arca Equities Rule 8.600. The proposed rule change was published for comment in the **Federal Register** on June 18, 2012.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the Fund pursuant to NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[4] The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). Partnervest Advisory Services, LLC serves as investment sub-adviser to the Fund (''Sub-Adviser'') and provides day-to-day portfolio management of the Fund. Foreside Fund Services, LLC is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon serves as administrator, custodian, and transfer agent for the Fund. The Exchange has represented that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.[5]

The Fund's investment objective is to seek consistent repeatable returns across all market cycles. The Fund is a ''fund-of-funds'' and, under normal market conditions,[6] intends to invest at least 60% of its total assets in exchange-traded funds (''ETFs'') [7] and exchange-traded notes (''ETNs'') [8] that seek to track a diversified basket of global indices and investment sectors, and in exchange-traded pooled investment vehicles that invest directly in commodities or currencies and that are registered pursuant to the 1933 Act (together with ETFs and ETNs, ''Underlying ETPs'') [9] that meet certain selection criteria established by the Sub-Adviser. The selection criteria include size, historical track record, diversification among indices, the correlation of an index to other indices, and an ability to write exchange-listed covered call options on the particular Underlying ETP.[10] An Underlying ETP may be disposed of should it no longer meet the selection criteria.

The Fund currently intends to invest primarily in the securities of ETFs consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Underlying ETPs in which the Fund will invest will primarily be Underlying ETPs that hold substantially all of their assets in securities representing a country (or region) specific index.

The Sub-Adviser seeks to achieve the Fund's investment objective by using a proprietary overwrite strategy known as Volatility Enhanced Global Appreciation (''VEGA''). Through VEGA, the Fund will invest in Underlying ETPs in combination with call options on generally all such Underlying ETPs to seek cumulative price appreciation from the portfolio's global exposure while generating an additional return stream from the sale of covered call and/or cash-secured put options.[11] While the Fund is permitted to invest up to 40% of its total assets in call options on Underlying ETPs, the Adviser expects that, under normal market conditions, the Fund will invest no more than 15% in such call options on a daily basis. To the extent cash and cash equivalents in the Fund's portfolio serve as collateral for cash-secured put options, such cash and cash equivalents may not be invested in Underlying ETPs, additional options, or other similar investments in pursuit of the Fund's investment objective. Rather, on a day-to-day basis, such collateral may be invested in U.S. Government securities, short-term, high-quality fixed income securities, money market instruments, cash, and other cash equivalents with maturities of one year or less, or Underlying ETPs that hold such investments.[12]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67183 (June 12, 2012), 77 FR 36314 (''Notice'').

[4] The Trust is registered under the Investment Company Act of 1940 (''1940 Act''). On October 28, 2011, the Trust filed an amendment to its registration statement on Form N–1A under the Securities Act of 1933 (''1933 Act'') and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 28822 (July 20, 2009) (File No. 812–13488).

[5] *See* NYSE Arca Equities Rule 8.600, Commentary .06. In the event (a) the Adviser or the Sub-Adviser becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding such portfolio.

[6] The term ''under normal market conditions'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot, or labor disruption, or any similar intervening circumstance.

[7] For purposes of this proposed rule change, ETFs are securities registered under the 1940 Act such as those listed and traded on the Exchange under NYSE Arca Equities Rules 5.2(j)(3), 8.100, and 8.600.

[8] For purposes of this proposed rule change, ETNs are securities that are registered pursuant to the 1933 Act such as those listed and traded on the Exchange pursuant to NYSE Arca Equities Rule 5.2(j)(6).

[9] Underlying ETPs include, in addition to ETFs and ETNs, the following securities: Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The ETFs in which the Fund may invest will primarily be index-based ETFs that hold substantially all of their assets in securities representing a specific index.

[10] The options in which the Fund will invest will be U.S. exchange-listed.

[11] A covered call option involves holding a long position in a particular asset, in this case shares of an Underlying ETP, and writing a call option on that same asset with the goal of realizing additional income from the option premium. A put option is a contract that gives the owner of the option the right to sell a specified amount of the asset underlying the option at a specified price (''strike price'') within a specified time. When a put option is exercised or assigned, the writer of the option is obligated to purchase the requisite amount of the asset underlying the option to complete the sale. A put option is considered cash-secured when the writer of the put option segregates an amount of cash or cash equivalents sufficient to cover the purchase price of the asset underlying the option.

[12] All options written on indices or securities must be covered. A written call option on a security may be covered if a fund: (1) Owns the security underlying the call until the option is exercised or expires; (2) holds an American-style call on the same security as the call written with an exercise price (a) no greater than the exercise price of the call written or (b) greater than the exercise price of the call written if the difference is maintained by the fund in cash or other liquid assets designated on the fund's records or placed in a segregated account with the fund's custodian; (3) has an absolute and immediate right to acquire the security without additional cost (or if additional consideration is required, cash or other liquid assets in such amount have been segregated); or (4) segregates cash or other liquid assets on the fund's records or with the custodian in an amount equal to (when added to any margin on deposit) the current market value of the call option, but not less than the exercise price, marked to market daily. If the call option is exercised by the purchaser during the option period, the seller is required to deliver the underlying security against payment of the exercise price or pay the difference. The seller's obligation terminates upon expiration of the option period or when the seller executes a closing purchase transaction with respect to such option. All put options written by the Fund will be covered

The Sub-Adviser will use VEGA, a proprietary quantitative and qualitative investment process, to determine the optimal Underlying ETPs and options for the strategy. The process focuses on the performance of a comprehensive portfolio of assets based on the combination of risk, return, and their correlation to each other. Consistent with VEGA, call options will be sold on generally all of the Underlying ETPs at a strike price equivalent to targets based on volatility and quantitative criteria. As calls are covered and/or expire, additional options on the Underlying ETPs will be sold. The average time until expiration for the option portfolio will be typically one quarter (91 days) or less, so that premiums may be received on options on Underlying ETPs approximately four times per year. The Sub-Adviser, however, will reserve the right to close out or enter into options on a more or less frequent basis in its discretion if it believes it is in the best interest of the Fund. The Sub-Adviser periodically will monitor the performance of the Fund's portfolio and systematically rebalance and initiate tactical shifts in the underlying investments when the strategy indicates it is both optimal and beneficial to do so.

VEGA is designed to generate quarterly returns in the form of premiums received from the sale of covered call and/or cash-secured put options. The amount of the premium will typically be determined at the start of the quarter, and realized either at expiration or sooner if the strategy determines that conditions warrant covering the short option position beforehand.[13]

Except for premium amounts required for transactional and portfolio management purposes, the Sub-Adviser, in its discretion, may allocate the accumulated premium in ''principal protection'' and/or ''reinvestment strategies,'' as described below.

The ''principal protection'' feature is intended as a means to profit and/or hedge against potential price declines of 20% or greater of Underlying ETPs. The feature may be implemented when volatility declines and/or security prices rise, and the Sub-Adviser determines the cost of principal protection to be beneficial. The cost of the protection is expected to be paid from accumulated option premiums, but principal may be used. The use of principal protection entails the purchase of put options on Underlying ETPs representing some or all of the Fund's portfolio holdings. The risk of buying long puts is limited to the loss of the premium paid for the purchase of the put. Option premiums received by the Fund will remain in cash or cash equivalents or may be invested in Underlying ETPs that invest primarily in U.S. treasuries or other cash equivalent securities.

The Sub-Adviser also will utilize a ''reinvestment strategy'' whereby accumulated option premiums may be reinvested back into additional shares of Underlying ETPs held by the Fund based on the Sub-Adviser's view of the market.

Principal Fund Investments

The Fund, through its investment in Underlying ETPs, may invest in equity securities. Equity securities represent ownership interests in a company or partnership and consist of common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships, rights, and depositary receipts, including American Depositary Receipts (''ADRs'') and Global Depositary Receipts (''GDRs''). The Fund, through its investment in Underlying ETPs, may purchase equity securities traded in the U.S. on registered exchanges or the over-the-counter market.

The Fund, through its investment in Underlying ETPs, may invest in the equity securities of foreign issuers, including the securities of foreign issuers in emerging countries. Emerging or developing markets exist in countries that are considered to be in the initial stages of industrialization.

The Fund, through its investment in Underlying ETPs, may invest in closed-end funds, pooled investment vehicles that are registered under the 1940 Act and whose shares are listed and traded on U.S. national securities exchanges.

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. government securities. Securities issued or guaranteed by the U.S. government or its agencies or instrumentalities include U.S. Treasury securities, which are backed by the full faith and credit of the U.S. Treasury and which differ only in their interest rates, maturities, and times of issuance. Certain U.S. government securities are issued or guaranteed by agencies or instrumentalities of the U.S. government including, but not limited to, obligations of U.S. government agencies or instrumentalities such as Fannie Mae, Freddie Mac, the Government National Mortgage Association, the Small Business Administration, the Federal Farm Credit Administration, the Federal Home Loan Banks, Banks for Cooperatives (including the Central Bank for Cooperatives), the Federal Land Banks, the Federal Intermediate Credit Banks, the Tennessee Valley Authority, the Export-Import Bank of the United States, the Commodity Credit Corporation, the Federal Financing Bank, the Student Loan Marketing Association, the National Credit Union Administration, and the Federal Agricultural Mortgage Corporation.

The Fund, through its investments in Underlying ETPs from time to time, in the ordinary course of business, may purchase securities on a when-issued or delayed-delivery basis (*i.e.,* delivery and payment can take place between a month and 120 days after the date of the transaction).

The Fund, or the Underlying ETPs in which it invests, may invest in U.S. Treasury zero-coupon bonds. The Fund, through its investment in ETFs, may invest in shares of real estate investment trusts.

Other Investments

To respond to adverse market, economic, political, or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETPs. The Fund may be invested in this manner for extended periods depending on the Sub-Adviser's assessment of market conditions. Debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, and bonds that are BBB or higher. The Fund may also invest a substantial portion of its assets in such instruments at any time to maintain liquidity or pending

by: (1) Segregating cash, cash equivalents, such as U.S. Treasury securities or overnight repurchase agreements, or other liquid assets on the Fund's records or with the custodian having a value at least equal to the exercise price of the option (less cash received, if any); or (2) holding a put option on the same security as the option written where the exercise price of the written put option is (i) equal to or higher than the exercise price of the option written or (ii) less than the exercise price of the option written provided the Fund segregates cash or other liquid assets in the amount of the difference.

[13] The risks of covered call writing include the potential for the market to rise sharply. In such instance, the buyer of the call option would likely acquire the Underlying ETP from the Fund and the return on that Underlying ETP would be limited to the premium received and the difference between the strike price and the purchase price until such time as the Underlying ETP is repurchased as applicable. The risks of cash-secured put writing include the potential for the price of the Underlying ETP to decline significantly causing the put writer, the Fund, to have an unrealized loss due to the high stock purchase price.

selection of investments in accordance with its policies.

The Fund may invest in derivatives, including, for example, options, futures, options on futures, and swaps. While the Fund currently does not intend to invest in swaps, it may invest up to 10% of its total assets in swaps. The Fund may invest in derivatives to gain market exposure, enhance returns, or hedge against market declines.

Other than options on Underlying ETPs in which the Fund may invest, as described above, the Fund may trade U.S. exchange-listed put and call options on other securities, securities indices, and currencies, as the Sub-Adviser determines is appropriate in seeking the Fund's investment objective and except as restricted by the Fund's investment limitations.[14] While the Fund may invest in put and call options on other securities, the Adviser expects that, under normal market conditions, the Fund will invest from 0% up to 10% in such put and call options on a daily basis.

The Fund may invest up to 10% of its total assets in futures contracts and related options on futures contracts for bona fide hedging; attempting to offset changes in the value of securities held or expected to be acquired or be disposed of; attempting to gain exposure to a particular market, index, or instrument; or other risk management purposes. To the extent the Fund uses futures and/or options on futures, it will do so in accordance with Rule 4.5 under the Commodity Exchange Act (''CEA'').[15]

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund also may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy.

The Fund may not with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies) if, as a result, (i) more than 5% of its total assets would be invested in the securities of such issuer, or (ii) more than 10% of the outstanding voting securities of any one issuer would be held by the Fund. For purposes of this policy, the issuer of the underlying security will be deemed to be the issuer of any respective depositary receipt.

The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets in any investment company that so concentrates.

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests. The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid securities. Illiquid securities include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

According to the Registration Statement, the Fund will seek to qualify for treatment as a Regulated Investment Company under the Internal Revenue Code.

Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues.

The Fund does not intend to invest in leveraged, inverse, or inverse leveraged Underlying ETPs. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. That is, while the Fund will be permitted to borrow as permitted under the 1940 Act, the Fund's investments will not be used to seek performance that is the multiple or inverse multiple (*i.e.,* 2Xs and 3Xs) of the Fund's broad-based securities market index (as defined in Form N–1A).[16]

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[17] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares for the Fund will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the net asset value (''NAV'') per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Additional information regarding the Trust, Fund, Shares, Fund's investment strategies, risks, creation and redemption procedures, fees, portfolio holdings and disclosure policies, distributions and taxes, availability of information, trading rules and halts, and surveillance procedures, among other things, can be found in the Notice and/or the Registration Statement, as applicable.[18]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[21] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Fund and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.600 to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[22] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the

[14] *See supra* note 10.

[15] The Exchange represents that the Trust, on behalf of all of its series, including the Fund, has filed a notice of eligibility for exclusion from the definition of the term ''commodity pool operator'' in accordance with Rule 4.5 and, therefore, the Fund is not subject to registration or regulation as a commodity pool operator under the CEA.

[16] The Fund's broad-based securities market index, which is to be determined, will be identified in an amendment to the Registration Statement.

[17] 17 CFR 240.10A–3.

[18] *See* Notice and Registration Statement, *supra* notes 3 and 4, respectively.

[19] 15 U.S.C. 78f.

[20] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78k–1(a)(1)(C)(iii).

maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line, and, for the Underlying ETPs, will be available from the national securities exchanges on which they are listed. Quotation and last-sale information for the U.S. exchange-listed options in which the Fund will invest will be available from the applicable U.S. options exchange via the Options Price Reporting Authority. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[23] On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio, as defined in NYSE Arca Equities Rule 8.600(c)(2), that will form the basis for the Fund's calculation of NAV at the end of the business day.[24] The Fund will calculate NAV once each business day as of the regularly scheduled close of trading on the New York Stock Exchange (''NYSE'') (normally 4:00 p.m., Eastern Time). Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. In addition, the intra-day, closing, and settlement prices of the other portfolio securities and instruments held by the Fund will be readily available from the national securities exchanges trading such securities, automated quotation systems, published or other public sources, or on-line information services, such as Bloomberg or Reuters. The Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Commission notes that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.[25] In addition, trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. The Exchange may halt trading in the Shares if trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[26] Further, the Commission notes that the Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[27] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange also states that neither the Adviser nor the Sub-Adviser is affiliated with a broker-dealer.[28] Moreover, the Exchange represents that it is able to obtain information from the U.S. exchanges, all of which are members of the Intermarket Surveillance Group (''ISG''), on which the Underlying ETPs and options are listed and traded.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Managed Fund Shares, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit Holders (''ETP Holders'') in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (b) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (c) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (d) how information regarding the Portfolio Indicative Value is disseminated; (e) the requirement that

[23] According to the Exchange, several major market data vendors widely disseminate Portfolio Indicative Values taken from the CTA or other data feeds.

[24] On a daily basis, the Adviser will disclose for each portfolio security and other financial instrument of the Fund the following information on the Fund's Web site: Ticker symbol (if applicable), name of security and financial instrument, number of shares or dollar value of securities and financial instruments held in the portfolio, and percentage weighting of the security and financial instrument in the portfolio. The Web site information will be publicly available at no charge.

[25] *See* NYSE Arca Equities Rule 8.600(d)(1)(B).

[26] *See* NYSE Arca Equities Rule 8.600(d)(2)(C) (providing additional considerations for the suspension of trading in or removal from listing of Managed Fund Shares on the Exchange). With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[27] *See* NYSE Arca Equities Rule 8.600(d)(2)(B)(ii).

[28] *See supra* note 5. The Commission notes that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Adviser and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[29] as provided by NYSE Arca Equities Rule 5.3.

(6) The options contracts held by the Fund will be U.S. exchange-listed. Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S.-registered issues. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement. In addition, the Exchange is able to obtain information from the U.S. exchanges, all of which are ISG members, on which the Underlying ETPs and options are listed and traded.

(7) The Fund does not intend to invest in leveraged, inverse, or inverse leveraged Underlying ETPs. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

(8) While the Fund is permitted to invest up to 40% of its total assets in call options on Underlying ETPs, the Adviser expects that, under normal market conditions, the Fund will invest no more than 15% in such call options on a daily basis.

(9) The Fund may invest up to 10% of its total assets in futures contracts and related options on futures contracts. While the Fund may invest in put and call options on securities other than Underlying ETPs, the Adviser expects that, under normal market conditions, the Fund will invest from 0% to up to 10% in such put and call options on a daily basis. While the Fund currently does not intend to invest in swaps, it may invest up to 10% of its total assets in swaps.

(10) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid securities (calculated at the time of investment), including Rule 144A securities and loan participation interests.

(11) A minimum of 100,000 Shares of the Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations, including those set forth above and in the Notice, and the Exchange's description of the Fund.

[29] 17 CFR 240.10A–3.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[30] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–NYSEArca–2012–55) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19210 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67567; File No. SR–NYSEMKT–2012–28]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 128—Equities, Which Governs Clearly Erroneous Executions, To Extend the Effective Date of the Pilot by Which Portions of Such Rule Operate Until February 4, 2013

August 1, 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 20, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 128—Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012. 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 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 Rule 128—Equities, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012.[3]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events[4] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEAmex–2010–60). *See also* Securities Exchange Act Release Nos. 63480 (December 9, 2010), 75 FR 78333 (December 15, 2010) (SR–NYSEAmex–2010–116); 64233 (April 7, 2011), 76 FR 20736 (April 13, 2011) (SR–NYSEAmex–2011–24); 65066 (August 9, 2011), 76 FR 50506 (August 15, 2011) (SR–NYSEAmex–2011–58) and 66137 (January 11, 2012), 77 FR 2587 (January 18, 2012) (SR–NYSEAmex–2011–106).

[4] Terms not defined herein are defined in Rule 128—Equities.

[5] Separately, the Exchange has proposed extend the effective date of the trading pause pilot under Rule 80C—Equities, which requires to the Exchange to pause trading in an individual security listed on

amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128—Equities would be in effect, and the Exchange would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to Rule 128—Equities until February 4, 2013 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] 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.[16]

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

the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSEMKT–2012–27.

[6] This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 7.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

• Send an Email to *rule-comments@sec.gov*. Please include File No. SR–NYSEMKT–2012–28 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–28. 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. 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–NYSEMKT–2012–28 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19292 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67569; File No. SR–NYSEMKT–2012–23]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing of Proposed Rule Change Amending the Members' Schedule of NYSE Amex Options LLC in Order To Reflect Changes to the Capital Structure of the Company

August 1, 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 25, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Members' Schedule (as defined in the Limited Liability Company Agreement of NYSE Amex Options LLC (the ''Company'') dated as of June 29, 2011 (the ''LLC Agreement'')) in order to reflect changes to the capital structure of the Company based on three transactions (such amendment, the ''Proposed Rule Change''). The first transaction involved the admission of NYSE Market, Inc. (''NYSE Market'') as a Member (as defined below) of the Company on September 19, 2011 pursuant to Sections 10.4 and 11.1 of the LLC Agreement and Section 3.2 of that certain Members Agreement, dated as of June 29, 2011, by and among the Company, NYSE MKT, NYSE Euronext, Banc of America Strategic Investments Corporation (''BAML''), Barclays Electronic Commerce Holdings Inc. (''Barclays''), Citadel Securities LLC (''Citadel''), Citigroup Financial Strategies, Inc. (''Citigroup''), Goldman, Sachs & Co. (''Goldman Sachs''), Datek Online Management Corp. (''TD Ameritrade'') and UBS Americas Inc. (''UBS'') (collectively, excluding the Company, NYSE MKT and NYSE Euronext, the ''Founding Firms'') (the ''Members Agreement''). The second transaction involved the issuance of Annual Incentive Shares (as defined in the Members Agreement) to the Founding Firms pursuant to Section 2.1 of the Members Agreement. The third transaction will involve the transfer of Interests (as defined below) by the Founding Firms to NYSE Market on or around September 25, 2012 pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement. 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, on the Commission's Web site at *www.sec.gov,* 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 self-regulatory organization included statements concerning the purpose of, and basis for, the Proposed Rule Change and discussed any comments it received on the Proposed Rule Change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Members' Schedule as set forth herein. The amendment reflects changes to the capital structure of the Company due to (i) The admission of NYSE Market as a Member of the Company on September 19, 2011 pursuant to Sections 10.4 and 11.1 of the LLC Agreement and Section 3.2 of the Members Agreement, (ii) the issuance of Annual Incentive Shares to the Founding Firms on February 29, 2012 pursuant to Section 2.1 of the Members Agreement and (iii) the upcoming transfer of Interests by the Founding Firms to NYSE Market on or around September 25, 2012 pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement.

Admission of NYSE Market

Pursuant to Section 3.2 of the Members Agreement, each Founding Firm has the right, subject to certain conditions and limitations, to cause NYSE MKT (or an affiliate thereof that NYSE MKT designates) to purchase a portion of such Founding Firm's equity interest in the Company (such right, the ''Founding Firm Right''). On September 19, 2011, each of the Founding Firms exercised its Founding Firm Right and

transferred Common Interests (as defined below) representing an aggregate equity interest of 5.28% in the Company to NYSE Market, an affiliate of NYSE MKT (the ''Transaction''). NYSE Market, rather than NYSE MKT, acquired the Common Interests for non-substantive business reasons related to the corporate structure of NYSE MKT. As a result of the Transaction, pursuant to Sections 10.4 and 11.1 of the LLC Agreement, NYSE Market was admitted as a Member of the Company on September 19, 2011. Notwithstanding NYSE Market's acquisition of Common Interests, the governance structure of the Company following the Transaction did not change: The number of directors on the Company's board has not changed; NYSE MKT continues to appoint a majority (7 of 13) of these directors; and, NYSE Market does not have the right to appoint a separate director to the board.

Initially, the Exchange intended to file this amendment to the Members' Schedule as part of a longer, forthcoming technical filing. Due to the Founding Firm Transfer (as defined below), however, the Exchange deems it appropriate, at present, to amend the Members' Schedule in order to reflect NYSE Market's membership in the Company.

As a limited liability company, ownership of the Company is represented by limited liability company interests in the Company (''Interests''). The holders of Interests are referred to as the members of the Company (the ''Members''). The LLC Agreement designates Members as either Class A Members or Class B Members. Currently, the Class A Members are NYSE MKT and NYSE Market, and the Class B Members are Citadel, Goldman Sachs, BAML, Citigroup, TD Ameritrade, UBS and Barclays. Generally, Class A Members and Class B Members are distinguishable in that Class A Members hold Class A Common Interests and Class B Members hold Class B Common Interests.[3] Although both classes of Common Interests entitle Members to some measure of voting and economic entitlements, the two classes of Common Interests are not fungible. In fact, a Member's voting and economic entitlements are determined by reference to both that Member's holdings of Common Interests and the aggregate economic and voting power of the Class A Members relative to the Class B Members. Prior to the Transaction, NYSE MKT owned an equity interest of 47.20% in the Company, while the Founding Firms collectively owned the remaining equity interest of 52.80%. Immediately following the Transaction, NYSE MKT owned an equity interest of 47.20% in the Company, NYSE Market owned an equity interest of 5.28%, and the Founding Firms collectively owned the remaining equity interest of 47.52%.

Because NYSE Market is an Affiliate of NYSE MKT, pursuant to Section 11.2(c) of the LLC Agreement, the Class B Common Interests transferred by the Founding Firms to NYSE Market automatically converted into Class A Common Interests upon their acquisition by NYSE Market. In connection with this transfer, NYSE Market became a Member of the Company holding Class A Common Interests representing an equity interest of 5.28% in the Company. As a Member, NYSE Market is bound by all of the provisions of the LLC Agreement (including Article XVI) and the Members Agreement. The Exchange proposes to amend the Members' Schedule as set forth in Exhibit 5–A attached hereto[4] (marked against Schedule A to the LLC Agreement) to reflect NYSE Market's membership and the concomitant reduction in the Interests held by the Founding Firms.

Issuance of Annual Incentive Shares

Pursuant to Section 2.1 of the Members Agreement, each year (until 2015, unless extended by the Board) the Company must issue a number of Class B Common Interests equal to thirty percent (30%) of the then-outstanding Class B Common Interests as Annual Incentive Shares. These Annual Incentive Shares are allocated among the Class B Members based on each Class B Member's contribution to the volume of the Exchange relative to such Class B Member's Individual Target. The Annual Incentive Shares may change the relative economic and voting rights among the Class B Members but have no affect on the relative economic and voting rights as between Class A Members and Class B Members.

On February 29, 2012, the Company issued 14.2560 Annual Incentive Shares in the aggregate to the Founding Firms (the ''Issuance of Annual Incentive Shares''). Because each Founding Firm achieved or exceeded its Individual Target, the Issuance of Annual Incentive Shares did not result in any change to any Member's economic or voting interest in the Company. The Exchange proposes to amend the Members' Schedule as set forth in Exhibit 5–B attached hereto[5] (marked against the Members' Schedule following the Transaction) to reflect the Issuance of Annual Incentive Shares.

Founding Firm Transfer

Pursuant to Article XI of the LLC Agreement and Section 3.1 of the Members Agreement, a Member may transfer Interests to a third party or to another Member in accordance with the conditions and limitations set forth therein. The Exchange is filing this amendment, in part, to provide notice that all of the Founding Firms collectively intend to transfer an aggregate equity interest of 5.28% in the Company to NYSE Market (the ''Founding Firm Transfer''). Upon consummation of the Founding Firm Transfer and the acquisition by NYSE Market of the Class B Common Interests transferred by the Founding Firms, such Class B Common Interests will automatically convert into an appropriate number of Class A Common Interests. Immediately following the Founding Firm Transfer, NYSE MKT will own an equity interest of 47.20% in the Company, NYSE Market will own an equity interest of 10.56%, and the Founding Firms, collectively, will own the remaining equity interest of 42.24%. The Exchange proposes, upon consummation of the Founding Firm Transfer, to amend the Members' Schedule as set forth in Exhibit 5–C attached hereto[6] (marked against the Members' Schedule following the Issuance of Annual Incentive Shares) to reflect the Founding Firm Transfer.

2. Statutory Basis

The Proposed Rule Change is consistent with Section 6(b)[7] of the Securities Exchange Act,[8] as amended (the ''Act''), in general, and furthers the objectives of Section 6(b)(1)[9] of the Act, which requires a national securities exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations promulgated thereunder and the rules of the Exchange. The Proposed Rule Change does not modify the Company's trading or compliance rules and preserves the existing mechanisms for ensuring the Exchange's and the Company's compliance with the Act, the rules and regulations promulgated

[3] Common Interests consist of Class A Common Interests and Class B Common Interests.

[4] The Commission notes that the Exhibit 5 is attached to the filing, not to this Notice.

[5] *See supra* note 4.

[6] *See supra* note 4.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78.

[9] 15 U.S.C. 78f(b)(1).

thereunder and the rules of the Exchange. The proposed amendments do not change the structure of the joint venture which retains NYSE MKT's regulatory control over the Company or the provisions specifically designed to ensure the independence of its self-regulatory function and to ensure that any regulatory determinations by NYSE MKT, as the Company's SRO, are controlling with respect to the actions and decisions of the Company.

Additionally, the Proposed Rule Change continues to require the Company, its Members and its directors to comply with the federal securities laws and the rules and regulations promulgated thereunder and to engage in conduct that fosters and does not interfere with the Exchange's or the Company's ability to carry out its respective responsibilities under the Act.

The Proposed Rule Change is also consistent with, and furthers the objectives of Section 6(b)(5) [10] of the Act, in that it preserves all of NYSE MKT's existing rules and mechanisms to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register**, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such Proposed Rule Change; or

B. Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2012–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NYSEMKT–2012–23 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19294 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67568; File No. SR–NYSEMKT–2012–27]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 80C—Equities, Which Provides for Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, To Extend the Effective Date of the Pilot, Until February 4, 2013

August 1, 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, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') 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 80C—Equities, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of July 31, 2012, until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 Rule 80C—Equities, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of July 31, 2012,[3] until February 4, 2013.

Rule 80C—Equities requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a ''Trading Pause.'' The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all NMS stocks and specified exchange-traded products.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until February 4, 2013 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[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 Exchange has asked the Commission to waive the 30-day operative delay so that

[3] *See* Securities Exchange Act Release No. 66133 (January 11, 2012), 77 FR 2593 (January 18, 2012) (SR–NYSEAmex–2011–105).

[4] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). *See also* Securities Exchange Act Release No. 63501 (December 9, 2010), 75 FR 78307 (December 15, 2010) (SR–NYSEAmex–2010–117). A proposal to, among other things, expand the pilot to include all NMS stocks not already included therein was implemented on August 8, 2011. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[5] This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 6.

[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).

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–NYSEMKT–2012–27 *on the subject line.*

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–27. 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–NYSEMKT–2012–27 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19293 Filed 8–6–12; 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. 34–67566; File No. SR–NYSEArca–2012–79]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Rule 7.10, Which Governs Clearly Erroneous Executions, To Extend the Effective Date of the Pilot by Which Portions of Such Rule Operate Until February 4, 2013

August 1, 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 20, 2012, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 NYSE Arca Rule 7.10, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012. 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 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 NYSE Arca Equities Rule 7.10, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012.[3]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Arca Equities Rule 7.10(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events[4] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSEArca–2010–58). *See also* Securities Exchange Act Release Nos. 63482 (December 9, 2010), 75 FR 78331 (December 15, 2010) (SR–NYSEArca–2010–113); 64234 (April 7, 2011), 76 FR 20399 (April 12, 2011) (SR–NYSEArca–2011–15); 65065 (August 9, 2011), 76 FR 50502 (August 15, 2011) (SR–NYSEArca–2011–56); and 66135 (January 11, 2012), 77 FR 2590 (January 18, 2012) (SR–NYSEArca–2011–100).

[4] Terms not defined herein are defined in NYSE Arca Equities Rule 7.10.

security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of NYSE Arca Equities Rule 7.10 would be in effect, and NYSE Arca would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Arca Equities Rule 7.10 until February 4, 2013 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 7.11 trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii)[15] 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.[16]

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.

[5] Separately, the Exchange has proposed extend the effective date of the trading pause pilot under NYSE Arca Equities Rule 7.11, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSEArca–2012–78.

[6] This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 7.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

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–NYSEArca–2012–79 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–2012–79. 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–NYSEArca–2012–79 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19290 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67565; File No. SR–NYSEArca–2012–78]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.11, Which Provides for Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, To Extend the Effective Date of the Pilot Until February 4, 2013

August 1, 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, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') 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 NYSE Arca Equities Rule 7.11, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of July 31, 2012, until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Arca Equities Rule 7.11, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of July 31, 2012,[3] until February 4, 2012.

NYSE Arca Equities Rule 7.11 requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a ''Trading Pause.'' The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all NMS stocks and specified exchange-traded products.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities

[3] *See* Securities Exchange Act Release No. 66132 (January 11, 2012), 77 FR 2577 (January 18, 2012) (SR–NYSEArca–2011–99).

[4] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). *See also* Securities Exchange Act Release No. 63496 (December 9, 2010), 75 FR 78285 (December 15, 2010) (SR–NYSEArca–2010–114). A proposal to, among other things, expand the pilot to include all NMS stocks not already included therein was implemented on August 8, 2011. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until February 4, 2013 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] thnsp; 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 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–NYSEArca–2012–78 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–2012–78. 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

[5] This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 6.

[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).

[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).

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–2012–78 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19289 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67561; File No. SR–CBOE–2012–067]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delete Temporary Rule 6.83

August 1, 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 27, 2012, the Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Temporary Rule 6.83. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[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 Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

From 2000 to 2009, the Exchange was a participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Old Plan''). That plan achieved intermarket order protection via a spoke-and-hub connectivity structure between options exchanges. The participants of the Old Plan established a new plan to provide a more modern framework for options market order protection and locked/crossed markets. The new plan is called the Options Order Protection and Locked/Crossed Market Plan (''New Plan''). SR–CBOE–2009–040 adopted Temporary Rule 6.83 to help transition from the Old Plan to the New Plan and also adopted new rules to implement the New Plan.[3] To date, the transition is complete and the New Plan has been implemented. The proposed rule change deletes Rule 6.83, a temporary rule that is now obsolete. The proposed rule change helps maintain clarity in the rules and avoids the potential for any rule confusion.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)5 requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Deleting Rule 6.83 provides clarity by abolishing an obsolete rule. This eliminates confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

[3] *See* Securities Exchange Act Release No. 34–60187 (June 29, 2009), 74 FR 32664 (July 8, 2009) (SR–CBOE–2009–040).

[4] 15 U.S.C. 78f(b).

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. impose any significant burden on competition; and

C. become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[6] of the Act and Rule 19b–4(f)(6)[7] thereunder.

At any time within 60 days of the filing of this 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

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

• Send an email to *rule-comments@sec.gov. Please include File Number SR–CBOE–2012–067 on the subject line.*

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE-*2012–067.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–067 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67560; File No. SR–CBOE–2012–072]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update References in Rules

August 1, 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 26, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to update references in the CBOE Rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rule 8.7.—Obligations of Market-Makers, Rule 8.51.—Firm Disseminated Market Quotes and Rule 43.14.—Firm Quotations to update references. Each of these rules refers to Rule 11Ac1–1 under the Securities Exchange Act of 1934 (''Exchange Act''). However, as of August 29, 2005, the Securities and Exchange Commission (the ''Commission'') adopted new rules under Regulation National Market System (''Regulation NMS''), which redesignated the national market system rules that previously existed under Rule 11Ac1–1. Therefore, the Exchange proposes to update each of the references to Rule 11Ac1–1. All general references to Rule 11Ac1–1 in CBOE Rules 8.7, 8.51, and 43.14 will now refer to Rule 602 of Regulation NMS.

Additionally, the term ''Responsible Broker or Dealer'' as referenced in CBOE Rule 8.51 as having the meaning prescribed in Rule 11Ac1–1 will now have the meaning prescribed in Rule 600(b)(65) of Regulation NMS (the definition of the term did not substantively change, only the reference). In CBOE Rule 43.14—Firm Quotations, reference to Rule 11Ac1–1(b)(3), which contains provisions regarding relieving responsible brokers or dealers of obligations in unusual market conditions, will now refer to Rule 602(a)(3) of Regulation NMS (where such provisions are now contained). Additionally, in CBOE Rule 43.14, reference to Rule 11Ac1–1(c)(3), which contains exceptions from execution obligations for responsible brokers and dealers, will now refer to Rule 602(b)(3) of Regulation NMS (where such exceptions are now contained).

The Exchange also proposes to add an end-parentheses that was mistakenly left out of the end of paragraph (a)(1) of Rule 8.51.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[4] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

Updating Rules 8.7, 8.51, and 43.14 provides clarity to the Exchange's rule references. The proposed rule updates (and added end-parentheses) eliminate confusion, thereby removing impediments to, and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

A. Significantly affect the protection of investors or the public interest;

B. Impose any significant burden on competition; and

C. Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) [5] of the Act and Rule 19b–4(f)(6) [6] thereunder.

At any time within 60 days of the filing of this proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–072 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–072. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–072 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19287 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67557; File No. SR–CBOE–2012–075]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

August 1, 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 27, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Marketing Fee. Currently, the Marketing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Fee assessed on all Penny Pilot Exchange-Traded Fund (''ETF'') options is $0.25 per contract, with the exception of DIA, for which the listed Marketing Fee is $0.10 per contract.[3] The Exchange hereby proposes to eliminate the exception for DIA, thereby amending the Marketing Fee for DIA to be $0.25 per contract. This change will place DIA on the same footing regarding the Marketing Fee as other ETFs.

The Exchange also proposes to change references to options on the PowerShares QQQ Trust. The ticker symbol for PowerShares QQQ Trust was changed from QQQQ to QQQ in 2011, but such changes were not reflected on the CBOE Fees Schedule. In order to accurately reflect the ticker symbol for the PowerShares QQQ Trust, the Exchange hereby proposes to change references on the Fees Schedule to from QQQQ to QQQ.

Currently, the marketing fee is not assessed on electronic transactions in SPY and QQQ, except for electronic transactions resulting from the Exchange's Automated Improvement Mechanism (''AIM''). Because complex order transactions in SPY and QQQ made via the Exchange's Complex Order Auction (''COA'') and Complex Order Book (''COB'') are electronic and do not result from AIM, such transactions do not incur the Marketing Fee. The Exchange now proposes to assess the Marketing Fee on such transactions (with the exception of complex orders that trade via COB against individual leg markets). By collecting the Marketing Fee on these transactions, the Exchange can then use such funds to attract greater order flow.

When a complex order is entered on CBOE, it first generates a COA and, if not filled there, is placed into the COB. In either case, a market participant is aware that it is a complex order and, in electing to trade against it, will know that such transaction will incur the Marketing Fee and take that fact into account in making such an election. However, CBOE's complex order processing also has the capability to fill a complex order from the posted leg markets. In such an event, the liquidity provider cannot know in advance if a simple or complex order is going to transact against those leg markets and therefore incur the Marketing Fee, and is thus not able to adjust his quoted price accordingly. As such, the Exchange proposes to except electronic complex orders in SPY and QQQ that trade against individual leg markets from being assessed the Marketing Fee.

Currently, transactions in XSP are assessed a Marketing Fee of $0.10 per contract. The Exchange intends to revise the offering for XSP in coming months, including the market model and fee schedule. In advance of this change, the Exchange proposes to eliminate the XSP Marketing Fee.

The proposed changes are to take effect on August 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[5], which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. Eliminating the $0.10 per contract Marketing Fee for XSP is reasonable because XSP transactions will now be assessed lower fees than previously. This change is equitable and not unfairly discriminatory because XSP transactions will now be assessed no Marketing Fee, similar to other singly-listed CBOE products, such as DJX, OEX, SPX, VIX, XEO and Volatility Indexes.

Eliminating the separate Marketing Fee for DIA and assessing the $0.25 per contract Marketing Fee for DIA is reasonable because that amount is the same amount as is being assessed for other ETFs. This is equitable and not unfairly discriminatory because the $0.25 per contract Marketing Fee will be assessed to all market participants on whom the Marketing Fee is assessed, and because DIA transactions will now be assessed the same Marketing Fee as transactions in other ETFs.

Assessing the Marketing Fee on complex order SPY and QQQ transactions executed via COA and COB is reasonable because the amount of the fee would be equivalent to the amount of the Marketing Fee assessed on SPY and QQQ transactions executed via other means, as well as the amount assessed on complex order transactions in other ETFs that are executed via COA and COB. Assessing the Marketing Fee on complex order SPY and QQQQ transactions executed via COA and COB is equitable and not unfairly discriminatory because the Marketing Fee is assessed on complex transactions in other ETFs that are executed via COA and COB, as well as on SPY and QQQ transactions executed via other means.

Excluding complex orders in SPY and QQQ that trade via COB against individual leg markets from being assessed the Marketing Fee is equitable and not unfairly discriminatory because such exclusion prevents a situation in which a market participant trading the single legs on COB elects to make a trade without knowing that he will be assessed the Marketing Fee for executing such trade. Excluding complex orders in SPY and QQQ that trade via COB against individual leg markets from being assessed the Marketing Fee while still assessing the Marketing Fee for complex orders in other products that trade via COB against individual leg markets is equitable and not unfairly discriminatory because, since in the other products the Marketing Fee is assessed on simple, single leg electronic orders, a market participant executing a trade in such products will know that the Marketing Fee will be assessed and be able to take that knowledge into account in determining whether or not to execute the trade.

The Exchange believes the proposed change of references from QQQQ to QQQ is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. QQQ is now the correct ticker symbol for the PowerShares QQQ Trust. As such, the accurate reflection of the correct ticker symbol of QQQ eliminates potential investor confusion, thereby removing impediments to and to perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] *See* CBOE Fees Schedule, Section 2. Exceptions also apply regarding certain types of trades in SPY and QQQ, as discussed elsewhere in this proposal.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f)(2) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–075 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–075. 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 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–075 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19286 Filed 8–6–12; 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. 34–67553; File No. SR–EDGA–2012–34]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Optional Attribution of Orders on the EDGA Book Feed

August 1, 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, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.5, entitled ''Orders and Modifiers'', to allow optional attribution of orders submitted to the Exchange on the EDGA Book Feed (the ''Service'' or ''EdgeBook Attributed℠'') to Members and non-Members of the Exchange (collectively referred to as ''Recipients'') without charge. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGA–2011–19,[3] the Exchange made available the EDGA Book Feed (''EDGA Book Feed''), a data feed that contains all orders for securities trading on the Exchange, including all displayed orders for listed securities trading on EDGA, order executions, order cancellations, order modifications, order identification numbers and administrative messages. The EDGA Book Feed offers real-time data, thereby allowing Member firms to more accurately price their orders based on EDGA's view of the depth of book information. It also provides Members an ability to track their own orders from order entry to execution. It is available in both unicast and multicast formats. In SR–EDGA–2012–15,[4] the Exchange modified the EDGA fee schedule by codifying the fees associated with the receipt of the EDGA Book Feed.

The purpose of this filing is to allow Members to optionally enter orders into the Exchange's System,[5] conveying their identity.[6] Such information will then be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 64792 (July 1, 2011), 76 FR 39959 (July 7, 2011) (SR–EDGA–2011–19).

[4] Securities and Exchange Release No. 66863 (Apr. 26, 2012), 77 FR 26059 (May 2, 2012) (SR–EDGA–2012–15).

[5] As defined in EDGA Rule 1.5(cc).

[6] Through the use of a field within the order entry message, Members will permit the display of their

displayed on the Exchange's new Service, namely EdgeBook Attributed℠, that will allow Recipients the option to view the market participant identifier (''MPID'') of such Members of the Exchange, including Market Makers,[7] on an order-by-order basis. Specifically, the Exchange proposes to amend Rule 11.5(c)(18) to add a definition of an Attributable Order, which shall mean an order that is designated for display (price and size) including the Member's MPID. The Exchange also proposes to adopt a definition in Rule 11.5(c)(19) for a Non-Attributable Order, which shall mean an order that is designated for display (price and size) on an anonymous basis by the Exchange. The proposed definitions of Attributable Order and Non-Attributable Order are virtually identical to definitions contained in the Rules of BATS Exchange, Inc. (''BATS'') and The NASDAQ Stock Market LLC (''Nasdaq'').

The attributed information will be disseminated on the EDGA Book Feed and available for use by Recipients. Currently, all display-eligible orders are displayed in the EDGA Book Feed on an anonymous basis without attribution to the individual Member. The Exchange is proposing to allow Recipients to utilize a new feature on the EDGA Book Feed, which will include MPIDs on published quotations.

At this time, EDGA does not have plans to charge an additional fee associated with the receipt of the Service. Should EDGA determine to charge fees associated with EdgeBook Attributed℠, EDGA will submit a proposed rule change to the Commission in order to implement those fees.

The Exchange believes that such attribution is consistent with the Exchange's Market Making rules, traditional market making on the floor of an exchange, and existing rules of the Exchange's competitors.[8] The additional feature will allow Members to publically disclose their identity when quoting on the Exchange and to display their attributed quote on the EDGA Book Feed. The Service will, in particular, allow a Market Maker to identify itself as a party that is willing to buy or sell securities on the Exchange and make continuous two-sided markets. The Exchange believes that this information will be beneficial to all Recipients and will aid in their trading decisions.

The Exchange intends to implement the proposed rule change on or about September 1, 2012. The Exchange first announced the Service to Members and non-Members in Direct Edge Trading Notice #12–25, published on June 27, 2012. As the Service is optional, there is no need for a phased implementation, as neither Recipients nor Members who wish to attribute their identity in the Service or wish to opt out of the Service will have to affect any material systems changes with regard to the Service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules not be designed to unfairly discriminate between customers, issuers, brokers or dealers and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. EDGA believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of the additional Service and by announcing its availability via information circular. In addition, EDGA is making a voluntary decision to make this Service available.

EDGA is not required by the Act in the first instance to make the Service available, unlike the best bid and offer which must be made available under the Act. EDGA chooses to make the Service available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, EDGA will be required to continue making the Service available until such time as EDGA changes its rule.

Furthermore, the proposal will benefit Recipients and help to promote transparency by providing additional information regarding quotations displayed on the Exchange by various Members and thereby aid Recipients in their trading decisions. Specifically, any Member that wishes to publicly disclose their identity (through their MPID) when quoting on the Exchange will be permitted to do so, and such attributed quotations will be analogous to the quotations they provide in other contexts (e.g., on the floor of a floor-based stock exchange or in the over-the-counter market through direct interaction). The proposed rule change also promotes transparency in that it will allow Recipients who wish to utilize the Service additional transparency into discerning the contra-party in a given execution.

The proposed rule change is also consistent with Section 11A(a)(1) of the Act[11] in that it seeks to assure fair competition among brokers and dealers by providing functionality that is consistent with that of functionality offered by the Exchange's competitors.[12] The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes uniformity across markets concerning the ability to display an attributed order on an exchange.

Lastly, in adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data services to the public. The Commission believed this authority would expand the amount of data available to market participants, and also spur innovation and competition for the provision of market data. EdgeBook Attributed℠ appears to be precisely the sort of market data service that the Commission envisioned when it adopted Regulation NMS.[13] The Service will allow Recipients to utilize a Service that will provide them a means to view attributed information on orders on the EDGA Book Feed.

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.

There is significant competition for the provision of market data to market participants, as well as competition for the orders that generate that data. In introducing the proposed Service, the

entered order on the EDGA Book Feed to include their associated MPID.

[7] As defined in EDGA Rule 1.5(l).

[8] *See infra* footnote 14.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] *See infra* footnote 14.

[13] Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''[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.'').

Exchange would be providing one similar to those already offered by other market centers.[14]

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 its Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[15] of the Act and Rule 19b–4(f)(6)(iii) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–EDGA–2012–34 *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–EDGA–2012–34. 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–EDGA–2012–34 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19211 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[14] *See* Nasdaq Rules 4751(e)(1) and (2) and BATS Rules 11.9(c)(14) and (15).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67554; File No. SR–EDGX–2012–32]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Optional Attribution of Orders on the EDGX Book Feed

August 1, 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 26, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.5, entitled ''Orders and Modifiers'', to allow optional attribution of orders submitted to the Exchange on the EDGX Book Feed (the ''Service'' or ''EdgeBook Attributed℠'') to Members and non-Members of the Exchange (collectively referred to as ''Recipients'') without charge. The text of the proposed rule change is available on the Exchange's Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In SR–EDGX–2011–18,[3] the Exchange made available the EDGX Book Feed (''EDGX Book Feed''), a data feed that contains all orders for securities trading on the Exchange, including all displayed orders for listed securities trading on EDGX, order executions, order cancellations, order modifications, order identification numbers and administrative messages. The EDGX Book Feed offers real-time data, thereby allowing Member firms to more accurately price their orders based on EDGX's view of the depth of book information. It also provides Members an ability to track their own orders from order entry to execution. It is available in both unicast and multicast formats. In SR–EDGX–2012–14,[4] the Exchange modified the EDGX fee schedule by codifying the fees associated with the receipt of the EDGX Book Feed.

The purpose of this filing is to allow Members to optionally enter orders into the Exchange's System,[5] conveying their identity.[6] Such information will then be displayed on the Exchange's new Service, namely EdgeBook Attributed℠, that will allow Recipients the option to view the market participant identifier (''MPID'') of such Members of the Exchange, including Market Makers,[7] on an order-by-order basis. Specifically, the Exchange proposes to amend Rule 11.5(c)(18) to add a definition of an Attributable Order, which shall mean an order that is designated for display (price and size) including the Member's MPID. The Exchange also proposes to adopt a definition in Rule 11.5(c)(19) for a Non-Attributable Order, which shall mean an order that is designated for display (price and size) on an anonymous basis by the Exchange. The proposed definitions of Attributable Order and Non-Attributable Order are virtually identical to definitions contained in the Rules of BATS Exchange, Inc. (''BATS'') and The NASDAQ Stock Market LLC (''Nasdaq'').

The attributed information will be disseminated on the EDGX Book Feed and available for use by Recipients. Currently, all display-eligible orders are displayed in the EDGX Book Feed on an anonymous basis without attribution to the individual Member. The Exchange is proposing to allow Recipients to utilize a new feature on the EDGX Book Feed, which will include MPIDs on published quotations.

At this time, EDGX does not have plans to charge an additional fee associated with the receipt of the Service. Should EDGX determine to charge fees associated with EdgeBook Attributed℠, EDGX will submit a proposed rule change to the Commission in order to implement those fees.

The Exchange believes that such attribution is consistent with the Exchange's Market Making rules, traditional market making on the floor of an exchange, and existing rules of the Exchange's competitors.[8] The additional feature will allow Members to publically disclose their identity when quoting on the Exchange and to display their attributed quote on the EDGX Book Feed. The Service will, in particular, allow a Market Maker to identify itself as a party that is willing to buy or sell securities on the Exchange and make continuous two-sided markets. The Exchange believes that this information will be beneficial to all Recipients and will aid in their trading decisions.

The Exchange intends to implement the proposed rule change on or about September 1, 2012. The Exchange first announced the Service to Members and non-Members in Direct Edge Trading Notice #12–25, published on June 27, 2012. As the Service is optional, there is no need for a phased implementation, as neither Recipients nor Members who wish to attribute their identity in the Service or wish to opt out of the Service will have to effect any material systems changes with regard to the Service.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] which requires, among other things, that the Exchange's rules not be designed to unfairly discriminate between customers, issuers, brokers or dealers and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. EDGX believes that this proposal is in keeping with those principles by promoting increased transparency through the dissemination of the additional Service and by announcing its availability via information circular. In addition, EDGX is making a voluntary decision to make this Service available.

EDGX is not required by the Act in the first instance to make the Service available, unlike the best bid and offer which must be made available under the Act. EDGX chooses to make the Service available as proposed in order to improve market quality, to attract order flow, and to increase transparency. Once this filing becomes effective, EDGX will be required to continue making the Service available until such time as EDGX changes its rule.

Furthermore, the proposal will benefit Recipients and help to promote transparency by providing additional information regarding quotations displayed on the Exchange by various Members and thereby aid Recipients in their trading decisions. Specifically, any Member that wishes to publicly disclose their identity (through their MPID) when quoting on the Exchange will be permitted to do so, and such attributed quotations will be analogous to the quotations they provide in other contexts (e.g., on the floor of a floor-based stock exchange or in the over-the-counter market through direct interaction). The proposed rule change also promotes transparency in that it will allow Recipients who wish to utilize the Service additional transparency into discerning the contra-party in a given execution.

The proposed rule change is also consistent with Section 11A(a)(1) of the Act[11] in that it seeks to assure fair competition among brokers and dealers by providing functionality that is consistent with that of functionality offered by the Exchange's competitors.[12] The Exchange believes that the proposed rule change promotes just and equitable principles of trade in that it promotes uniformity across markets concerning the ability to display an attributed order on an exchange.

[3] Securities Exchange Act Release No. 64791 (July 1, 2011), 76 FR 39944 (July 7, 2011) (SR–EDGX–2011–18).

[4] Securities and Exchange Release No. 66864 (Apr. 26, 2012), 77 FR 26064 (May 2, 2012) (SR–EDGX–2012–14).

[5] As defined in EDGX Rule 1.5(cc).

[6] Through the use of a field within the order entry message, Members will permit the display of their entered order on the EDGX Book Feed to include their associated MPID.

[7] As defined in EDGX Rule 1.5(l).

[8] *See infra* footnote 14.

[9] 15 U.S.C. 78f (sic).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k–1(a)(1).

[12] *See infra* footnote 14.

Lastly, in adopting Regulation NMS, the Commission granted SROs and broker-dealers increased authority and flexibility to offer new and unique market data services to the public. The Commission believed this authority would expand the amount of data available to market participants, and also spur innovation and competition for the provision of market data. EdgeBook Attributed℠ appears to be precisely the sort of market data service that the Commission envisioned when it adopted Regulation NMS.[13] The Service will allow Recipients to utilize a Service that will provide them a means to view attributed information on orders on the EDGX Book Feed.

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.

There is significant competition for the provision of market data to market participants, as well as competition for the orders that generate that data. In introducing the proposed Service, the Exchange would be providing one similar to those already offered by other market centers.[14]

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 its Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[15] of the Act and Rule 19b–4(f)(6)(iii) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

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–EDGX–2012–32 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–EDGX–2012–32. 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–EDGX–2012–32 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19212 Filed 8–6–12; 8:45 am]

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[13] Securities and Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005) (''[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.'').

[14] *See* Nasdaq Rules 4751(e)(1) and (2) and BATS Rules 11.9(c)(14) and (15).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67555; File No. SR–NYSE–2012–32]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 128, Which Governs Clearly Erroneous Executions, to Extend the Effective Date of the Pilot by Which Portions of Such Rule Operate Until February 4, 2013

August 1, 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 20, 2012, the New York Stock Exchange 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 amend NYSE Rule 128, which governs clearly

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012. 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 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 NYSE Rule 128, which governs clearly erroneous executions, to extend the effective date of the pilot by which portions of such Rule operate, until February 4, 2013. The pilot is currently scheduled to expire on July 31, 2012.[3]

On September 10, 2010, the Commission approved, on a pilot basis, market-wide amendments to exchanges' rules for clearly erroneous executions to set forth clearer standards and curtail discretion with respect to breaking erroneous trades. In connection with this pilot initiative, the Exchange amended NYSE Rule 128(c), (e)(2), (f), and (g). The amendments provide for uniform treatment of clearly erroneous execution reviews (1) in Multi-Stock Events[4] involving twenty or more securities, and (2) in the event transactions occur that result in the issuance of an individual security trading pause by the primary market and subsequent transactions that occur before the trading pause is in effect on the Exchange.[5] The amendments also eliminated appeals of certain rulings made in conjunction with other exchanges with respect to clearly erroneous transactions and limited the Exchange's discretion to deviate from Numerical Guidelines set forth in the Rule in the event of system disruptions or malfunctions.

If the pilot were not extended, the prior versions of paragraphs (c), (e)(2), (f), and (g) of Rule 128 would be in effect, and the NYSE would have different rules than other exchanges and greater discretion in connection with breaking clearly erroneous transactions. The Exchange proposes to extend the pilot amendments to NYSE Rule 128 until February 4, 2013 in order to maintain uniform rules across markets and allow the pilot to continue to operate without interruption during the same period that the Rule 80C trading pause rule pilot is also in effect. Extension of the pilot would permit the Exchange, other national securities exchanges and the Commission to further assess the effect of the pilot on the marketplace, including whether additional measures should be added, whether the parameters of the rule should be modified or whether other initiatives should be adopted in lieu of the current pilot.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Act, in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the Exchange believes that the extension of the pilot would promote just and equitable principles of trade because it would help assure that the determination of whether a clearly erroneous trade has occurred will be based on clear and objective criteria. Additionally, resolution of the incident will occur promptly through a transparent process, which the Exchange believes would protect investors and the public interest. The proposed rule change would also foster cooperation and coordination with persons engaged in facilitating transactions in securities and to remove impediments to, and perfect the mechanism of, a free and open market and a national market system because it would help assure consistent results in handling erroneous trades across the U.S. markets, thus furthering fair and orderly markets, the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.[9]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

[3] *See* Securities Exchange Act Release No. 62886 (September 10, 2010), 75 FR 56613 (September 16, 2010) (SR–NYSE–2010–47). *See also* Securities Exchange Act Release Nos. 63479 (December 9, 2010), 75 FR 78274 (December 15, 2010) (SR–NYSE–2010–80); 64232 (April 7, 2011), 76 FR 20735 (April 13, 2011) (SR–NYSE–2011–17); 65064 (August 9, 2011), 76 FR 50505 (August 15, 2011) (SR–NYSE–2011–41); and 66136 (January 11, 2012), 77 FR 2589 (January 18, 2012) (SR–NYSE–2011–69).

[4] Terms not defined herein are defined in NYSE Rule 128.

[5] Separately, the Exchange has proposed extend the effective date of the trading pause pilot under NYSE Rule 80C, which requires to the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day. *See* SR–NYSE–2012–31.

[6] This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *See supra* note 7.

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(6).

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 [12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii) [15] 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.[16]

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–NYSE–2012–32 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–32. 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–NYSE–2012–32 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 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.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] 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).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67556; File No. SR–NYSE–2012–31]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 80C, Which Provides for Trading Pauses in Individual Securities Due to Extraordinary Market Volatility, To Extend the Effective Date of the Pilot Until February 4, 2013

August 1, 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 New York Stock Exchange 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 amend NYSE Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of July 31, 2012, until February 4, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE Rule 80C, which provides for trading pauses in individual securities due to extraordinary market volatility, to extend the effective date of the pilot by which such rule operates from the current scheduled expiration date of July 31, 2012,[3] until February 4, 2013.

NYSE Rule 80C requires the Exchange to pause trading in an individual security listed on the Exchange if the price moves by a specified percentage as compared to prices of that security in the preceding five-minute period during a trading day, which period is defined as a ''Trading Pause.'' The pilot was developed and implemented as a market-wide initiative by the Exchange and other national securities exchanges in consultation with the Commission staff and is currently applicable to all NMS stocks and specified exchange-traded products.[4]

The extension proposed herein would allow the pilot to continue to operate without interruption while the Exchange, other national securities exchanges and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot.[5]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the change proposed herein meets these requirements in that it promotes uniformity across markets concerning decisions to pause trading in a security when there are significant price movements, which promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. Additionally, extension of the pilot until February 4, 2013 would allow the pilot to continue to operate without interruption while the Exchange and the Commission further assess the effect of the pilot on the marketplace or whether other initiatives should be adopted in lieu of the current pilot, which contributes to the protection of investors and the public interest. Finally, the proposed rule change would permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[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 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

[3] *See* Securities Exchange Act Release No. 66134 (January 11, 2012), 77 FR 2592 (January 18, 2012) (SR–NYSE–2011–68).

[4] The Exchange notes that the other national securities exchanges and the Financial Industry Regulatory Authority have adopted the pilot in substantially similar form. *See* Securities Exchange Act Release No. 62252 (June 10, 2010), 75 FR 34186 (June 16, 2010) (File Nos. SR–BATS–2010–014; SR–EDGA–2010–01; SR–EDGX–2010–01; SR–BX–2010–037; SR–ISE–2010–48; SR–NYSE–2010–39; SR–NYSEAmex–2010–46; SR–NYSEArca–2010–41; SR–NASDAQ–2010–061; SR–CHX–2010–10; SR–NSX–2010–05; and SR–CBOE–2010–047) and Securities Exchange Act Release No. 62251 (June 10, 2010), 75 FR 34183 (June 16, 2010) (SR–FINRA–2010–025). *See also* Securities Exchange Act Release No. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) (File Nos. SR–BATS–2010–018; SR–BX–2010–044; SR–CBOE–2010–065; SR–CHX–2010–14; SR–EDGA–2010–05; SR–EDGX–2010–05; SR–ISE–2010–66; SR–NASDAQ–2010–079; SR–NYSE–2010–49; SR–NYSEAmex–2010–63; SR–NYSEArca–2010–61; and SR–NSX–2010–08 and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033). *See also* Securities Exchange Act Release No. 63500 (December 9, 2010), 75 FR 78309 (December 15, 2010) (SR–NYSE–2010–81). A proposal to, among other things, expand the pilot to include all NMS stocks not already included therein was implemented on August 8, 2011. *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (File Nos. SR–BATS–2011–016; SR–BYX–2011–011; SR–BX–2011–025; SR–CBOE–2011–049; SR–CHX–2011–09; SR–EDGA–2011–15; SR–EDGX–2011–14; SR–FINRA–2011–023; SR–ISE–2011–028; SR–NASDAQ–2011–067; SR–NYSE–2011–21; SR–NYSEAmex–2011–32; SR–NYSEArca–2011–26; SR–NSX–2011–06; and SR–Phlx–2011–64).

[5] This proposed extension would also permit the pilot to operate until the National Market System Plan to Address Extraordinary Market Volatility is implemented, which will occur on February 4, 2013. *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y–Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *See supra* note 6.

[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).

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–NYSE–2012–31 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–31. 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–NYSE–2012–31 and should be submitted by August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19214 Filed 8–6–12; 8:45 am]

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[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. 34–67562; File No. SR–BX–2012–053]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation Date of Non-Display of Primary Pegged Orders With an Offset Amount

August 1, 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, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to delay the implementation date for its rule change that provides for non-display of Primary Pegged Orders with an offset amount. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/*, at the Exchange's principal office, and at the Commission's Public Reference Room.

[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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX recently submitted a proposed rule change to provide that Primary Pegged Orders with an offset amount will not be displayed,[3] a change that will improve system and inter-market price stability. The display of Primary Pegged Orders with an offset amount can potentially result in excessive messaging when multiple venues display pegged non-marketable orders. The rule change to eliminate display of Primary Pegged Orders with an offset amount will prevent this feedback loop, adding to system stability and improving market quality.

Implementation of this change has been delayed to allow market makers to make the necessary system changes and still meet their compliance obligations. The Exchange expects to implement the change in the third quarter of 2012, and will announce the exact date through a publicly disseminated alert.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in

[3] Securities Exchange Act Release No. 66698 (March 30, 2012), 77 FR 20671 (April 5, 2012) (SR–BX–2012–022).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. Specifically, BX believes that delaying the implementation date of non-display of primary pegged orders with an offset amount to allow market participants to adjust their systems consistent with compliance obligations will provide efficiencies that will benefit investors and the public interest and encourage more efficient order entry practices by all market participants.

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. Specifically, the Exchange believes that the proposed delay in the implementation of the change will not have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–053 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–BX–2012–053 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19215 Filed 8–6–12; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67563; File No. SR–Phlx–2012–97]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Delay the Implementation of Non-Display of Primary Pegged Orders With an Offset Amount

August 1, 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, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to delay the implementation date for its rule change that provides for non-display of Primary Pegged Orders with an offset amount. The text of the proposed rule change is available at *http://nasdaqomxphlx.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx recently submitted a proposed rule change to provide that Primary Pegged Orders with an offset amount will not be displayed,[3] a change to improve system and inter-market price stability. The display of Primary Pegged Orders with an offset amount can potentially result in excessive messaging when multiple venues display pegged non-marketable orders. The rule change to eliminate display of Primary Pegged Orders with an offset amount will prevent this feedback loop, adding to system stability and improving market quality.

Implementation of this change to eliminate display of Primary Pegged Orders with an offset amount has been delayed to allow market makers to make the necessary system changes and still meet their compliance obligations. The Exchange expects to implement the change in the third quarter of 2012, and will announce the exact date through a publicly disseminated alert.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(5) of the Act,[5] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Phlx believes that delaying the implementation date of non-display of primary pegged orders with an offset amount to allow market participants to adjust their systems consistent with compliance obligations will provide efficiencies that will benefit investors and the public interest and encourage more efficient order entry practices by all market participants.

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. Specifically, the Exchange believes that the proposed delay in the implementation of the change will not have any effect on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(6) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The Exchange has provided the Commission written notice of its intent to file the proposed rule change, along with a brief description, at least five business days prior to the date of filing of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–97 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–2012–97. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–Phlx–2012–97 and should be submitted on or before August 28, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19216 Filed 8–6–12; 8:45 am]

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[3] Securities Exchange Act Release No. 66697 (March 30, 2012), 77 FR 20657 (April 5, 2012) (SR–Phlx–2012–039).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67564; File Nos. SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07]

Self-Regulatory Organizations; New York Stock Exchange LLC; NYSE Arca, Inc.; NYSE MKT LLC; Order Granting Approval of Proposed Rule Changes Amending Independence Policy of the Board of Directors of NYSE Euronext and Creating a New Independence Policy for Boards of Directors of the New York Stock Exchange LLC, NYSE MKT LLC, NYSE Regulation, Inc., and NYSE Market, Inc.

August 1, 2012.

I. Introduction

On June 6, 2012, New York Stock Exchange LLC (''Exchange''), and on June 8, 2012, NYSE Arca, Inc. (''NYSE Arca''), and NYSE MKT LLC (''NYSE MKT'' and, together with the Exchange and NYSE Arca, the ''NYSE Exchanges''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] proposed rule changes amending the Independence Policy of the board of directors (the ''NYSE Euronext Board'') of NYSE Euronext (the ''NYSE Euronext Director Independence Policy'') and creating a new Independence Policy (the ''Regulated Subsidiary Director Independence Policy'') for each of the boards of directors of the Exchange, NYSE MKT, NYSE Regulation, Inc. (''NYSE Regulation''), and NYSE Market, Inc. (''NYSE Market'' and, together with NYSE Regulation, the Exchange, and NYSE MKT, the ''Regulated Subsidiaries''). The proposed rule changes were published for comment in the **Federal Register** on June 18, 2012.[4] The Commission received no comment letters on the proposal.

The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposed rule changes are consistent with Section 6(b) of the Act,[6] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, and assure the fair representation of its members in the selection of its directors and administration of its affairs, and provide that one or more directors shall be representative of issuers and investors and not be associated with a member of the exchange, broker, or dealer. Section 6(b) of the Act [7] also requires that the rules of the exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

II. Discussion

NYSE Euronext Director Independence Policy

Under the proposed rule changes, the NYSE Exchanges would amend the NYSE Euronext Director Independence Policy and create the Regulated Subsidiary Director Independence Policy.[8] Under the proposed rule changes, the NYSE Euronext Director Independence Policy would be amended to reflect that (i) a majority (as opposed to 75%) of the NYSE Euronext Board would be required to be independent; (ii) executive officers of listed companies would no longer be prohibited from being considered independent for purposes of the NYSE Euronext Board; (iii) the ''additional independence requirements'' at the end of the current independence policy of NYSE Euronext, which provide that executive officers of foreign private issuers, executive officers of NYSE Euronext, and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated; (iv) references to certain European regulatory authorities would be updated, because their names have changed; (v) references to NYSE Alternext US LLC and NYSE Amex LLC would refer instead to NYSE MKT LLC, because of this entity's previous name changes; and (vi) footnote 2 would be deleted because the NYSE Euronext Director Independence Policy would not be applicable to the Regulated Subsidiaries, each of which is proposed to have its own director independence policy.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),[9] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. The Commission previously considered and approved these changes to the NYSE Euronext Director Independence Policy in connection with the previously proposed combination of NYSE Euronext and Deutsche Börse AG (the ''Combination'').[10] The Commission notes that a majority of NYSE Euronext's Board would still need to be independent. In addition, the Commission notes that as a company listed on the Exchange, NYSE Euronext's board of directors must also satisfy the independence requirements applicable to a listed company's board of directors as contained in the Exchange's Listed Company Manual. Further, the Commission notes that there are requirements in the NYSE Euronext Director Independence Policy that independent directors may not be or have been within the last year, and may not have an immediate family member who is or within the last year was, a member of the Exchange, NYSE Arca, or NYSE MKT.

Regulated Subsidiary Director Independence Policy

The Regulated Subsidiary Director Independence Policy to be adopted by each of the Exchange, NYSE Market, NYSE Regulation and NYSE MKT under the proposed rule changes would be substantially similar to the current Independence Policy of the NYSE Euronext Board, except that certain conforming changes would be made,

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release Nos. 67185 (June 12, 2011), 77 FR 36321 (SR–NYSE–2012–17); 67186 (June 12, 2012), 77 FR 36307 (SR–NYSEArca–2012–59); 67184 (June 12, 2012), 77 FR 36324 (SR–NYSEMKT–2012–07).

[5] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] *Id.*

[8] In addition, the Exchange proposes to amend the Amended and Restated Bylaws of NYSE Euronext, the Amended and Restated Bylaws of NYSE Market, Inc., Third Amended and Restated Bylaws of NYSE Regulation, Inc., the Third Amended and Restated Operating Agreement of New York Stock Exchange LLC and the Second Amended and Restated Operating Agreement of NYSE MKT LLC to make certain conforming changes.

[9] 15 U.S.C. 78f(b)(1).

[10] *See* Securities Exchange Act Release No. 34–66171 (January 17, 2012) File Nos. SR–EDGA–2011–34; SR–EDGX–2011–33; SR–ISE–2011–69; SR–NYSE–2011–51; SR–NYSEAmex–2011–78; SR–NYSEArca–2011–72), 77 FR 3297 (January 23, 2012). The Combination was not completed and, therefore, the proposed rule changes conditionally approved by the Commission did not become effective. *See, e.g.,* Securities Exchange Act Release No. 66662 (March 26, 2012), 77 FR 19396 (March 30, 2012) (SR–NYSE–2012–08).

including the deletion of provisions that currently apply only to NYSE Euronext directors and expressly do not apply to directors of these Regulated Subsidiaries. In particular, (i) references to NYSE Euronext would refer instead to the relevant Regulated Subsidiary; (ii) the requirement that at least three-fourths of the directors must be independent would be deleted, since the organizational documents of these Regulated Subsidiaries contain the independence and other qualification requirements for directors; (iii) the requirement in the Independence Policy of NYSE Euronext that the board consider the special responsibilities of a director in light of NYSE Euronext's ownership of U.S. regulated subsidiaries and European regulated entities would be deleted, because unlike NYSE Euronext, the Regulated Subsidiaries are not holding companies; (iv) the requirement for directors to inform the Chairman of the Nominating and Governance Committee of certain relationships and interests would be deleted, since the boards of these Regulated Subsidiaries do not have a Nominating and Governance Committee, except that in the Regulated Subsidiary Director Independence Policy to be adopted by NYSE Regulation, this provision would reference the Nominating and Governance Committee of NYSE Regulation; (v) references to NYSE Alternext, Inc. and NYSE Amex LLC would refer instead to NYSE MKT LLC, because of this entity's previous name changes; (vi) because the current Independence Policy of NYSE Euronext provides that a director of an affiliate of a Member Organization'' (as defined in the Regulated Subsidiary Director Independence Policy) cannot qualify as an independent director of these Regulated Subsidiaries, the conflicting language stating that a director of an affiliate of a Member Organization shall not per se fail to be independent would be deleted; and (vii) because language in the current Independence Policy of NYSE Euronext provides that an executive officer of an issuer whose securities are listed on a NYSE Exchange cannot qualify as an independent director of these Regulated Subsidiaries, the conflicting language providing an exception applicable only to NYSE Euronext directors would be deleted. In addition, the ''additional independence requirements'' at the end of the current Independence Policy of NYSE Euronext, which provides that executive officers of foreign private issuers, executive officers of NYSE Euronext and directors of affiliates of member organizations must together comprise no more than a minority of the total board, would be eliminated. This provision is designed to ensure that although persons who are directors of an affiliate of a Member Organization or who are executive officers of a ''foreign private issuer'' listed on a NYSE Exchange may in some circumstances qualify as independent for purposes of NYSE Euronext board membership, such persons may not, together with executive officers of NYSE Euronext, constitute more than a minority of the total NYSE Euronext directors. Under the proposed Regulated Subsidiary Director Independence Policy, such persons could not be deemed to be independent directors of the relevant Regulated Subsidiary and, accordingly, this limitation on the number of such persons who may serve on the board is unnecessary.

The Commission finds that these proposals, taken together, are consistent with the Act, particularly Section 6(b)(1),[11] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act. Further, the Commission notes that the NYSE Exchanges are not proposing to change any of the provisions relating to (i) the fair representation of the members of each of the NYSE Exchanges in the selection of its directors and administration of its affairs or (ii) one or more of the directors of each of the NYSE Exchanges being representative of issuers and investors and not being associated with a member of the exchange or with a broker dealer, each as required under Section 6(b)(3) of the Act.[12]

III. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [13] that the proposed rule changes (SR–NYSE–2012–17; SR–NYSEArca–2012–59; SR–NYSEMKT–2012–07), are approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–19217 Filed 8–6–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78f(b)(3).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7970]

International Security Advisory Board (ISAB) Meeting Notice; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App 10(a)(2), the Department of State announces a meeting of the International Security Advisory Board (ISAB) to take place on September 13, 2012, at the Department of State, Washington, DC.

Pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App 10(d), and 5 U.S.C. 552b(c)(1), it has been determined that this Board meeting will be closed to the public because the Board will be reviewing and discussing matters properly classified in accordance with Executive Order 13526. The purpose of the ISAB is to provide the Department with a continuing source of independent advice on all aspects of arms control, disarmament, political-military affairs, international security and related aspects of public diplomacy. The agenda for this meeting will include classified discussions related to the Board's ongoing studies on current U.S. policy and issues regarding arms control, international security, nuclear proliferation, and diplomacy.

For more information, contact Richard W. Hartman II, Executive Director of the International Security Advisory Board, U.S. Department of State, Washington, DC 20520, telephone: (202) 736–4290.

Dated: July 31, 2012.

Richard W. Hartman, II,

Executive Director, International Security Advisory Board, U.S. Department of State.

[FR Doc. 2012–19300 Filed 8–6–12; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (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 collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on May 22, 2012 [Volume 77, No. 99, Page 30352].

DATES: Comments must be submitted on or before September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Gary R. Toth, Office of Data Acquisitions (NVS–410), Room W53–303, 1200 New Jersey Avenue SE., Washington, DC 20590. The telephone number for Mr. Toth is (202) 366–5378.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Automotive Sampling System (NASS).

OMB Number: 2127–0021.

Type of Request: Continuation.

Abstract: The collection of crash data that support the establishment and enforcement of motor vehicle regulations that reduce the severity of injury and property damage caused by motor vehicle crashes is authorized under the National Traffic and Motor Vehicle Safety Act of 1966 (Pub. L. 89–563, Title 1, Sec. 106, 108, and 112). The National Automotive Sampling System (NASS) Crashworthiness Data System (CDS) of the National Highway Traffic Safety Administration investigates high severity crashes. Once a crash has been selected for investigation, researchers locate, visit, measure, and photograph the crash scene; locate, inspect, and photograph vehicles; conduct a telephone or personal interview with the involved individuals or surrogate; and obtain and record injury information received from various medical data sources. NASS CDS data are used to describe and analyze circumstances, mechanisms, and consequences of high severity motor vehicle crashes in the United States. The collection of interview data aids in this effort.

Affected Public: Passenger Motor Vehicle Operators.

Estimated Total Annual Burden: 5,605 hours.

Number of Respondents: 9,450.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on August 3, 2012.

Terry T. Shelton,

Associate Administrator for National Center for Statistics and Analysis.

[FR Doc. 2012–19233 Filed 8–6–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, 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 information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The OCC is soliciting comments concerning the currently approved Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance Program information collection, which is being renewed without change. The OCC is also giving notice that it has sent the collection to OMB for review.

DATES: Written comments should be received on or before September 6, 2012.

ADDRESSES: Interested parties are invited to submit written comments to the OCC. All comments should refer to the Office of Management and Budget (OMB) control numbers. Direct all written comments as follows:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0180, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC's Public Information Room, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0180, by mail to U.S. Office of Management and Budget, 725, 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is renewing without change all information collections covered under the information collection titled: ''Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance.''

Title: Minimum Security Devices and Procedures, Reports of Suspicious Activities, and Bank Secrecy Act Compliance program.

OMB Control No.: 1557–0180.

Form Numbers: 8010–1/8010–9.

Abstract: In 1985, the bank supervisory agencies (Agencies),[1] issued procedures to be used by banks and certain other financial institutions operating in the United States to report known or suspected criminal activities to the appropriate law enforcement and Banking Supervisory Agencies. Beginning in 1994, the Agencies and the Financial Crimes Enforcement Network (FinCEN) undertook a redesign of the reporting process and developed the Suspicious Activity Report, which became effective in April 1996. The report is authorized by the following regulations: 31 CFR 103.18 (FinCEN); 12 CFR 21.11 and 12 CFR 163.180 (OCC); 12 CFR 208.62(c), 211.5(k), 211.24(f), and 225.4(f) (Board); 12 CFR 353.3 (FDIC); 12 CFR 748.1 (NCUA). The regulations were issued under the authority contained in the following statutes: 31 U.S.C. 5318(g) (FinCEN); 12 U.S.C. 93a, 1463, 1464, 1818, 1881–84,

[1] The Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the National Credit Union Administration.

3401–22, 31 U.S.C. 5318 (OCC); 12 U.S.C. 248(a)(1), 625, 1818, 1844(c), 3105(c)(2) and 3106(a) (Board); 12 U.S.C 1818–1820 (FDIC); 12 U.S.C. 1766(a), 1789(a) (NCUA).

Current Action: The OCC proposes to renew, without revision, the currently approved collection.

Type of Review: Regular.

Affected Public: Business, for-profit institutions, and non-profit institutions.

Estimated Number of Respondents: 2,021.

Estimated Total Annual Responses: 424,410.

Estimated Burden per Response: 1 hour per form.

Estimated Total Annual Burden: 548,560 hours.

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 Office of Management and Budget control number. Records required to be retained under the Bank Secrecy Act and these regulations issued by the Banking Supervisory Agencies must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

A notice regarding the collection was published for 60 days of comment. 77 FR 27858 (May 11, 2012). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information shall have practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology, and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: July 31, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–19200 Filed 8–6–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Actions Taken Pursuant to Executive Order 13382

AGENCY: Office of Foreign Assets Control, TD.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is unblocking and removing three entities from OFAC's list of Specially Designated Nationals and Blocked Persons (''SDN List''), whose property and interests in property were blocked pursuant to Executive Order 13382 of June 28, 2005, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters.'' OFAC is also announcing the unblocking and removal from the SDN List of seven vessels, which were property blocked pursuant to Executive Order 13382 of June 28, 2005.

DATES: The removals by the Director of OFAC, pursuant to Executive Order 13382, were effective on July 12, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, Tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On June 28, 2005, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 29, 2005. In the Order, the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

On July 12, 2012, the Director of OFAC removed and unblocked three entities from the SDN List whose property and interests in property were blocked pursuant to Executive Order 13382. On the same date, the Director of OFAC removed and unblocked seven vessels from the SDN List, which were property blocked pursuant to Executive Order 13382.

The list of removed entities and vessels is as follows:

Entities

1. OASIS FREIGHT AGENCIES (a.k.a. OASIS FREIGHT AGENCY LLC), Sharaf Building, No. 4, 2nd Floor, Al Meena Road, Opposite Customs, Dubai, United Arab Emirates; Sharaf Building, 1st Floor, Al Mankhool St., Bur Dubai, P.O. Box 5562, Dubai, United Arab Emirates; Kayed Ahli Building, Jamal Abdul Nasser Road (Parallel to Al Wahda St.), P.O. Box Box 4840, Sharjah, United Arab Emirates [NPWMD].
2. GREAT OCEAN SHIPPING SERVICES (L.L.C.), 2nd Floor, Sharaf Building, Al Mina Road, Bur Dubai, Dubai, United Arab Emirates; Business

Registration Document #606318 (United Arab Emirates) issued 5 Feb 2008; Email Address *info@oceanshg.com;* Web site *www.oceanshg.com;* Telephone: 97143525000; Fax: 97143518008 [NPWMD].

3. PEARL SHIP MANAGEMENT L.L.C., Dubai, United Arab Emirates; Email Address *technical@pearlsmc.com;* Telephone: 97143525333; Fax: 97143518008 [NPWMD].

Vessels

1. DESPINA (a.k.a. IRAN KOLAHDOOZ) General Cargo, 17,982DWT 13,914GRT Iran flag (IRISL); Vessel Registration Identification IMO 7428809 (vessel) [NPWMD].
2. GOMIDAS (a.k.a. IRAN ESTEGHLAL) Bulk Carrier 35,839DWT 20,811GRT Iran flag (IRISL); Vessel Registration Identification IMO 7620550 (vessel) [NPWMD].
3. HOOTAN (a.k.a. IRAN SEPAH) Bulk Carrier 33,856DWT 20,361GRT Iran flag (IRISL); Vessel Registration Identification IMO 7375363 (vessel) [NPWMD].
4. IRAN BEHESHTI Unknown vessel type 38,411DWT 21,999GRT IRAN flag (IRISL); Vessel Registration Identification IMO 7389792 (Iran) (vessel) [NPWMD].
5. IRAN SARBAZ Bulk Carrier 34,859DWT 20,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8113011 (vessel) [NPWMD].
6. MARKARID (a.k.a. IRAN DEYANAT) Bulk Carrier 43,150DWT 25,168GRT Iran flag (IRISL); Vessel Registration Identification IMO 8107579 (vessel) [NPWMD].
7. TABAK (a.k.a. IRAN AMANAT) Bulk Carrier 34,859DWT 20,576GRT Iran flag (IRISL); Vessel Registration Identification IMO 8112990 (vessel) [NPWMD].

Dated: July 11, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–18823 Filed 8–6–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Bankruptcy Compliance Project Committee will be held Tuesday, September 11, 2012, at 9:00 a.m. Pacific Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19195 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 4, 2012.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Project Committee will be held Tuesday, September 4, 2012, at 11 a.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19190 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 6, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Refund Processing Communications Project Committee will be held Thursday, September 6, 2012 at 2:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley. For more information please contact Ms. Smiley at 1–888–912–1227 or 414–231–2360, or write

TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19181 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 11, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Face-to-Face Service Methods Project Committee will be held Tuesday, September 11, 2012, at 2 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19182 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 26, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, September 26, 2012, 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS topics.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19188 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 18, 2012.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Small Business/Self-Employed Decreasing Non-Filers Project Committee will be held Tuesday, September 18, 2012, at 1:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Patricia Robb. For more information please contact Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19198 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 12, 2012.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory

Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, September 12, 2012, at 2:00 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 1, 2012.

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19192 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, September 19, 2012.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1–888–912–1227 or 718–488–2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Burden Reduction Project Committee will be held Wednesday, September 19, 2012, at 2:30 p.m. Eastern Time via telephone conference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Jenkins. For more information please contact Ms. Jenkins at 1–888–912–1227 or 718–488–2085, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: August 1*, 2012.*

Louis Morizio,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–19178 Filed 8–6–12; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 77 Tuesday,

No. 152 August 7, 2012

Part II

Commodity Futures Trading Commission

17 CFR Part 50

Clearing Requirement Determination Under Section 2(h) of the CEA; Proposed Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AD86

Clearing Requirement Determination Under Section 2(h) of the CEA

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing regulations to establish a clearing requirement under new section 2(h)(1)(A) of the Commodity Exchange Act (CEA or Act), enacted under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The regulations would require that certain classes of credit default swaps (CDS) and interest rate swaps (IRS), described herein, be cleared by a derivatives clearing organization (DCO) registered with the Commission. The Commission also is proposing regulations to prevent evasion of the clearing requirement and related provisions.

DATES: Comments must be received on or before September 6, 2012.

ADDRESSES: You may submit comments, identified by RIN number 3038–AD86, 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://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]

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

FOR FURTHER INFORMATION CONTACT: Sarah E. Josephson, Deputy Director, 202–418–5684, *sjosephson@cftc.gov;* Brian O'Keefe, Associate Director, 202–418–5658, *bokeefe@cftc.gov;* or Erik Remmler, Associate Director, 202–418–7630, *eremmler@cftc.gov,* Division of Clearing and Risk, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

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I. Background

A. Financial Crisis

In the fall of 2008, a series of large financial institution failures triggered a financial and economic crisis that threatened to freeze U.S. and global credit markets. As a result of these failures, unprecedented governmental intervention was required to ensure the stability of the U.S. financial system.[2] These failures revealed the vulnerability of the U.S. financial system and economy to wide-spread systemic risk resulting from, among other things, poor risk management practices of financial firms and the lack of supervisory oversight for a financial institution as a whole.[3]

The financial crisis also illustrated the significant risks that an uncleared, over-the-counter (OTC) derivatives market can pose to the financial system. As the Financial Crisis Inquiry Commission explained:

> The scale and nature of the [OTC] derivatives market created significant systemic risk throughout the financial system and helped fuel the panic in the fall of 2008: millions of contracts in this opaque and deregulated market created interconnections among a vast web of financial institutions through counterparty credit risk, thus exposing the system to a contagion of spreading losses and defaults.[4]

Certain OTC derivatives, such as CDS, played a prominent role during the crisis. According to a white paper by the U.S. Department of the Treasury, ''the sheer volume of these [CDS] contracts overwhelmed some firms that had promised to provide payment of the CDS and left institutions with losses that they believed they had been

[1] 17 CFR 145.9. Commission regulations referred to herein are found on the Commission's Web site.

[2] On October 3, 2008, President Bush signed the Emergency Economic Stabilization Act of 2008, which was principally designed to allow the U.S. Department of the Treasury and other government agencies to take action to restore liquidity and stability to the U.S. financial system (*e.g.,* the Troubled Asset Relief Program—also known as TARP—under which the U.S. Department of the Treasury was authorized to purchase up to $700 billion of troubled assets that weighed down the balance sheets of U.S. financial institutions). *See* Public Law 110–343, 122 Stat. 3765 (2008).

[3] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at xxviii, available at *http://www.gpo.gov/fdsys/pkg/GPO–FCIC/pdf/GPO–FCIC.pdf.*

[4] *See id.* at 386.

protected against.'' [5] In particular, AIG reportedly issued uncleared CDS transactions covering more than $440 billion in bonds, leaving it with obligations that it could not cover as a result of changed market conditions.[6] As a result of AIG's CDS exposure, the Federal government bailed out the firm with over $180 billion of taxpayer money in order to prevent AIG's failure and a possible contagion event in the broader economy.[7]

More broadly, the President's Working Group (PWG) on Financial Policy noted shortcomings in the OTC derivative markets as a whole during the crisis. The PWG identified the need for an improved integrated operational structure supporting OTC derivatives, specifically highlighting the need for an enhanced ability to manage counterparty risk through ''netting and collateral agreements by promoting portfolio reconciliation and accurate valuation of trades.'' [8] These issues were exposed in part by the surge in collateral required between counterparties during 2008, when the International Swaps and Derivatives Association (ISDA) reported an 86% increase in the collateral in use for OTC derivatives, indicating not only the increase in risk, but also circumstances in which positions may not have been collateralized.[9]

With only limited checks on the amount of risk that a market participant could incur, great uncertainty was created among market participants. A market participant did not know the extent of its counterparty's exposure, whether its counterparty was appropriately hedged, or if its counterparty was dangerously exposed to adverse market movements. Without central clearing, a market participant bore the risk that its counterparty would not fulfill its payment obligations pursuant to a swap's terms (counterparty credit risk). As the financial crisis deepened, this risk made market participants wary of trading with each other. As a result, markets quickly became illiquid and trading volumes plummeted. The dramatic increase in ''TED spreads'' evidenced this mistrust.[10] These spreads increased from a long-term average of approximately 30 basis points to 464 basis points.[11]

The failure to adequately collateralize the risk exposures posed by OTC derivatives, along with the contagion effects of the vast web of counterparty credit risk, led many to conclude that OTC derivatives should be centrally cleared. For instance, in 2008, the Federal Reserve Bank of New York (FRBNY) began encouraging market participants to establish a central counterparty to clear CDS.[12] For several years prior, the FRBNY had led a targeted effort to enhance operational efficiency and performance in the OTC derivatives market by increasing automation in processing and by promoting sound back office practices, such as timely confirmation of trades and portfolio reconciliation. Beginning with CDS in 2008, the FRBNY and other primary supervisors of OTC derivatives dealers increasingly focused on central clearing as a means of mitigating counterparty credit risk and lowering systemic risk to the markets as a whole. Both regulators and market participants alike recognized that risk exposures would have been monitored, measured, and collateralized through the process of central clearing.

B. Central Role of Clearing in the Dodd-Frank Act

Recognizing the peril that the U.S. financial system faced during the financial crisis, Congress and the President came together to pass the Dodd-Frank Act in 2010. Title VII of the Dodd-Frank Act establishes a comprehensive new regulatory framework for swaps, and the requirement that swaps be cleared by DCOs is one of the cornerstones of that reform. The CEA, as amended by Title VII, now requires a swap: (1) To be cleared through a DCO if the Commission has determined that the swap, or group, category, type, or class of swap, is required to be cleared, unless an exception to the clearing requirement applies; (2) to be reported to a swap data repository (SDR) or the Commission; and (3) if the swap is subject to a clearing requirement, to be executed on a designated contract market (DCM) or swap execution facility (SEF), unless no DCM or SEF has made the swap available to trade.[13]

Clearing is at the heart of the Dodd-Frank financial reform. According to the Senate Report:[14]

> As a key element of reducing systemic risk and protecting taxpayers in the future, protections must include comprehensive regulation and rules for how the OTC derivatives market operates. Increasing the use of central clearinghouses, exchanges, appropriate margining, capital requirements, and reporting will provide safeguards for American taxpayers and the financial system as a whole.

The Commission believes that a clearing requirement will reduce counterparty credit risk and provide an organized mechanism for collateralizing the risk exposures posed by swaps. According to the Senate Report:[15]

> With appropriate collateral and margin requirements, a central clearing organization can substantially reduce counterparty risk and provide an organized mechanism for clearing transactions. * * * While large losses are to be expected in derivatives trading, if those positions are fully margined there will be no loss to counterparties and the overall financial system and none of the uncertainty about potential exposures that contributed to the panic in 2008.

[5] *Financial Regulatory Reform: A New Foundation,* June 2009, available at: *http://www.treasury.gov/initiatives/Documents/Final Report_web.pdf* and cited in S. Rep. 111–176 at 29–30 (Apr. 30, 2010).

[6] Adam Davidson, ''How AIG fell apart,'' Reuters, Sept. 18, 2008, available at *http://www.reuters.com/article/2008/09/18/us-how-aig-fell-apart-idUSMAR85972720080918.*

[7] Hugh Son, ''AIG's Trustees Shun 'Shadow Board,' Seek Directors,'' Bloomberg, May 13, 2009, available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aaog3i4yUopo&refer=us.*

[8] The President's Working Group on Financial Markets, ''Policy Statements on Financial Market Developments,'' Mar. 2008, available at *http://www.treasury.gov/resource-center/fin-mkts/Documents/pwgpolicystatemktturmoil_03122008.pdf.*

[9] ISDA, ISDA Margin Survey, 2009, available at *http://www.isda.org/c_and_a/pdf/ISDA–Margin-Survey-2009.pdf.*

[10] The TED spread measures the difference in yield between three-month Eurodollars as represented by London Interbank Offered Rate (LIBOR), and three-month Treasury Bills. LIBOR contains credit risk while T-bills do not. As the spread got larger, it meant that lenders demanded more return to compensate for credit risk then they would need if they loaned the money to the U.S. Department of the Treasury without any credit risk.

[11] The U.S. Financial Crisis: Credit Crunch and Yield Spreads, by James R. Barth et al., page 5, available at: *http://apeaweb.org/confer/bei08/papers/blp.pdf.*

[12] *See* Federal Reserve Bank of New York, Press Release, ''New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives,'' Oct. 31, 2008, available at *http://www.newyorkfed.org/newsevents/news/markets/2008/an081031.html,* which references documents prepared by market participants describing the importance of clearing. *See also* Ciara Linnane and Karen Brettell, ''NY Federal Reserve pushes for central CDS counterparty,'' Reuters, Oct. 6, 2008, available at *http://www.reuters.com/article/2008/10/06/cds-regulation-idUSN0655208920081006.*

[13] The Commission has proposed rules that would establish a separate process for determining whether a swap has been made ''available to trade'' by a DCM or SEF. Those rules, and any determinations made under those rules, will be finalized separately from the proposed clearing requirements discussed herein. *See* Process for a Designated Contract Market or Swap Execution Facility to Make a Swap Available to Trade Under Section 2(h)(8) of the Commodity Exchange Act, 76 FR 77728 (Dec. 14, 2011).

[14] S. Rep. 111–176, at 32 (April 30, 2010). *See also* Letter from Senators Christopher Dodd and Blanche Lincoln to Congressmen Barney Frank and Collin Peterson (June 30, 2010) (''Congress determined that clearing is at the heart of reform—bringing transactions and counterparties into a robust, conservative, and transparent risk management framework.'').

[15] S. Rep. 111–176, at 33.

Notably, Congress did not focus on just one asset class, such as CDS; rather, Congress determined that all swaps that a DCO plans to accept for clearing must be submitted to the Commission for a determination as to whether or not those swaps are required to be cleared pursuant to section 2(h)(2)(D) of the CEA.

C. G–20 and International Commitments on Clearing

The financial crisis generated international consensus on the need to strengthen financial regulation by improving transparency, mitigating systemic risk, and protecting against market abuse. As a result of the widespread recognition that transactions in the OTC derivatives market increased risk and uncertainty in the economy and became a significant contributor to the financial crisis, a series of policy initiatives were undertaken to better regulate the financial markets.

In September 2009, leaders of the Group of 20 (G–20)—whose membership includes the United States, the European Union, and 18 other countries—agreed that: (1) OTC derivatives contracts should be reported to trade repositories; (2) all standardized OTC derivatives contracts should be cleared through central counterparties and traded on exchanges or electronic trading platforms, where appropriate, by the end of 2012; and (3) non-centrally cleared contracts should be subject to higher capital requirements.

In June 2010, the G–20 leaders reaffirmed their commitment to achieve these goals. In its October 2010 report on Implementing OTC Derivatives Market Reforms (the October 2010 Report), the Financial Stability Board (FSB) made twenty-one recommendations addressing practical issues that authorities may encounter in implementing the G–20 leaders' commitments.[16] The G–20 leaders again reaffirmed their commitments at the November 2011 Summit, including the end-2012 deadline. The FSB has issued three implementation progress reports. The most recent report urged jurisdictions to push forward aggressively to meet the G–20 end-2012 deadline in as many reform areas as possible. On mandatory clearing, the report observed that ''[j]urisdictions now have much of the information they requested in order to make informed decisions on the appropriate legislation and regulations to achieve the end-2012 commitment to centrally clear all standardised OTC derivatives.'' [17]

Specifically with regard to required clearing, the Technical Committee of the International Organization of Securities Commissions (IOSCO) has published a final report, *Requirements for Mandatory Clearing,* outlining recommendations that regulators should follow to carry out the G–20's goal of requiring standardized swaps to be cleared.[18]

D. Overview of Section 2(h) and § 39.5

The Commission has promulgated § 39.5 of its regulations to implement procedural aspects section 2(h) of the CEA.[19] Regulation 39.5 establishes procedures for: (1) Determining the eligibility of a DCO to clear swaps; (2) the submission of swaps by a DCO to the Commission for a clearing requirement determination; (3) Commission initiated reviews of swaps; and (4) the staying of a clearing requirement.

This determination and rule proposed today would require that certain swaps submitted by Commission-registered DCOs are required to be cleared under section 2(h) of the CEA. Under section 2(h)(1)(A), ''it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a [DCO] that is registered under [the CEA] or a [DCO] that is exempt from registration under [the CEA] if the swap is required to be cleared.'' [20]

A clearing requirement determination may be initiated by a swap submission. Section 2(h)(2)(B)(i) of the CEA requires a DCO to ''submit to the Commission each swap, or any group, category, type or class of swaps that it plans to accept for clearing, and provide notice to its members of the submission.'' In addition under section 2(h)(2)(B)(ii) of the CEA, ''[a]ny swap or group, category, type, or class of swaps listed for clearing by a [DCO] as of the date of enactment shall be considered submitted to the Commission.''

E. Submissions From DCOs

On February 1, 2012, Commission staff sent a letter requesting that DCOs submit all swaps that they were accepting for clearing as of that date, pursuant to § 39.5.[21] The Commission received submissions relating to CDS and IRS clearing from: the International Derivatives Clearinghouse Group (IDCH) on February 17, 2012; the CME Group (CME), ICE Clear Credit, ICE Clear Europe, each dated February 22, 2012, and a submission from LCH.Clearnet Limited (LCH) on February 24, 2012.[22]

This proposal's clearing requirement determination would cover certain CDS and IRS currently being cleared by a DCO. The Commission intends subsequently to consider other swaps submitted by DCOs, such as agricultural, energy, and equity indices.

The decision to focus on CDS and IRS in the initial clearing requirement determination is a function of both the market importance of these swaps and the fact that they already are widely cleared. In order to move the largest number of swaps to required clearing in its initial determination, the Commission believes that it is prudent to focus on those swaps that have the highest market shares and market impact. Further, for these swaps there is already a blueprint for clearing and appropriate risk management. CDS and IRS fit these considerations and therefore are well suited for required clearing consideration.[23]

Significantly, market participants have recommended that the Commission take this approach. In their joint comment letter to the Commission's proposed Compliance and Implementation Schedule for the clearing requirement, the Futures Industry Association (FIA), ISDA, and the Securities Industry and Financial Markets Association (SIFMA) opined

[16] *See* ''Implementing OTC Derivatives Market Reforms,'' Financial Stability Board, Oct. 25, 2010, available at *http://www.financialstabilityboard.org/publications/r_101025.pdf.*

[17] OTC Derivatives Working Group, ''OTC Derivatives Market Reforms: Third Progress Report on Implementation,'' Financial Stability Board, June 15, 2012, available at *http://www.financialstabilityboard.org/publications/r_120615.pdf.*

[18] IOSCO's report, published in February 2012, is available at *https://www.iosco.org/library/pubdocs/pdf/IOSCOPD374.pdf.*

[19] *See* 76 FR 44464 (July 26, 2011); 17 CFR 39.5.

[20] *See* section 2(h) of the CEA. A clearing requirement determination also may be initiated by the Commission. Section 2(h)(2)(A)(i) of the CEA requires the Commission on an ongoing basis to ''review each swap, or any group, category, type, or class of swaps to make a determination as to whether the swap, category, type or class of swaps should be required to be cleared.'' As previously noted, the Commission intends to consider swaps submitted by DCOs prior to undertaking any Commission-initiated reviews.

[21] The letter made it clear that DCOs should submit both pre-enactment swaps and swaps for which DCOs have initiated clearing since enactment of the Dodd-Frank Act. Pre-enactment swaps refer to those swaps that DCOs were accepting for clearing as of July 21, 2010, the date of enactment of the Dodd-Frank Act.

[22] Other swaps submissions were received from Kansas City Board of Trade (KCBT) and the Natural Gas Exchange (NGX). KCBT and NGX do not accept any CDS or IRS for clearing.

[23] The Commission will consider all other swaps submitted under § 39.5(b) as soon as possible after this proposal is published. These other swaps include certain CDS that were submitted to the Commission subsequent to the initial February 2012 submissions discussed above. If the Commission determines that additional swaps should be required to be cleared such determination likely will be proposed as a new class under proposed § 50.4, as discussed below.

that CDS and IRS should be required to be cleared first because they are already being cleared.[24] FIA, ISDA, and SIFMA commented further that it would make sense for the Commission to require commodity and equity swaps to be cleared later because fewer of these swaps are currently being cleared. Similarly, the letter sent by the Alternative Investment Management Association (AIMA) in response to Commissioner O'Malia's request for comment concerning the implementation of the clearing requirement[25] argues that the Commission should first review those swaps currently being cleared and then swaps that currently trade in large numbers.

IRS accounts for about $500 trillion of the $650 trillion global OTC swaps market, in notional dollars—the highest market share of any class of swaps.[26] LCH claims to clear about $302 trillion of those—meaning that, in notional terms, LCH clears approximately 60% of the IRS market.[27] While CDS indices do not have as prominent a market share as IRS, CDS indices are capable of having a sizeable market impact, as they did during the 2008 financial crisis. Overall, the CDS marketplace has almost $29 trillion in notional outstanding across both single and multi-name products.[28] CDS on standardized indices accounts for about $10 trillion of the global OTC market in notional dollar amount outstanding.[29] Since March 2009, the ICE Clear Credit and ICE Clear Europe have combined to clear over $30 trillion in gross notional for all CDS.[30] Because of the market shares and market impacts of these swaps, and because these swaps are currently being cleared, the Commission decided to review CDS and IRS in its initial clearing requirement determination. The Commission recognizes that while this is an appropriate basis for this initial proposal, swap clearing is likely to evolve and clearing requirement determinations made at later times may be based on a variety of other factors beyond the extent to which the swaps in question are already being cleared.

II. Review of Swap Submissions

A. General Description of Information Considered

The Commission reviewed each of the submissions in detail. Based on these submissions, the Commission was able to consider the ability of an individual DCO to clear a given swap, as well as to consider the information supplied cumulatively across all submissions for a given swap. The analysis included reviews of the DCOs' existing rule frameworks and their risk management policies. The Commission relied on industry data as available, such as publicly available Depository Trust and Clearing Corporation (DTCC) data from the Trade Information Warehouse (TIW) on CDS transactions. Other publicly available data sources, such as data from the Bank of International Settlements (BIS) on the OTC derivatives markets are analyzed and cited throughout this notice of proposed rulemaking. The Commission also was able to review letters from market participants directly related to the clearing requirement.[31] Other market input on the clearing requirement could be taken from comments received with regard to rules relating to the proposed Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA[32] and the Process for Review of Swaps for Mandatory Clearing.[33] This notice of proposed rulemaking also reflects consultation with the staff of the Securities and Exchange Commission (SEC), prudential regulators, and international regulatory authorities. As § 39.5 provides for a 30-day comment period for any clearing determination, the final clearing requirement will be informed by public feedback.

B. Commission Processes for Review and Surveillance of DCOs

i. Part 39 Regulations Set Forth Standards for Compliance

Section 2(h)(2)(D)(i) of the CEA provides that the Commission shall review whether the submissions are consistent with section 5b(c)(2) of the CEA. Section 5b(c)(2) of the CEA sets forth eighteen core principles with which DCOs must comply to be registered and to maintain registration. The core principles address numerous issues, including financial resources, participant and product eligibility, risk management, settlement procedures, default management, system safeguards, reporting, recordkeeping, public information, and legal risk.

All of the DCOs that submitted swaps for review are registered with the Commission and their submissions identify swaps that they are already clearing. Consequently, the Commission has been reviewing and monitoring compliance by the DCOs with the core principles for the submitted swaps. For purposes of reviewing whether the submissions are consistent with section 5b(c)(2) of the CEA, the Commission will rely on both the information received in the submissions themselves and on its ongoing review and risk surveillance programs. These processes are summarized below to provide a better understanding of the information the Commission uses in its review of consistency of the submissions with the core principles. The Commission believes this overview is particularly helpful for this rulemaking because the clearing requirement proposed herein is the first such undertaking by the Commission under the provisions of the Dodd-Frank Act.

The primary objective of the CFTC supervisory program is to ensure compliance with applicable provisions of the CEA and implementing regulations, and in particular, the core principles applicable to DCOs. A primary concern of the program is to monitor and mitigate potential risks that can arise in derivatives clearing activities for the DCO, its members, and entities using the DCO's services. Accordingly, the CFTC supervisory program takes a risk-based approach.

In addition to the core principles set forth in section 5b(c)(2) of the CEA, section 5c(c) of the CEA governs the procedures for review and approval of new products, new rules, and rule amendments submitted to the

[24] FIA/ISDA/SIFMA comment letter to the Notice of Proposed Rulemaking, Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011). This comment letter is available on the Commission's Web site at: *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1093&ctl00_ctl00_cphContentMain_MainContent_gvCommentListChangePage=2.*

[25] On July 28, 2011, Commissioner O'Malia released a letter seeking public comment on the manner in which the Commission should determine (i) which swaps would be subject to the clearing requirement and (ii) whether to grant a stay of a clearing requirement. Commissioner O'Malia's letter, as well as AIMA's letter, are available on the Commission's Web site at: *http://www.cftc.gov/About/Commissioners/ScottDOMalia/reviewofswaps.*

[26] Bank of International Settlements (BIS) data, December 2011, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[27] *Id.;* LCH data.

[28] BIS data, December 2011, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[29] *Id.*

[30] ICE Clear Credit data, as of the April 26, 2012 clearing cycle.

[31] *See* responses to Commissioner O'Malia's letter of June 28, 2011 requesting input on the clearing determination available on the Commission's Web site, available at *http://www.cftc.gov/About/Commissioners/ScottDOMalia/reviewofswaps.*

[32] *See* comment file for Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011), available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=1093.*

[33] *See* comment file for Process for Review of Swaps for Mandatory Clearing, 75 FR 67277 (Nov. 2, 2010), available at *http://comments.cftc.gov/PublicComments/CommentList.aspx?id=890.*

Commission by DCOs. Part 39 of the CFTC's regulations implements sections 5b and 5c(c) of the CEA by establishing specific requirements for compliance with the core principles as well as procedures for registration, for implementing DCO rules, and for clearing new products. Part 40 of the CFTC's regulations sets forth additional provisions applicable to a DCO's submission of rule amendments and new products to the CFTC.

The Commission has means to enforce compliance, including the Commission's ability to sue the DCO in federal court for civil monetary penalties,[34] issue a cease and desist order,[35] or suspend or revoke the registration of the DCO.[36] In addition, any deficiencies or other compliance issues observed during ongoing monitoring or an examination are frequently communicated to the DCO and various measures are used by the Commission to ensure that the DCO appropriately addresses such issues, including escalating communications within the DCO management and requiring the DCO to demonstrate, in writing, timely correction of such issues.

ii. Initial Registration Application Review and Periodic In-Depth Reviews

Section 5b of the CEA requires a DCO to register with the Commission. In order to do so, an organization must submit an application demonstrating that it complies with the core principles. During the review period, the Commission generally conducts an on-site review of the prospective DCO's facilities, asks a series of questions, and reviews all documentation received. The Commission may ask the applicant to make changes to its rules to comply with the CEA and the Commission's regulations.

After registration, the Commission conducts examinations of DCOs to determine whether the DCO is in compliance with the CEA and Commission regulations. The examination consists of a planning phase where staff reviews information the Commission has on hand to determine whether the information raises specific issues and to develop an examination plan. The examination team participates in a series of meetings with the DCO at its facility. Commission staff also communicates with relevant DCO staff, including senior management, and reviews documentation. Data produced by the DCO is independently tested. Finally, when relevant, walk-through testing is conducted for key DCO processes.

iii. Commission Daily Risk Surveillance

Commission risk surveillance staff monitors the risks posed to and by DCOs, clearing members, and market participants, including market risk, liquidity risk, credit risk, and concentration risk. This analysis includes reviews of daily, large trader reporting data obtained from market participants, clearing members, and DCOs, which is available at the trader, clearing member, and DCO levels. Relevant margin and financial resources information is also included within the analysis.

Commission staff regularly conducts back-testing to review margin coverage at the product level and follows up with the relevant DCO regarding any exceptional results. Independent stress testing of portfolios is conducted on a daily, weekly, and ad hoc basis. The independent stress tests may lead to individual trader reviews and/or futures commission merchant (FCM) risk reviews to gain a deeper understanding of a trading strategy, risk philosophy, risk controls and mitigants, and financial resources at the trader and/or FCM level. The traders and FCMs that have a higher risk profile are then reviewed during the Commission's on-site review of a DCO's risk management procedures.

C. Credit Default Swaps

i. Submissions Provided Information per § 39.5

Pursuant to § 39.5, the Commission received filings with respect to CDS from CME, ICE Clear Credit, and ICE Clear Europe.[37] The CME and ICE Clear Credit submissions included the CDS that each clear on North American corporate indices, covering various tenors and series. The ICE Clear Europe submission includes, among other swaps, the CDS contracts on European corporate indices that they clear, with information on each of the different tenors and series. Each of the submissions contained information relating to the five statutory factors set forth in section 2(h)(2)(D) of the CEA and other information required under § 39.5.

CME, ICE Clear Credit, and ICE Clear Europe provided notice of their § 39.5 swap submissions to their members by posting their submissions on their respective Web sites.[38] The submissions also are published on the Commission's Web site.

Regulation 39.5(b)(3)(viii) also directs a DCO's submission to include a summary of any views on the submission expressed by members. CME's submission did not address this. In their submissions, ICE Clear Credit and ICE Clear Europe stated that neither has solicited nor received any comments to date and will notify the Commission of any such comments. The Commission expects that DCOs will provide any feedback they receive regarding their submissions to the Commission for consideration.

ii. Background on Market

A credit default swap is a bilateral contract that allows the counterparties to trade or hedge the risk that an underlying entity will default—in most cases, either a corporate or a sovereign borrower. The protection buyer makes a quarterly premium payment until a pre-defined credit event occurs or until the swap agreement matures. In return, the protection seller assumes the financial loss in case the reference borrower becomes insolvent or an underlying security defaults. In addition to such ''single name'' CDS described above, the market also developed CDS to cover multi-name baskets of entities. While these baskets can be specifically created by the parties in a bespoke swap transaction, the large majority of multi-name baskets are based on both standardized indices and standardized swap agreements. These index CDS can cover up to 125 reference entities. Each of these entities may be weighted equally within the index or have different weightings depending on the terms of the specific index. Unlike a single name CDS, these contracts generally continue until the swap agreement reaches its scheduled termination date. Under the contract, the protection seller would assume the financial loss associated with, and make payment to the protection buyer on, each of the individual entities in the index that suffers a credit event until the swap's maturity. Those entities suffering a credit event would be removed from the index. The swap would continue on the remaining names, with the protection buyer making reduced quarterly premium

[34] *See* section 6c of the CEA.

[35] *See* section 6b of the CEA.

[36] *See* section 5e of the CEA.

[37] In the case of CME and ICE Clear Europe, the submissions also included other swaps beyond those in the CDS and IRS categories. These submissions, including a description of the specific swaps covered, are available at *http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm.*

[38] Available at: *http://www.cmegroup.com/market-regulation/rule-filings.html* and *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_022212.pdf.* ICE Clear Europe did not provide a link to its relevant Web page.

payments based upon the now smaller index covered by the swap.

The most recent BIS study[39] found that, as of December 2011, the size of the overall CDS marketplace exceeded $28.6 trillion in notional amount outstanding. Of that amount, $11.8 trillion was in multi-name CDS agreements. Within this sub-category of CDS, CDS on indices accounted for more than 89% of the total notional amount outstanding. This continues a trend as CDS on standardized indices have seen increasing volumes relative to other multi-name instruments such as synthetic collateralized debt obligations and other bespoke products.

Multiple providers have established CDS indices to be used by market participants. These providers typically establish an index's constituents, as well as standard terms and tenors. They also may provide on-going pricing services for their indices. The CDS indices owned and managed by Markit have the dominant market share within this class of CDS. There are other providers of CDS indices, though to date, those indices have not been widely used. Currently none of the indices are the basis for any CDS cleared by a DCO.[40] The Markit CDX family of indices is the standard North American credit default swap family of indices, with the primary corporate indices being the CDX North American Investment Grade (consisting of 125 investment grade corporate reference entities [41]) (CDX.NA.IG) and the CDX North American High Yield (consisting of 100 high yield corporate reference entities) (CDX.NA.HY). The standard currency for CDS on these indices is the U.S. dollar.

Additionally, Markit owns and manages the iTraxx indices covering reference entities in the European and Asia/Pacific markets. The primary indices for the European markets are the iTraxx Europe which covers 125 European investment grade corporate reference entities, the iTraxx Europe Crossover covering 50 European high yield reference entities and the iTraxx Europe High Volatility, which is a 30-entity subset of the European investment grade index. These indices are generally denominated in euro.

Beyond those discussed above, Markit provides more granular indices covering specific corporate sectors in both the United States and Europe. Markit also provides indices that cover non-corporate reference entities, including indices of sovereign reference entities from around the world, U.S. municipal issuers and structured finance issuers. Some of the sector specific CDS, particularly those based on indices in the iTraxx family have significant volumes. For example, the iTraxx Europe Senior Financials referencing European financial institutions has over $13 billion in net notional and 3,711 open contracts for Series 17 according to DTCC data.[42] Those contracts are not currently cleared by a DCO and thus have not been submitted to the Commission. Therefore, these contracts are not being considered as part of the proposed clearing requirement determination discussed herein. To the extent these contracts were to be cleared by a DCO in the future, the DCO would be required to submit those contracts to the Commission for review pursuant to § 39.5. If those contracts were not cleared by any DCO, they may still be subject to a Commission-initiated review pursuant to § 39.5(c) in the future.

As administrator of these indices, Markit reviews the composition of underlying reference entities in the indices every six months. Once Markit establishes the constituents to be included within the indices, a new series of the respective index is created. Additionally, each time one of the reference entities within an index suffers a credit event, a new version of an existing series of the index is created. In addition to the series and version variations that may exist on the index, the parties can choose the tenor of the CDS on a given index. While the 5-year tenor is the most common, and therefore most liquid, other standard tenors may include 1-, 2-, 3-, 7-, and 10-year swaps.

Beyond these administrative functions, Markit, in conjunction with ISDA, has established standardized transaction terms and legal documentation in the form of standard terms supplements and confirmations for their indices. In the vast majority of cases, transactions using the indices are executed using these standard terms, although the indices also may be used in connection with non-standard transactions. A particular CDS index agreement will only be eligible to be cleared by a DCO to the extent the agreement is based upon the standard terms. Consistent with the movement of the CDS market to standardized contracts and spreads, cleared contracts all use standardized spreads of 100 or 500 basis points on the cost of protection, with the use of the upfront payments to accurately capture the cost of the credit protection on the indices.[43]

The CDS cleared by CME, ICE Clear Credit, and ICE Clear Europe that were submitted to the Commission are standardized contracts providing credit protection on an untranched basis, meaning that settlement is not limited to a specific range of losses upon the occurrence of credit events among the reference entities included within an index. Besides single name CDS, these untranched CDS on indices are the only type of CDS being cleared by these DCOs. Other swaps like credit index tranches, options, and first- or Nth-to-default baskets on these indices are not currently cleared.

Both CME and ICE Clear Credit have submitted standard untranched CDS on the CDX.NA.IG and the CDX.NA.HY indices that they clear. CME offers the CDX.NA.IG at the 3-, 5-, 7- and 10-year tenors for each series going back to Series 9 for those contracts that have not reached their termination date. For the North American high yield index, CME offers clearing for Series 11 and each subsequent series at the 5-year tenure.

ICE Clear Credit offers CDX.NA.IG Series 8 and all subsequent series of that index that are still outstanding at the 5- and 10-year tenors. Additionally, Series 8 to Series 10 are cleared at the 7-year tenor. For the high yield index, ICE Clear Credit clears all series from the current series through the CDX.NA.HY Series 9 at the 5-year tenor.

[39] *See* BIS data, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[40] S&P/ISDA have, for example, co-branded additional indices for use in the CDS marketplace. These indices cover similar classes of reference entities as the Markit indices. To date, however, the use of these indices by market participants has been limited. With insufficient data regarding outstanding notional amounts and trading volumes, the Commission does not believe it appropriate to include these indices in the mandatory clearing determination. To the extent other providers establish indices with demonstrable open interest, trading volumes and pricing sources, the Commission will consider them for inclusion either within the current proposed classes of swaps, or within a separate class of swaps. Exclusion for the proposed classes only means that the CDS on such indices are not subject to a clearing requirement, and has no other impact on the use of such indices by market participants.

[41] The term ''reference entities'' refers to those entities that form the basis of an index. For the indices discussed in this proposal, all of the reference entities are corporate entities. For example, when one of those corporate entities declares bankruptcy, it may trigger a credit event under the terms of the index. A credit event also may be declared when a reference entity fails to pay on an outstanding debt.

[42] *See www.dtcc.com.* Data as of May 21, 2012.

[43] ISDA's Big Bang Protocol in April 2009, in addition to providing the ''hardwiring'' necessary for Auction Settlement and the establishment of the Credit Derivatives Determination Committees, also created a new standardized North American corporate CDS contract with fixed scheduled termination dates, fixed payment and accrual dates, and standardized coupons. *See http://www.isda.org/companies/auctionhardwiring/auctionhardwiring.html.*

In addition to these indices, ICE Clear Credit has also cleared the CDX North American Investment Grade High Volatility (consisting 30 names from the CDX.NA.IG) (CDX.NA.IG.HVOL). ICE Clear Credit is not however clearing Series 18, the most recently established series of the CDX.NA.IG.HVOL or Series 17, given the limited trading volumes for this swap. ICE Clear Credit only clears the CDX.NA.IG.HVOL for Series 9 through Series 16, and only at the 5-year tenor.

ICE Clear Europe, another registered DCO, made a submission covering the index CDS that it clears. Similar to the other submissions, the contracts that ICE Clear Europe clears are focused on corporate reference entities, though in this case, the entities are based in Europe. Also, similar to the CME and ICE Clear Credit submissions, the swaps cleared by ICE Clear Europe are indices owned and administered by Markit. ICE Clear Europe clears the euro-denominated contracts referencing the iTraxx Europe, the iTraxx Europe Crossover, and the iTraxx Europe High Volatility. For the iTraxx Europe and Crossover, ICE Clear Europe clears outstanding contracts in the Series 7 and 8, respectively, through the current series. For the High Volatility index, ICE Clear Europe clears outstanding contracts in the Series 9 through the current series. In terms of tenors, ICE Clear Europe clears the 5-year tenor for all swaps, as well as the 10-year tenor for the iTraxx Europe index.

Based upon those portions of the CME, ICE Clear Credit, and ICE Clear Europe swap submissions relating to the cleared CDS contracts discussed above, as well as the analysis conducted by the Commission pursuant to § 39.5(b) and set forth below, the Commission is reviewing the following classes of swaps for purposes of the clearing requirement.

iii. CDS Trading and Risk Management

The indices were created in the mid-2000s. Parties to these OTC contracts could use the indices to express their bullish or bearish sentiments on credit as an asset class, or to actively manage their credit exposures.[44] As standardized contracts and indices, they had increased liquidity and were cheaper and easier to enter into than a customized transaction. Following the financial crisis, the popularity of such bespoke transactions like synthetic collateral debt obligations decreased and the standardized indices continued to grow.

Markit licenses its indices to market making financial institutions. Notwithstanding that these contracts trade as OTC products, the standardization of the contracts has allowed for them to be completed and confirmed electronically by a number of service providers. The 5-year tenor is the most liquid of the tenors. Similarly, the current ''on-the-run'' series tend to see the most liquidity, while the older ''off-the-run'' series tend to see less liquidity.[45] Many investors exit positions in an existing series when a new series ''rolls,'' explaining increased liquidity in the ''on-the-run'' series. As noted above, the pricing for the contract is generally set at a standardized rate of 100 or 500 basis points, with upfront payments exchanged to compensate for the actual price of the credit protection being provided.

For the DCOs clearing these swaps, the key factors in managing the risk of CDS portfolios that they clear are changes in the price of the swaps, the idiosyncratic risk related to the default of a reference entity, and the liquidity risk associated with unwinding a portfolio of a defaulting clearing member. While differing in the specific margin methodologies, each of the DCOs uses methodologies designed to capture 99% of potential portfolio losses over a five-day period. The DCOs will stress CDS portfolios with shifts both up and down in the price of the CDS, as well as with changes to the slope of the term structure of the CDS pricing curve. Idiosyncratic risk will be captured by a ''jump-to-default'' analysis in which widely held reference entities are assumed to default with limited or no recovery. Liquidity risk seeks to capture the cost of liquidating a portfolio, with assumed higher costs associated with concentrated portfolios.

The DCOs conduct end-of-day settlement on the CDS, using prices submitted by clearing members that hold a cleared position in that swap. According to DCO rules, the submitted prices may be traded against, such that members are incentivized to submit accurate pricing data. The DCOs analyze the submitted data to remove any outliers.[46] The DCOs then calculate a composite spread or price by aggregating all the prices individually submitted, after deleting the outliers.[47] The more liquid a particular swap, the more price submissions will be made.

In the event of a default of a clearing member, the DCOs have the ability to conduct an auction for other members to bid on all or a portion of the defaulting member's portfolio of CDS positions. To the extent that the DCO was unable to sell the entire portfolio, the clearing rules require the non-defaulting clearing members to accept an apportionment of such portfolio if required by the DCO. To the extent the market for a swap is more liquid, the chances for a successful auction would likely be increased. Further, to the extent an auction is unsuccessful, a more liquid market would give the clearing member receiving such an apportionment a better opportunity to successfully sell or otherwise offset the risk associated with the CDS it accepted.

In addition to the CDS indices, ICE Clear Credit and ICE Clear Europe also offer single name CDS[48] for clearing. Of the $29 trillion in CDS notional outstanding, approximately $17 trillion is in single name swaps according to the latest market survey of BIS.[49] As part of their margining methodology, DCOs are seeking approval to offer portfolio margining for the single name CDS and the CDS indices held within a given portfolio.[50] Given that the single name reference entities will likely also be constituents of a given index within a portfolio, the Commission generally believes that such portfolio margining initiatives are consistent with the sound risk management policies for DCOs that are required under § 39.13(g)(4). Moreover, DCOs such as ICE Clear Credit already use margining methodologies that provide for appropriate portfolio margining treatment with regard to clearing

[44] Generally the market for all CDS is driven by dealers. Recent estimates found that about 74% of CDS trading takes place among 20 dealer-banks worldwide, according to data from DTCC., which runs a central registry for credit derivatives. *See http://www.bloomberg.com/news/2011-11-01/selling-more-insurance-on-shaky-european-debt-raises-risk-for-u-s-banks.html.*

[45] The term ''on-the-run'' refers to current series of an index, while older series are referred to ''off-the-run.'' Each six months when a new series is created (or ''rolls'' using market terminology), the new series is considered the ''on-the-run'' index, and all others are considered ''off-the-run.''

[46] Clearing rules generally provide for a mechanism for DCOs to levy fines against clearing members for failure to submit accurate prices across the full term structure for a given product.

[47] The theoretical spread/price of the index may be calculated by looking at the spread/price of each of the individual constituents in the index, though this may not account for the actual demand to buy or sell protection based on the index itself.

[48] Such single name CDS are defined as ''security-based swaps'' under section 721(a) of the Dodd-Frank Act.

[49] *See* BIS data, available at *http://www.bis.org/statistics/otcder/dt1920a.pdf.*

[50] *See* ICE Clear Credit's petitions to the Commission and SEC, dated October 4, 2011. The petition to the Commission is available at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/iceclearcredit100411public.pdf.*

members' proprietary positions.[51] The Commission is committed to working toward establishing similar portfolio margining programs for DCOs clearing customer positions in CDS indices and single name CDS.

iv. CDS Classes Based on Key Specifications

Under § 39.5, the decision of the Commission to require that a group, category, type, or class of swaps be required to be cleared is informed by a number of factors. As an initial matter, the Commission looks to the submissions of the DCO themselves with regard to the swaps they submit. After analyzing the key attributes of the swaps submitted, the Commission is proposing to establish two classes of CDS subject to the clearing requirement. The first class is based on the North American untranched indices and the second class is based on the European untranched indices.

Given the different markets that the CDS indices cover, the different currencies and other logistical differences in how the CDS markets and documentation work, the Commission believes this is an appropriate basis for separate classes. In the case of the submissions received to date, the U.S. dollar-denominated CDS covering North America corporate credits would be a separate class of CDS from a euro-denominated CDS referencing European obligations.

The nature of the underlying reference entities for the CDS serve to establish the another specification. Each index referenced was a broad-based pool of corporate entities. These indices included both investment grade and high yield corporate entities and they were not limited by a specific sector type. The data available for corporate CDS transactions, including the CDS indices, is substantial. As new swaps are cleared and considered by class, the nature of the underlying index will continue to be a factor in the establishment of such classes.

As noted above, the regional differences in the way CDS indices are traded and cleared warrant a separate specification based upon common market standards established within the regions. Beyond different currencies, the key terms of the underlying CDS, including the relevant credit events, may differ with direct impact on the clearing and risk management of these products by DCOs.

The actual indices included within a class are also specified. As only certain indices for a type of reference entity may have significant trading volumes and be cleared within a particular region, it is necessary to identify those specific indices within the classes.

The classes are also being defined by particular tenors for the various indices included within the class. Given varying outstanding notional amounts and trading volumes on different tenors of existing indices, the Commission has analyzed the impact of including all or only select tenors within a given class. In addition, applicable series are identified within each tenor so that market participants can identify whether a particular series of given index is required to be cleared.

Finally, the nature of the CDS itself referencing the underlying indices will be a factor as well. Each of the submissions dealt only with untranched CDS on the indices. There is a significant market for tranched swaps using the indices, where parties to the CDS contract agree to address only a certain range of losses along the entire loss distribution curve. Other swaps such as first or ''Nth'' to default baskets, and options, also exist on the indices.

v. Identification of Specifications

The Commission is proposing two classes of CDS contracts subject to the clearing requirement. The first class would be untranched CDS contracts referencing corporate entities in North America via Markit's CDX.NA.IG and CDX.NA.HY indices. The second class would include untranched CDS referencing European corporate entities via Markit's iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe High Volatility. The following table sets forth the specific specifications of each class:

TABLE 1

North American Untranched CDS Indices Class	
Specification	
1. Reference Entities	Corporate.
2. Region	North America.
3. Indices	CDX.NA.IG. CDX.NA.HY.
4. Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y. CDX.NA.HY: 5Y.
5. Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
6. Tranched	No.

European Untranched CDS Indices Class	
Specification	
1. Reference Entities	Corporate.
2. Region	Europe.
3. Indices	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.
4. Tenor	iTraxx Europe: 5Y, 10Y. iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
5. Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series.

[51] See ICE Clear Credit's certification to the Commission, dated as of November 25, 2011. The certification is available at *http://www.cftc.gov/stellent/groups/public/@rulesandproducts/documents/ifdocs/rul112511icecc001.pdf.*

TABLE 1—Continued

	iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
6. Tranched	No.

The Commission is proposing to separate the classes of corporate swaps between the North American contracts and European contracts. The Commission believes that indices based on other types of entities would be viewed as a separate class and would be subject to a separate determination by the Commission. For example, given the differences that exist with regard to volumes and risk management of indices based on sovereign issuers, it is likely that such CDS would represent their own class of swaps. Similarly, to the extent indices from other regions were submitted by a DCO, it is likely that the Commission would take the view that they are part of their own class of swaps as well.

The Commission believes it appropriate to define the classes of swaps as untranched CDS contracts referencing the broad-based corporate indices of Markit. These corporate indices have the most net notional outstanding, the most trading volumes, and the best available pricing. The risk management frameworks for the corporate index swaps are the most well-established, and have the most available data in terms of CDS spreads and corporate default studies for analysis of the underlying constituents of the indices. Agreements based on these indices also are widely accepted and use standardized terms.[52]

Both of the CDS classes presented herein assume that the relevant CDS agreement will use the standardized terms established by Markit/ISDA with regard to the specific index and be denominated in a currency that is accepted for clearing by DCOs. To the extent that a CDS agreement on an index listed within the classification is not accepted for clearing by any DCO because it uses non-standard terms or is denominated in a currency that makes it ineligible for clearing, that CDS would not be subject to the requirement that it be cleared, notwithstanding that the CDS is based on such index.

With regard to the specific indices, the Commission has not included the CDX.NA.IG.HVOL within the North American swap class. While older series of this swap were cleared at the 5-year tenor by ICE Clear Credit, neither of the two most recent series has been cleared, given the lack of trading volume in this swap. The swap is not offered for clearing by CME. To the extent that any DCO decides to clear future series of this particular indice, it would need to be submitted pursuant to § 39.5, at which time, the Commission would be able to revisit the profile of the underlying index and determine whether swap contracts associated with this index should be subject to a clearing requirement.

ICE Clear Europe continues to clear the iTraxx Europe High Volatility through the current series at the 5-year tenor, notwithstanding declines in the volume for the recent series. Overall, the outstanding notional amounts and trading volumes are substantially less than those of the other iTraxx swaps. Recent DTCC data indicates that the gross notional amounts on contracts on the iTraxx Europe High Volatility index was $1.8 billion, representing less than 1% of those volumes for the European investment grade index and approximately 2.5% of the European high yield index for the same series.[53]

Notwithstanding the relatively small volumes, the Commission is proposing to include the iTraxx Europe High Volatility index within the class of European corporate indices subject to required clearing at this time. Because the current on-the-run series of this particular index is cleared, unlike the similar North American contract, the Commission believes the contract should be included within the class of European corporate swaps that is required to be cleared.

With regard to tenors, Markit, as administrator of the indices, publishes the initial spreads on the roll for each of the tenors offered for a given indice. For the CDX.NA.IG, it publishes spreads for the 1-, 2-, 3-, 5-, 7-, and 10-year tenors. For the CDX.NA.HY, the spreads are set for the 3-, 5-, 7-, and 10-year tenors. For the iTraxx Europe, Crossover and High Volatility, spreads are similarly set for the 3-, 5-, 7-, and 10-year tenors.

Notwithstanding these various tenor offerings, the 5-year tenor for all indices is by far the most liquid tenor in the CDS marketplace. As a result, each DCO clears the 5-year tenor of the CDS index swaps that they clear. CME additionally offers clearing for 3-, 7-, and 10-year tenors on the CDX.NA.IG. ICE Clear Credit offers clearing on the 10-year tenor for the North American investment grade swap in addition to the 5-year contract. In the past, ICE Clear Credit has cleared the 7-year tenor of that index, but has not offered that tenor since Series 10. For the iTraxx indices, ICE Clear Europe offers the 10-year tenor on the investment grade index, in addition to the 5-year tenor.

Based upon its analysis of the § 39.5 factors, the Commission is proposing that each of the 3-, 5-, 7-, and 10-year tenors be included within the class of swaps subject to the clearing requirement determination for CDX.NA.IG. While the DCO submissions indicate varying degrees of trading volumes among the indices at tenors other than the 5-year tenor, there are clearly large notional volumes and trading activity across the products as a whole. The risk management frameworks and methodologies employed by the DCOs should not be substantially impacted or can be adjusted to accommodate additional tenors. The remaining factors should be unchanged.

The Commission is proposing to exclude the 1- and 2-year tenors of the CDX.NA.IG from the class at this point. The Commission would like to see more data on the volumes of these tenors. Importantly, these tenors of swaps have not been submitted to the Commission by a DCO, so the Commission could review them when submitted by a DCO or on its own initiative pursuant to the § 39.5(c). Because many investors use the 5-year tenor to take a view on credit as an asset class, and then exit the position when the new index rolls rather than hold a less liquid position in an off-the-run swap, the Commission is concerned that those seeking to avoid clearing may shift to the 1- or 2-year tenor to take a position on credit. The Commission will monitor volumes in the swaps at these tenors and evaluate

[52] To the extent other vendors successfully develop similar indices, the Commission would conduct the analysis required by § 39.5, either on its own initiative or based on a DCO submission. If based on that analysis the Commission issued a clearing requirement determination, it is likely that such indices would be considered to be part of an existing class of CDS that are required to be cleared.

[53] *See www.dtcc.com.* Data as of May 21, 2012.

whether a change in the class of swaps to include these tenors is warranted.

With regard to the CDX.NA.HY, the Commission's proposal will be limited to the 5-year tenor, the predominant tenor in this contract.[54] Similarly, the Commission's proposal with regard to the iTraxx indices will capture only those tenors that are currently offered for clearing—the 5- and 10-year tenors for the iTraxx Europe, and the 5-year tenors for the iTraxx Crossover and the iTraxx High Volatility.

The Commission's proposed clearing determination will be limited to only those series of a given index, which are currently being cleared. Therefore, no swaps referencing a series prior to Series 8 for the CDX.NA.IG and CDX.NA.HY would be required to be cleared. For the iTraxx Europe and iTraxx Europe Crossover, no contracts referencing a series prior to Series 7 would be required to be cleared, and in the case of the iTraxx Europe High Volatility, no series prior to Series 9 would be required to be cleared.[55]

Further, to the extent that any contract is of a tenor such that it is scheduled to terminate prior to July 1, 2013, such contract would not be part of this proposed clearing determination. Given the implementation periods provided for under § 50.25, discussed below in Section IV, the Commission does not want to create a situation where certain market participants would be required to clear a contract based upon their status under the implementation provisions, but other parties would never be required to clear that same contract before its scheduled termination.

The Commission also is proposing that the classes be limited to untranched CDS agreements on the aforementioned indices where the contract covers the entire index loss distribution of the index and settlement is not linked to a specified number of defaults. Tranched swaps, first- or ''Nth'' to-default, options, or any other product variations on these indices are excluded from these classes. These other swaps based on the indices, such as tranches, have very different profiles in terms of the § 39.5 analysis. Besides very different notional and trading volumes, the risk management processes and operations may be significantly different. The Commission believes it appropriate to consider tranched swaps and other variations on the indices as outside of the classes of swaps proposed herein. Such swaps, if submitted, likely would be viewed as a separate class.

D. Proposed Determinations Analysis for Credit Default Swaps

Section 2(h)(2)(D)(i) of the CEA requires the Commission to review whether a swap submission under section 2(h)(2)(B) is consistent with section 5b(c)(2) of the CEA. Section 2(h)(2)(D)(ii) of the CEA also requires the Commission to consider five factors in a determination based on a Commission initiated review or a swap submission: (1) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data; (2) the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract; (4) the effect on competition, including appropriate fees and charges applied to clearing; and (5) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

i. Consistency With Core Principles for Derivatives Clearing Organizations

Section 2(h)(2)(D)(i) of the CEA requires the Commission to review whether a submission is consistent with the core principles for DCOs. Each of the DCO submissions relating to CDS provided data to support the Commission's analysis of the five factors under section 2(h)(2)(D) of the CEA. The Commission also was able to call upon independent analysis conducted with regard to CDS market, as well as its knowledge and reviews of the registered DCOs' operations and risk management processes, covering items such as product selection criteria, pricing sources, participant eligibility, and other relevant rules. The discussion of all of these factors is set forth below.

The swaps submitted by CME, ICE Clear Credit, and ICE Clear Europe pursuant to § 39.5(b) are currently being cleared by those organizations. As discussed above, the risk management, rules, and operations used by each DCO to clear these swaps are subject to review by the Commission risk management, legal, and examinations staff on an on-going basis.

Additionally, each of the DCOs has established procedures for the review of any new swaps offered for clearing. Before the indices referenced herein were accepted for clearing by any of the DCOs, they were subject to review by the risk management functions of those organizations. Such analysis generally focuses on the ability to risk manage positions in the potential swaps and on any specific operational issues that may arise from the clearing of such swaps. In the case of the former, this involves ensuring that adequate pricing data is available, both historically and on a ''going forward'' basis, such that a margining methodology could be established, back-tested, and used on an on-going basis. Operational issues may include analysis of additional contract terms for new swaps that may require different settlement procedures. Each of the contracts submitted by CME, ICE Clear Credit, and ICE Clear Europe and discussed herein has undergone an internal review process by the respective DCO and has been determined to be within their product eligibility standards.

As part of their rule frameworks, each of the DCOs also maintains participant eligibility requirements. On April 20, 2012, CME filed its amended rule concerning CDS Clearing Member Obligations and Qualifications (Rule 8H04). Pursuant to the amended rule, published to comply with Commission Regulation 39.12(a)(2), a CDS clearing member would have to maintain at least $50 million of capital. The amended rule would also require a CDS clearing member's minimum capital requirement to be ''scalable'' to the risks it poses. Further, CME already has client clearing available for its CDS index contracts.

Similarly, on March 23, 2012, ICE Clear Credit filed its amended Rule 201(b) to incorporate the $50 million minimum capital requirement for clearing members. ICE Clear Credit also has client clearing available for its CDX index contracts.

ICE Clear Europe has adopted similar rules to comply with § 39.12(a)(2), and has instituted changes to its rules to permit client clearing of its iTraxx contracts.

In their submissions, CME and ICE Clear Credit enclosed their risk management procedures. In its submission, ICE Clear Europe references

[54] After its initial submission, ICE Clear Credit added the CDX.NA.HY, Series 15, 3-year contract to its list of CDS contracts eligible for clearing. The Commission has reviewed this contract, but is not including this particular contract within its proposed determination. The Commission will monitor volumes in the product at these tenors and evaluate whether a change in the class of swaps to include additional tenors is warranted.

[55] As discussed in further detail below, the clearing requirement would not require existing swaps in the older series to be cleared. The requirement is prospective, only requiring newly executed swaps in these older series to be cleared.

its risk management procedures, which it had previously submitted to the Commission in connection with its application to register as a DCO. As part of its risk management and examination functions, the Commission reviews each DCO's risk management procedures, including its margining methodologies.

ICE Clear Credit uses a multi-factor model to margin the indices discussed herein, as well as single name CDS. The margining methodology is designed to capture the risk of movements in credit spreads, liquidation costs, jump-to-default risk for those names on which credit protection has been sold, large position concentration risks, interest rate sensitivity, and basis risk associated with offsetting index derived single names and opposite ''outright'' single names. These factors are similarly used by ICE Clear Europe to calculate the margining requirements for their iTraxx swap listings and the underlying single name constituents. The CME's CDS model also weighs a number of factors to calculate the initial margin for a portfolio of CDS positions. These include macro-economic risk factors, such as movements associated with systematic risk resulting in large shifts in credit spreads across a portfolio, shifts in credit spreads based on tenors and changes in relative spreads between investment grade and high yield spreads. Additional factors include specific sector risks, the idiosyncratic risk of extreme moves in particular reference entities and the liquidity risk associated with unwinding the portfolio. In all cases, the methodologies are designed to protect against any 5-day move in the value of the given CDS portfolio, with a 99% confidence level.

In addition to initial margin, each of the clearinghouses collects variation margin on a daily basis to capture changes in the mark-to-market value of the positions. To do this, the clearinghouses calculate end-of-day settlement prices using clearing member price submissions for cleared swaps. Each of the clearinghouses maintains processes for ensuring the quality of member price submissions, including the ability to compel trades at quoted prices on a random basis and to enforce fines on incomplete or incorrect submissions. ICE Clear Credit and ICE Clear Europe also use Markit services for CDX and iTraxx submissions. CME uses other third party data providers for pricing support as necessary on its cleared CDS products.

In addition to the end-of-day settlement, each of the clearinghouses monitors positions throughout the day and maintains the ability to require margin on an intraday basis. Triggers may be set based upon the erosion of margin to a specific level or a call may be made at the discretion of the clearinghouse. When necessary, DCOs apply concentration charges to a clearing member's house or customer account in order to address situations where the DCO believes a given position may be under-collateralized because the size of the position relative to the size of the market may increase the cost of liquidating the position.

In addition to the initial margin and variation margin collected by each DCO, each of the clearinghouses maintains a separate guaranty fund for its CDS clearing business. Using a combination of factors from their margining methodologies, positions are stressed to replicate extreme but plausible market conditions. Using these stressed results, each of the clearinghouses sizes its guaranty fund to cover the positions of its two largest debtor clearing members. Clearing members are required to contribute to the guaranty fund based on their relative positions.

To the extent a clearing member was unable to meet a margin call, or otherwise violated clearinghouse rules, each of the clearinghouses has the ability to find a clearing member in default. In such cases, each of the clearinghouses has established procedures by which it attempts to minimize the risk associated with a defaulting member's positions. A clearinghouse would activate its default committee, seconding traders from clearing participants, to work to partition the portfolio for sale and for hedging purposes. The clearinghouse would then conduct an auction among its clearing participants for the sale of the portfolio. To the extent certain positions were unsold, each of the clearinghouses has the ability to allocate such positions to the remaining clearing members.

While other resources of the clearinghouse would be available in the event of a default of a clearing member, including clearinghouse contributions, the initial margin and guaranty fund contributions make up the primary financial resources of the clearinghouses. In total, CFTC-registered DCOs are currently holding more than $20 billion in aggregate in initial margin to cover cleared CDS positions.[56] Additionally, publicly available data shows that CME's CDS guaranty fund has approximately $629 million; ICE Clear Credit has a guaranty fund equal to $4.4 billion; and ICE Clear Europe has a guaranty fund €2.7 billion for its CDS business.[57] In addition to the guaranty fund contributions made by clearing members, each of the clearinghouses also makes contributions to their respective funds, ranging in amounts from $50 to $100 million.[58]

Based upon the Commission's on-going risk management and rule reviews, and its annual examinations of the DCOs, the Commission believes that the submissions of CME, ICE Clear Credit, and ICE Clear Europe are consistent with section 5b(c)(2) of the CEA and the related Commission regulations. In analyzing the CDS products submissions discussed herein, the Commission does not believe that a clearing determination with regard to the specified CDS products would be inconsistent with CME, ICE Clear Credit, or ICE Clear Europe's continued ability to maintain such compliance with the DCO core principles.

ii. Consideration of the Five Statutory Factors for Clearing Requirement Determinations

a. Outstanding Notional Exposures, Trading Liquidity, and Adequate Pricing Data

Section 2(h)(2)(D)(ii)(I) of the CEA requires the Commission to take into account the existence of outstanding notional exposures, trading liquidity, and adequate pricing data. As discussed earlier, the most recent BIS data has shown significant growth in the use of CDS on index products, with notional amounts growing by 40% over the most recent annual reporting period. Overall, CDS on index products account for 37% of all notional amounts of CDS contracts outstanding, with over $10 trillion in notional outstanding.

The predominant provider of CDS indices is Markit. Markit has indices covering corporate and sovereign entities, among others, in the United States, Europe, and Asia. Recent Markit data shows daily transaction volumes of 1,561 transactions using its licensed family of CDX indices, and 1,266 daily transactions using its European iTraxx index swaps.[59] Further, it shows a rolling monthly average of $663 billion in gross notional amount for the CDX family of indices and €499 billion for

[56] Based on Commission data for registered DCOs as of May 10, 2012.

[57] *See http://www.cmegroup.com/clearing/cme-clearing-overview/safeguards.html* for data regarding CME's guaranty fund, as of May 10, 2012; *https://www.theice.com/clear_credit.jhtml* for data on the size of ICE Clear Credit's guaranty fund; and *https://www.theice.com/clear_europe_cds.jhtml* for data on the size of ICE Clear Europe's guaranty fund for CDS, as of May 10, 2012.

[58] Many DCOs also have rules allowing for an assessment of the remaining clearing members in the event of a default.

[59] Based on data published on *www.markit.com* as of May 23, 2012.

the iTraxx family. Nearly all of the CDX contracts and volumes come from indices that would be subject to the proposed clearing requirement determination. For the iTraxx, more than 79% of those daily contract volumes and 82% of the daily gross notional volumes come from the iTraxx investment grade and high yield indices contemplated by the proposed clearing requirement determination.

One point highlighted by this data, however, is the declining trading liquidity in the off-the-run series that can occur. Of the volumes noted by Markit, nearly 60% was in the current on-the-run series, as compared to all other outstanding series combined. The submissions of ICE Clear Credit, ICE Clear Europe, and CME also note the decline in average weekly gross notional amounts and contracts for benchmark tenors for off-the-run indices. The decline however can be more precipitous among older off-the-run indices. While many market factors can contribute to the actual volumes for a specific off-the-run contract, subject to certain exceptions, the trend is generally toward lower volumes.

Set forth below is a table of data taken from DTCC as of May 22, 2012, highlighting the net notional amounts and outstanding contracts across all tenors available for each series in the proposed determination.[60]

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[60] Data available at *www.dtcc.com.* In 2006, DTCC began providing warehouse services for confirmed CDS trades through its Trade Information Warehouse (TIW). With the commitment of global market participants in 2009 to ensure that all OTC derivatives trades are recorded by a central repository, TIW has become a global repository for all CDS trades. With all major market participants submitting their trades to the TIW, it is estimated that 98% of all CDS trades are included within the warehouse, making it the primary source of CDS transaction data.

Table 2

DTCC DATA - BY CONTRACT AND SERIES

DTCC DATA CONTRACT/SERIES	NET NOTIONAL $ OUTSTANDING	OPEN CONTRACTS	DTCC DATA CONTRACT/SERIES	NET NOTIONAL $ OUTSTANDING	OPEN CONTRACTS
CDX.NA.IG.18	74,088,248,711	3,773	CDX.NA.HY.18	17,262,419,000	2,663
CDX.NA.IG.17	22,690,244,475	2,204	CDX.NA.HY.17	15,112,305,572	2,506
CDX.NA.IG.16	22,762,835,551	1,727	CDX.NA.HY.16	7,477,366,500	884
CDX.NA.IG.15	14,199,856,003	859	CDX.NA.HY.15	10,104,339,397	726
CDX.NA.IG.14	10,817,490,773	630	CDX.NA.HY.14	13,241,325,000	428
CDX.NA.IG.13	8,662,044,151	495	CDX.NA.HY.13	1,412,587,000	299
CDX.NA.IG.12	5,453,252,332	410	CDX.NA.HY.12	1,808,607,331	247
CDX.NA.IG.11	5,297,695,584	348	CDX.NA.HY.11	10,801,054,030	241
CDX.NA.IG.10	7,528,353,077	395	CDX.NA.HY.10	14,309,027,880	613
CDX.NA.IG.9	145,782,810,765	2,350	CDX.NA.HY.9	16,110,327,087	254
CDX.NA.IG.8	24,431,822,306	560	CDX.NA.HY.8	25,507,045,127	331
ITRAXX EUROPE SERIES 17	37,642,521,516	5,489	ITRAXX EUROPE CROSSOVER SERIES 17	8,629,557,282	4,691
ITRAXX EUROPE SERIES 16	22,295,070,780	3,941	ITRAXX EUROPE CROSSOVER SERIES 16	9,343,133,693	1,843
ITRAXX EUROPE SERIES 15	11,049,897,794	2,246	ITRAXX EUROPE CROSSOVER SERIES 15	2,794,035,304	1,131
ITRAXX EUROPE SERIES 14	4,292,819,861	1,312	ITRAXX EUROPE CROSSOVER SERIES 14	1,740,687,355	649
ITRAXX EUROPE SERIES 13	6,760,884,446	1,457	ITRAXX EUROPE CROSSOVER SERIES 13	787,770,517	580
ITRAXX EUROPE SERIES 12	6,775,838,355	705	ITRAXX EUROPE CROSSOVER SERIES 12	1,117,494,651	378
ITRAXX EUROPE SERIES 11	8,399,669,547	528	ITRAXX EUROPE CROSSOVER SERIES 11	1,097,708,488	156
ITRAXX EUROPE SERIES 10	10,754,021,324	669	ITRAXX EUROPE CROSSOVER SERIES 10	717,990,656	156
ITRAXX EUROPE SERIES 9	62,601,849,948	3,322	ITRAXX EUROPE CROSSOVER SERIES 9	1,310,980,407	325
ITRAXX EUROPE SERIES 8	17,611,772,299	831	ITRAXX EUROPE CROSSOVER SERIES 8	3,177,929,773	580
ITRAXX EUROPE SERIES 7	28,304,164,643	798	ITRAXX EUROPE CROSSOVER SERIES 7	2,122,285,632	705
CDX.NA.IG.HVOL.18	-	-	ITRAXX EUROPE HIVOL SERIES 17	613,187,847	57
CDX.NA.IG.HVOL.17	-	-	ITRAXX EUROPE HIVOL SERIES 16	688,636,200	60
CDX.NA.IG.HVOL.16	-	-	ITRAXX EUROPE HIVOL SERIES 15	307,270,558	82
CDX.NA.IG.HVOL.15	-	-	ITRAXX EUROPE HIVOL SERIES 14	1,127,979,816	91
CDX.NA.IG.HVOL.14	188,680,000	17	ITRAXX EUROPE HIVOL SERIES 13	1,161,775,281	102
CDX.NA.IG.HVOL.13	149,910,000	18	ITRAXX EUROPE HIVOL SERIES 12	2,794,578,397	80
CDX.NA.IG.HVOL.12	606,200,000	22	ITRAXX EUROPE HIVOL SERIES 11	670,133,714	68
CDX.NA.IG.HVOL.11	725,183,334	39	ITRAXX EUROPE HIVOL SERIES 10	1,335,212,836	86
CDX.NA.IG.HVOL.10	825,532,014	56	ITRAXX EUROPE HIVOL SERIES 9	2,050,972,237	74
CDX.NA.IG.HVOL.9	2,650,127,666	69	ITRAXX EUROPE HIVOL SERIES 8	1,647,664,539	90
CDX.NA.IG.HVOL.8	3,530,079,068	169	ITRAXX EUROPE HIVOL SERIES 7	5,740,435,521	235

Notwithstanding the declining volumes that occur when an index is no longer on-the-run, the Commission does not believe that is sufficient reason to exclude the older series from the classes of CDS. As the DTCC data indicates, there are still significant volumes of outstanding notional amounts in each of these series. From the perspective of the clearinghouse, the risk management of the older series of swaps should not provide significant additional challenges. With the significant notional and contract volumes still outstanding at DTCC, many clearing members already have these positions on their books and are meeting their risk management requirements, even in the face of declining trading volumes. Finally, while the volumes may decline, the data included in the submissions indicates that volume still does exist, and parties should be able trade as necessary. Additionally, as discussed further below, the clearing requirement would apply only to new swaps executed in the off-the-run indices.

Given the contract and notional volumes listed above, there is adequate data available on pricing. The pricing for the CDS on these indices is fairly consistent across clearinghouses. The clearinghouses generally require a clearing member with open interest in a particular index to provide a price on that index for end of day settlement purposes. After applying a process to remove clear outliers, a composite price is calculated using the remaining prices. To ensure the integrity of the submissions, clearing members' prices may be ''actionable,'' meaning that they may form the basis of an actual trade that the member will be forced to enter. Clearinghouses also have compliance programs that may result in fines for clearing members that fail to submit accurate pricing data.

Beyond clearing member submissions, there are a number of third-party vendors that provide pricing services on these swaps. Third-party vendors typically source their data from a broader range of dealers. The data includes both direct contributions as well as feeds to automated trading systems. This data is reviewed for outliers and aggregated for distribution.

b. Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded. The Commission preliminarily has determined that this factor is satisfied by each of CME, ICE Clear Credit, and ICE Clear Europe.

CME, ICE Clear Credit, and ICE Clear Europe, respectively, currently are clearing the swaps each submitted under § 39.5. As such, they have developed respective rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the contracts on terms that are consistent with the material terms and trading conventions on which the contracts currently are trading. The Commission believes that these are scalable and that CME, ICE Clear Credit, and ICE Clear Europe would be able to risk manage the additional swaps that might be submitted due to the clearing requirement determination.

Following the financial crisis, the major market participants committed in 2009 to the substantial reforms to the OTC derivatives markets.[61] Among the commitments from CDS dealers and buy side participants was to actively engage with central counterparties to broaden the range of cleared swaps and market participants. These changes were in addition to those generated through organizations like ISDA and their protocols impacting CDS. For broadly traded swaps like the CDS indices, the ultimate impact of these initiatives was operational platforms, rule frameworks, and other infrastructure initiatives that replicated the bilateral market and supported the move of these CDS to a centrally cleared environment. In this way, the CDS clearing services offered by DCOs, including CME, ICE Clear Credit, and ICE Clear Europe, were designed to be cleared in a manner that is consistent with the material terms and trading conventions of a bilateral, uncleared market.

In addition, CME, ICE Clear Credit, and ICE Clear Europe are registered DCOs. To be registered as such, CME, ICE Clear Credit, and ICE Clear Europe have, on an on-going basis, demonstrated to the Commission that they are each in compliance with the core principles set forth in the CEA and Commission regulations, as discussed above. As a general matter, any DCO that does not have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the swaps that are subject to mandatory clearing is not in compliance with the core principles or the Commission regulations promulgating these principles.

The Commission requests comment on all aspects of this factor, including whether or not commenters agree that an applicant's status as a registered DCO is sufficient for meeting the factor's requirements.

c. Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to take into account the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. The Commission agrees with the § 39.5 swap submissions of the CME, ICE Clear Credit, and ICE Clear Europe that requiring certain classes of CDS to be cleared would reduce systemic risk in this sector of the swaps market. As CME noted, the 2008 financial crisis demonstrated the potential for systemic risk arising from the interconnectedness of OTC derivatives market participants and the limited transparency of bilateral, *i.e.* uncleared, counterparty relationships. According to the Quarterly Report (Third Quarter 2011) on Bank Trading and Derivatives Activities of the Office of the Comptroller of the Currency (OCC Report),[62] CDS index products account for a significant percentage of the notional value of swaps positions held by financial institutions. According to ICE Clear Credit, the CDS indices it offers for clearing are among the most actively traded swaps with the largest pre-clearing outstanding positions, and ICE Clear Credit's clearing members are among the most active market participants. ICE Clear Credit also noted that its clearing members clear a significant portion of their clearing-eligible portfolio.

Clearing the CDS indices subject to this proposal will reduce systemic risk in the following ways: Mitigating counterparty credit risk because the DCO would become the buyer to every seller of CDS indices subject to this proposal and vice versa; providing counterparties with daily mark-to-market valuations and exchange of variation margin pursuant to a risk management framework; posting initial margin with the clearinghouse in order to cover potential future exposures in the event of a default; achieving multilateral netting, which substantially reduces the number and notional amount of outstanding bilateral positions; reducing swap counterparties' operational burden by consolidating collateral management and cash flows; and eliminating the need for novations or tear-ups because clearing members may offset opposing positions.

As discussed previously, the clearinghouses collect substantial amounts of collateral in the form of initial margin and guaranty fund contributions to cover potential losses on CDS portfolios. The methodologies for calculating these amounts are based on covering 5-day price movements on a portfolio with a 99% confidence level for initial margin, and longer liquidation periods and higher confidence levels under ''extreme but plausible'' conditions in the case of guaranty fund requirements. Beyond these financial resources, the clearinghouses have in place established risk monitoring processes, system safeguards, and default management procedures, which are subject to testing and review, to address potential systemic shocks to the financial markets.

The Commission requests comment on all aspects of this factor, including the risk mitigation associated with proposed clearing determination.

d. Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. Of particular concern to the Commission is whether this proposed determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power.[63] Under U.S. Department of Justice guidelines, market power is viewed as the ability ''to raise price [including clearing fees and charges], reduce output, diminish innovation, or otherwise harm customers as a result of

[61] *See* the June 2, 2009 letter to The Honorable William C. Dudley, President of the Federal Reserve Bank of New York, available at *http://www.newyorkfed.org/newsevents/news/markets/2009/060209letter.pdf.*

[62] Available at: *http://occ.treas.gov/topics/capital-markets/financial-markets/trading/derivatives/dq311.pdf.*

[63] *See* U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines [hereinafter ''Horizontal Merger Guidelines''] at § 1(Aug. 19, 2010), available at *http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf.*

diminished competitive constraints or incentives.'' [64]

The Commission has identified the following putative product and service markets as potentially affected by this proposed clearing determination: A DCO service market encompassing those clearinghouses that currently (or with relative ease in the future could) clear the CDS subject to this proposal, and a CDS product market or markets encompassing the CDS that are subject to this determination.[65] Without defining the precise contours of these markets at this time,[66] the Commission recognizes that, depending on the interplay of several factors, this proposed swap determination potentially could impact competition within the affected markets. Of particular importance to whether any impact is, overall, positive or negative, is: (1) Whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant increase above competitive levels would prove unprofitable because users of the CDS products and DCO clearing services would substitute other products/clearing services co-existing in the same market(s), and (2) the potential for new entry into these markets. The availability of substitute products/clearing services to compete with those encompassed by this proposed determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

Any competitive import would likely stem from the fact that proposed determination would (1) remove the alternative of not clearing the CDS subject to this proposal, and/or (2) single out Markit indices and certain tenors for determination. The proposed determination would not specify what CDS products (or products that compete with the proposed CDS classes) may or may not be offered, traded, or voluntarily cleared; or who may or may not compete to provide clearing services for the CDS subject to this proposal (as well as those not required to be cleared). With respect to the first potential area of competitive import, to the extent that parties to the CDS subject to this proposal consider clearing the transactions reasonably interchangeable with not clearing them, the proposed determination would eliminate at least one competitive substitute within the clearinghouse services market for the CDS subject to this proposal. Given the risk-mitigation purpose and benefit of migration to voluntary CDS clearing, however, the Commission sees some basis to doubt that, under the ''hypothetical monopolist'' methodology,[67] counterparties to cleared swaps would consider the alternative of not clearing CDS under this proposal as a reasonable substitute to a degree sufficient that they should be viewed as populating the same relevant market.[68] And, if the alternative of not clearing the proposed classes of CDS falls outside of the relevant services market that includes clearing, the proposed clearing determination should not impact competition in the clearing services market. The Commission requests comment on the extent to which foregoing clearing is considered reasonably interchangeable with clearing the CDS subject to this proposal and, in particular, if parties transacting cleared swaps in these classes would forego clearing if clearinghouses raised the price of clearing five percent. The Commission also requests comment on whether a different percentage than five percent should be used.

Moreover, even if cleared and non-cleared transactions in the proposed CDS clearing requirement are now within the same relevant market, removing the uncleared option through this proposed rulemaking is not determinative of negative competitive impact. Other factors—including the availability of other substitutes within the market or potential for new entry into the market—may constrain market power.

The Commission recognizes that currently no DCO clears CDS indices licensed by any other provider than Markit, suggesting the possibility that currently the clearing service market may be limited to the three providers (CME, ICE Clear Credit, and ICE Clear Europe) now clearing CDS indices licensed by Markit. This could be indicative, but is not dispositive, of whether a concentrated clearing services market susceptible to exercises of market power exists. The possibility remains that uncleared transactions on other indices, as well as cleared and uncleared transactions on Markit indices of tenors not included within the proposed determination, may also populate the affected clearing services market to constrain CME, ICE Clear Credit, and ICE Clear Europe from exercising market power.[69] The Commission requests comment on the extent to which uncleared transactions on non-Markit indices, and cleared and uncleared transactions on Markit indices of tenors not included within the proposed determination, are considered reasonably interchangeable with clearing the CDS subject to this proposal; and, in particular, if parties transacting cleared CDS subject to this proposal would substitute uncleared transactions on non-Markit indices and/or transactions on Markit CDS tenors not subject to this proposal if clearinghouses raised the price of clearing the CDS required to be cleared five percent.

Additionally, the potential for new entry may constrain market power in an otherwise concentrated clearing services market. The Commission does not foresee that the proposed determination constructs barriers that would deter or impede new entry into a clearing services market.[70] Indeed, there is some

[64] *Id.; see also* U.S. Department of Justice (DOJ) and the Federal Trade Commission (FTC), Antitrust Guidelines for Collaborations Among Competitors at § 1.2 (April 2000), available at *http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf* (''The central question is whether the relevant agreement likely harms competition by increasing the ability or incentive profitably to raise price above or reduce output, quality, service, or innovation below what likely would prevail in the absence of the relevant agreement'').

[65] Included among these could be a separate product market for CDS indices licensing.

[66] The federal antitrust agencies, the DOJ and FTC, use the ''hypothetical monopolist test'' as a tool for defining antitrust markets for competition analysis purposes. The test ''identif[ies] a set of products that are reasonably interchangeable with a product,'' and thus deemed to reside in the same relevant antitrust product or service market. ''[T]he test requires that a hypothetical profit-maximizing firm, not subject to price regulation, that was the only present and future seller of those products ('hypothetical monopolist') likely would impose at least a small but significant and non-transitory increase in price ('SSNIP') on at least one product in the market.'' In most cases, a SSNIP of five percent is posited. If consumers would respond to the hypothesized SSNIP by substituting alternatives to a significant degree to render it unprofitable, those alternative products/services are included within the relevant market. This methodological exercise is repeated until it has been determined that consumers have no further interchangeable products/services available to them. Horizontal Merger Guidelines at § 4.1.

[67] *See id.*

[68] In other words, the Commission questions that, faced with a five percent non-transitory increase in the price of clearing the identified CDS classes, including fees and other charges, that the parties to these CDS transactions would forego clearing in sufficient volume to render the price increase unprofitable.

[69] Stated another way, competitive or potentially competitive CDS indices other than Markit, or for Markit CDS tenors other than those subject to this proposal, may offer a reasonably interchangeable substitute for cleared transactions in the proposed classes proposed, particularly if the price of clearing the required classes increased five percent.

[70] That said, the Commission recognizes that (1) to the extent the clearing services market for the CDS subject to this proposal, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through barriers—*e.g.,* high sunk capital cost requirements; high switching costs to transition from embedded, incumbents; and access restrictions, the proposed

basis to expect that the determination could foster an environment conducive to new entry. For example, the proposed clearing determinations, and the prospect that more may follow, is likely to reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.[71] Further, this proposed determination may increase the incentive of competing indices providers (for illustration purposes, Standard & Poor's) to support a new clearing services entrant through some form of partnership or other sponsorship effort. The Commission requests comment on the extent to which (1) entry barriers currently do or do not exist with respect to a clearing services market for the identified CDS classes; (2) the proposed determinations may lessen or increase these barriers; and (3) the proposed determinations otherwise may encourage, discourage, facilitate, and/or dampen new entry into the market.

Also, while the proposed rule does single out Markit indices and certain CDS tenors for required clearing, for reasons similar to those discussed above, this does not foreclose competition from CDS on other indices or tenors, and may in fact encourage it. For example, the Commission anticipates that an attempt by Markit to increase indices licensing fees would present a competitive opportunity for current and potential future indices providers to capture market share and/or entrants to leverage from market entry. The Commission requests comment on the extent to which competition in identified Markit CDS product markets may be impacted, including any expected impact on the price of Markit indices licenses, cost of swaps in the required classes, and entry conditions.

In addition to what is noted above, the Commission requests comment, and quantifiable data, on whether the required clearing of any or all of these swaps will create conditions that create, increase, or facilitate an exercise of (1) clearing services market power in CME, ICE Clear Credit, ICE Clear Europe, and/or any other clearing service market participant, including conditions that would dampen competition for clearing services and/or increase the cost of clearing services, and/or (2) market power in any product markets for Markit indices and CDS tenors, including conditions that would dampen competition for these product markets and/or increase the cost of CDS involving the proposed clearing requirement. The Commission seeks comment, and quantifiable data, on the likely cost increases associated with clearing, particularly those fees and charges imposed by DCOs, and the effects of such increases on counterparties currently participating in the market. The Commission also seeks comment regarding the effect of competition on risk management by DCOs. The Commission welcomes comment on any other aspect of this factor.

e. Legal Certainty in the Event of the Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is proposing this clearing requirement based on its view that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, namely the CDS indices subject to this proposal, in the event of the insolvency of the relevant DCO (CME, ICE Clear Credit, or ICE Clear Europe) or one or more of the DCO's clearing members.

The Commission concludes that, in the case of a clearing member insolvency at CME or ICE Clear Credit, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) and Part 190 of the Commission's regulations would govern the treatment of customer positions.[72] Pursuant to section 4d(f) of the CEA, a clearing member accepting funds from a customer to margin a cleared swap, must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and Part 190 of the Commission's regulations, the customer's CDS positions, carried by the insolvent FCM, would be deemed ''commodity contracts.'' [73] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent either CME or ICE Clear Credit from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the customers' positions in CDS indices subject to this proposal.[74] Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swaps customers, including CDS customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.06) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and Part 190 would govern the bankruptcy of a DCO, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to ICE Clear Europe, the Commission understands that the default of a clearing member of ICE Clear Europe would be governed by the rules of that DCO. ICE Clear Europe, a DCO based in the United Kingdom, has represented that under English law its rules would supersede English insolvency laws. Under its rules, ICE Clear Europe would be permitted to close out and/or transfer positions of a defaulting clearing member that is an FCM pursuant to the U.S. Bankruptcy Code and Part 190 of the Commission's regulations. According to ICE Clear Europe's submission, the insolvency of ICE Clear Europe itself would be governed by both English insolvency law and Part 190.

ICE Clear Europe has obtained legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members. In addition, ICE Clear Europe has obtained a legal opinion from U.S. counsel regarding compliance with the protections afforded to FCM customers under New York law.

The Commission requests comment on its conclusions with regard to legal certainty in the event of an insolvency of CME, ICE Clear Credit, ICE Clear

determination could have a negative competitive impact by increasing market concentration.

[71] *See, e.g.,* Horizontal Merger Guidelines at § 9.2 (entry likely if it would be profitable which is in part a function of ''the output level the entrant is likely to obtain'').

[72] The Commission observes that an FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act).

[73] If an FCM is also registered as a broker-dealer, certain issues related to its insolvency proceeding would also be governed by the Securities Investor Protection Act.

[74] Claims seeking payment for the administration of customer property would share this priority.

Europe, or one of such DCOs' clearing members.

Request for Comment

The Commission requests comment on all aspects of the proposed classes of CDS to be included within the clearing requirement and the proposed determination. The Commission may consider alternatives to the proposed CDS classes and is requesting comment on the following questions:

- Should the Commission include all tenors, such as the 1- or 2-year tenor for Markit indices, for each index included within the class, notwithstanding the fact that those are tenors not currently cleared by a DCO? Will market participants be incentivized to use such contracts to avoid the clearing requirement?
- Should the Commission limit its determination to the most liquid tenors of the CDX.NA.IG such as the 5- and 10-year tenors, and exclude other tenors such as the 3- and 7-year tenors, which are less liquid?
- Is the Commission correct in believing that risk management frameworks and methodologies supporting existing cleared offerings can be adjusted to address additional tenors with limited changes?
- Should the Commission structure its clearing requirement such that indices that become older off-the-run indices are no longer subject to the requirement? In such a proposal, how should the Commission treat those off-the-run indices, such CDX.NA.IG Series 9, that have remained extremely active notwithstanding being off-the-run? Should the Commission establish some type of threshold of trading to exclude off-the-run indices from the requirement? How would the Commission construct a rule to indicate that an off-the-run index is no longer subject to clearing?
- To the extent off-the-run indices were excluded from the clearing requirement, would market participants be incentivized to trade in older off-the-run indices, as opposed to current on-the-run indices?
- The CDS indices proposed to be included within the clearing requirement are currently offered by DCOs and are among the most liquid CDS. Is there any factor within the five statutory that do not support inclusion with the clearing requirement? Are there other factors outside of those five factors with regard to these particular offerings that weigh against inclusion in a clearing determination?

E. Interest Rate Swaps

i. Introduction

Interest rate swaps are agreements wherein counterparties agree to exchange payments based on a series of cash flows over a specified period of time typically calculated using two different rates multiplied by a notional amount. As of June 2011, the BIS estimated that over $500 trillion in notional amount of single currency interest rate swaps were outstanding[75] representing 75 to 80% of the total estimated notional amount of derivatives outstanding.[76] Based on these factors and on the swap submissions received under § 39.5(b), the Commission believes that interest rate swaps represent a substantial portion of the swaps market and warrant consideration by the Commission for required clearing.

The Commission's consideration of the interest rate swap submissions (IRS submissions) is presented in two parts. The first part, this Section II.E, discusses the Commission's rationale for determining how to classify and define the interest rate swaps identified in the DCO submissions to be considered for the clearing requirement. The second part, Section II.F, presents the Commission's consideration of the IRS submissions in accordance with section 2(h)(2)(D) of the CEA.

Unlike certain CDS or futures contracts, there are a large number of different, variable contract specifications available and used in interest rate swap transactions. As an indication of this variability, the Commission notes that over 10,500 different combinations of significant interest rate swap terms were identified for trades executed in a single three month period in 2010.[77] This variability creates a challenge for DCOs to specify the interest rate swaps for which clearing services are available and for the Commission to define what kinds of interest rate swaps will be subject to the clearing requirement. Notwithstanding this variability in swap terms, parties generally seek common economic results when entering into interest rate swaps, and there are common contract definitions and conventions that make classifying and clearing interest rate swaps possible. Identifying and analyzing these commonalities is necessary for effective classification of the swaps that will be subject to a proposed clearing requirement determination for interest rate swaps. Accordingly, a summary of the DCO submissions received by the Commission is followed by a discussion of how interest rate swaps are traded and risk managed and an analysis of the primary interest rate swap classes that are cleared and the product specifications used to identify interest rate swap products within each class. Thereafter, in Section II.F the Commission considers each of the interest rate swap classes and the primary specifications that are identified in the IRS submissions using the five factors identified in section 2(h)(2)(D) of the CEA to determine which interest rate swaps shall be required to be cleared.

ii. Submissions Received

The Commission received submissions from three DCOs eligible to clear interest rate swaps (IRS submissions): LCH.Clearnet Limited (LCH), the clearing division of the Chicago Mercantile Exchange Inc. (CME), and International Derivatives Clearinghouse, LLC (IDCH).[78]

The following table summarizes the interest rate swap classes and significant specifications identified in the IRS submissions as currently available for clearing by each DCO. The classes and swap specifications are described in more detail below.

[75] BIS, OTC Derivatives Market Activity in the First Half of 2011, November 2011, Table 1 [hereinafter ''BIS data'']. The BIS data provides the broadest market-wide estimates of interest rate swap activity available to the Commission.

[76] *Id.*

[77] Federal Reserve Bank of New York Staff Reports, ''An Analysis of OTC Interest Rate Derivatives Transactions: Implications for Public Reporting'' (March 2012) at 3 [hereinafter ''NY Fed Analysis''], available at *http://www.newyorkfed.org/research/staff_reports/sr557.pdf.*

[78] The IRS submissions received by the Commission are available at *http://www.cftc.gov/IndustryOversight/IndustryFilings/index.htm.* Submission materials marked by the submitting DCO for confidential treatment pursuant to §§ 39.5(b)(5) and 145.9(d) are not available for public review.

TABLE 3—INTEREST RATE SWAP SUBMISSIONS SUMMARY

	LCH	CME	IDCH
Swap Classes	Fixed-to-floating, basis, forward rate agreements (FRAs), overnight index swaps (OIS).	Fixed-to-floating	Fixed-to-floating, basis, FRAs, OIS.
Currencies [79]	USD, EUR, GBP, JPY, AUD, CAD, CHF, SEK, CZK, DKK, HKD, HUF, NOK, NZD, PLN, SGD, and ZAR.	USD, EUR, GBP, JPY, CAD, and CHF	USD.
Rate Indexes	*For Fixed-to-floating, basis, FRAs:* LIBOR in seven currencies, BBR–BBSW, BA–CDOR, PRIBOR, CIBOR–DKNA13, CIBOR2–DKNA13, EURIBOR–Telerate, EURIBOR–Reuters, HIBOR–HIBOR, HIBOR–HKAB, HIBOR–ISDC, BUBOR–Reuters, NIBOR, BBR–FRA, BBR–Telerate, PLN–WIBOR, PLZ–WIBOR, STIBOR, SOR–Reuters, JIBAR. *For OIS:* FEDFUNDS, SONIA, EONIA, TOIS.	USD–LIBOR, CAD–BA, CHF–LIBOR, GBP–LIBOR, JPY–LIBOR, and EURIBOR.	USD–LIBOR.
Maximum Stated Termination Dates.	*For Fixed-to-floating, basis, FRAs:* USD, EUR, and GBP out to 50 years, AUD, CAD, CHF, SEK and JPY out to 30 years and the remaining nine currencies out to 10 years.	USD, EUR, GBP out to 50 years, and CAD, JPY, CHF, AUD out to 30 years.	*For Fixed-to-floating:* 30 years.
	For OIS: USD, EUR, GBP, and CHF out to two years.		*For OIS, and FRAs:* two years.

Each of the IRS submissions provided information specified under § 39.5(b) for such swap submissions or provided references to Web sites or other sources for such information, including, for example, information previously provided to the Commission for other purposes. Each submitter also has described how it provided notice to its members as required by § 39.5(b)(3)(viii).

LCH has been clearing OTC interest rate swaps since 1999 through its SwapClear service. In its IRS submission, LCH indicates that it clears more than 50% of the interest rate swap market by notional amount.[80] As of its submission date, February 24, 2012, LCH reported that it had cleared and held outstanding about one million trades with an aggregate notional amount over $283 trillion. LCH accepted for clearing fixed-to-floating and basis swaps in seventeen currencies (including variable notional swaps in three currencies), overnight index swaps in four currencies, and forward rate agreements in 10 currencies. Swaps accepted for clearing must have certain product specifications identified by LCH, which help it administer clearing and manage risk appropriately.[81] Of the three interest rate swap submitters, LCH has been clearing the longest, clears the broadest range of interest rate swaps, and clears the largest portion of the interest rate swap market at this time. As of March 2011, LCH implemented client clearing in both Europe and the U.S. Prior to that date, both parties to a swap had to be LCH members to be able to clear a swap with LCH.

CME began clearing interest rate swaps on October 18, 2010. CME's IRS submission indicates that CME is currently clearing fixed-to-floating swaps in six currencies with an identified set of product specifications and has open interest in three currencies. In its submission, CME recommended a clearing requirement determination for all non-option interest rate swaps denominated in a currency cleared by any qualified DCO.

In September 2010, IDCH amended its rule book to provide for clearing interest rate swaps. IDCH is eligible to clear U.S. dollar denominated fixed-to-floating swaps, overnight index swaps, and forward rate agreements, which have certain product specifications as identified in its submission. IDCH had no outstanding cleared positions for these swaps as of the date of this proposal.

Furthermore, the interest rate swaps identified in the three IRS submissions are all single currency swaps with no optionality, as defined by the applicable DCO.

iii. Interest Rate Swap Market Conventions and Risk Management

Unlike certain CDS for which highly standardized terms have been developed, or futures, the terms of which are set by the exchanges, interest rate swaps are broad in scope and present a wide range of variable product classes and product specifications within each class. A data set of interest rate swaps electronically recorded over a three month period in 2010 by 14 large dealers for which one of those dealers was a party to each swap, contained over 10,500 different combinations of product classes, currencies, tenors, and forward periods.[82] The data set also included eight different general product classes (*e.g.,* fixed-to-floating, basis, forward rate agreements, swaptions, etc.), 28 currencies, 53 different rate indexes, and stated termination dates from one month to 55 years. In addition, dozens of different contract term conventions were identified.

Notwithstanding the large variety of contracts, there are commonalities that make it possible to categorize interest rate swaps for clearing purposes. Firstly, the vast majority of interest rate swaps use the ISDA definitions and contract conventions that allow market participants to agree quickly on common terms for each transaction. In fact, the three DCOs clearing interest rate swaps all use ISDA definitions in their product specifications.

Secondly, counterparties enter into swaps to achieve particular economic results. While the results desired may differ in small ways depending on each

[79] In this proposal, currencies are identified either by their full name or by the three letter ISO currency designation for the currency.

[80] LCH letter, dated February 24, 2012, at 1, stating that the market share percentage estimate is based upon BIS statistics and SwapClear volumes as of January 31, 2012.

[81] These specifications can be found on LCH's Web site at *http://www.lchclearnet.com/Images/General%20Regulations_tcm6-43737.pdf.*

[82] *See* ''ODSG data'' described below. The ODSG data set, while the broadest available providing trade-by-trade details, is limited in that it excludes trades that needed to be manually confirmed or that did not include a G14 Dealer.

counterparty's specific circumstances and goals, there are certain common swap conventions that are used to identify and achieve commonly desired economic results when entering into interest rate swaps. For example, a party that is trying to hedge variable interest rate risk may enter into a fixed rate to floating rate swap, or a party that is seeking to fix interest rates for periods in the future may enter into a forward rate agreement.

The IRS submissions classify interest rate swaps on this basis by identifying commonly known classes of swaps that they clear including: fixed rate to floating rate swaps, that are sometimes referred to as plain vanilla swaps (fixed-to-floating swaps); floating rate to floating rate swaps, also referred to as basis swaps (basis swaps); overnight index swaps (OIS); and forward rate agreements (FRAs).[83] These class terms are also being used in industry efforts to develop a taxonomy for interest rate swaps.[84]

Furthermore, within these general classes, certain specifications such as currency, reference interest rate index, and stated termination date (also referred to as maturity date), are essential for defining the economic result that will be achieved. For example, a party located in the United States who seeks to hedge interest rate risk that is in U.S. dollars will most likely enter into a U.S. dollar swap as opposed to a swap in different currency. The party will also enter into a swap whose interest rate index correlates with the floating rate the party is trying to hedge and will specify a termination date that coincides with when the subject interest rate risk terminates. Each of the IRS submissions naturally use these common specifications when identifying the swaps that the DCO clears. Within each of those specifications, there are common terms used by the DCOs, which allows for further classification of the full range of interest rate swaps that are executed.

Accordingly, while there are a wide variety of interest rate swaps when taking into account all possible contract specifications, certain specifications are commonly used by the DCOs and market participants. This allows for the identification of classes of swaps and primary specifications within each class that reflect the economic goals market participants seek to achieve and that are based on market conventions used by the DCOs to define which interest rate swap products they will clear. For example, fixed-to-floating swaps comprise roughly 50% of interest rate swaps, U.S. dollar denominated swaps account for approximately 35% of the total outstanding notional amount of swaps, and U.S. dollar LIBOR is the floating rate index used for approximately 80% of U.S. dollar swaps traded.[85]

The DCOs also risk manage interest rate swaps collectively on a portfolio basis rather than on a transaction or product specific basis. All three DCOs primarily assess risk at the portfolio-level. In other words, when looking at the risk posed by an interest rate swap portfolio, DCOs do not assess the risk of any one particular swap or swap class within the portfolio. Instead, the DCOs analyze the cumulative risk of a position's components. This concept of risk aggregation is also used within the context of the DCOs' margining methodologies. All three DCOs use margin methodologies based on portfolio margining as opposed to margining individual swaps or swap categories and subsequently developing offsets and charges across different swaps or classes of swaps.

By looking at risk on a portfolio basis, the DCOs take into account how swaps with different attributes, such as underlying currency, stated termination dates, underlying floating rate indexes, swap classes, *etc.,* are correlated and thus can offset risk across attributes. This is possible because, although individual transactions may have unique contract terms, given the commonalities of transactions as discussed above, swap portfolios can be risk managed on a cumulative value basis taking into account correlations among the cleared swaps. Consequently, DCOs can be expected to fairly, rapidly, and efficiently manage the risk of interest rate swaps in a default scenario through a small number of large hedging transactions that hedge large numbers of similarly correlated positions held by the defaulting party.[86] As such, liquidity for specific, individual swaps is not the focus of DCOs from a risk management perspective. Rather, liquidity is viewed as a function of whether a portfolio of swaps has common specifications that are determinative of the economics of the swaps in the portfolio such that a DCO can price and risk manage the portfolio through block hedging and auctions in a default situation.

A real life example of how this works is provided by LCH's management of the Lehman Brothers cleared interest rate swap portfolio following Lehman's bankruptcy in September 2008. Upon Lehman's default, LCH needed to risk manage a portfolio of approximately 66,000 interest rate swaps, which it hedged with approximately 100 new trades in less than five days. Once LCH executed these initial hedges, it was left with a relatively risk neutral portfolio. However, some risk still remained given that the hedges did not match the original trades exactly. Once the portfolio was hedged, LCH asked clearing members to price and bid on all, or subdivided portions, of the original Lehman portfolio with the hedging trades. For example, clearing members with live open positions in U.S. dollar swaps were asked to bid for the relatively hedged U.S. dollar portfolio. Through the bidding process, LCH was able to hedge and auction off all risk related to Lehman's interest rate swap portfolio existing at the time of its bankruptcy and only used approximately 35% of the initial margin Lehman had posted.[87]

iv. Interest Rate Swap Classification for Clearing Requirement Determinations

Section 2(h)(2)(A) of the CEA provides that the Commission ''shall review each swap, or any group, category, type, or class of swaps to make a determination as to whether'' any thereof shall be required to be cleared. In reviewing the IRS submissions, the Commission has considered whether its clearing requirement determination should address individual swaps, or categories, types, classes, or other groups of swaps.

Based on the market conventions as discussed above, and the DCO recommendations in the IRS submissions, the Commission is proposing a clearing requirement for four classes of interest rate swaps: fixed-to-floating swaps, basis swaps, OIS, and

[83] These are sometimes also referred to as ''types,'' ''categories,'' or ''groups.'' For purposes of this determination, the Commission is using the term ''class,'' in order to be consistent with the approach taken by the European Securities and Markets Authority (ESMA) in its Discussion Paper, ''Draft Technical Standards for the Regulation on OTC Derivatives, CCPs, and Trade Repositories,'' (Feb. 16, 2012), available at *http://www.esma.europa.eu/system/files/2012-95.pdf.* It is also noted that other categorizations are sometimes used for certain purposes. However, these four classes are common terms used by the DCOs and are common terms used in industry taxonomies.

[84] *See, e.g.,* ISDA Swap Taxonomies, available at *http://www2.isda.org/identifiers-and-otc-taxonomies/;* Financial Products Markup Language, available at *http://www.fpml.org/;* and the NY Fed Analysis.

[85] *See* below for a discussion of available market sources.

[86] After putting on these hedging positions, the DCO has the time needed to address any residual risk of the defaulted portfolio through auctioning off the defaulted portfolio together with the hedging transactions.

[87] *See* LCH IRS submission, at 4.

FRAs. According to the IRS submissions, LCH offers all four classes for clearing, IDCH offers three of them for clearing, and CME offers one of them for clearing.[88]

These four classes represent a substantial portion of the interest rate swap market. The following table provides an indication of the outstanding positions in each class.

TABLE 4—INTEREST RATE SWAPS NOTIONAL AND TRADE COUNT BY CLASS [89]

Swap class	Notional amount (USD BNs)	Gross notional percent of total	Total trade count	Total trade count percent of total
Fixed-to-Floating	$299,818	52	3,239,092	75
FRA	67,145	12	202,888	5
OIS	43,634	8	109,704	3
Basis	27,593	5	119,683	3
Other	132,162	23	617,637	14
Total	570,352	100	4,289,004	100

At this time, there are no standard definitions in federal statutes or existing Commission regulations for these interest rate swap classes. In addition, while various class definitions are used in the derivatives literature, there are no commonly used definitions in the market. Accordingly, for purposes of discussing the clearing requirement determination in this proposal, the Commission has developed the following class definitions based on information provided by the submitting DCOs and market conventions.

To define the four interest rate swap classes in a manner that works across all three DCOs making IRS submissions and for the interest rate swap market generally, it is useful first to summarize how interest rate swaps work. As noted above, in an interest rate swap, the parties exchange payments based on a series of cash flows over a specified period of time calculated using two different interest rates multiplied by a notional amount. One party to the swap agrees to pay the amount equal to one of the interest rates specified multiplied by the notional amount and the other party agrees to pay the amount equal to the other interest rate specified times the notional amount.[90] Each such payment stream is typically referred to as one ''leg'' or ''side'' of the swap transaction.

Using this background, the four classes of swaps are defined as follows, for purposes of this proposal:

1. ''Fixed-to-floating swap'': A swap in which the payment or payments owed for one leg of the swap is calculated using a fixed rate and the payment or payments owed for the other leg are calculated using a floating rate.

2. ''Floating-to-floating swap'' or ''basis swap'': A swap in which the payments for both legs are calculated using floating rates.

3. ''Forward Rate Agreement'' or ''FRA'': A swap in which payments are exchanged on a pre-determined date for a single specified period and one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate that is set on a pre-determined date.

4. ''Overnight indexed swap'' or ''OIS'': A swap for which one leg of the swap is calculated using a fixed rate and the other leg is calculated using a floating rate based on a daily overnight rate.

The LCH and CME IRS submissions addressed issues of classification for purposes of the interest rate swap clearing requirement. In its submission, LCH discussed the classification of interest rate swaps and recommended establishing clearing requirements for classes of interest rate swaps. LCH stated:

> We believe that it is counterproductive to define every single attribute and combination that could be found in an [interest rate] swap, and furthermore it would always be possible to create additional attributes that would move a swap outside of the mandate. We do not believe that the Commission should define the almost limitless combination of swap attributes currently used by the market. We recommend defining a subset of easily identifiable features that determine a swap subject to mandatory clearing if that swap is cleared by a registered DCO that satisfies the five factors in the Act and the Commission's regulations.

More specifically, LCH recommended that the Commission use the following specifications to classify interest rate swaps for purposes of making a clearing determination: (i) Swap class (*i.e.,* what the two legs of the swap are (fixed-to-floating, basis, OIS, etc.)), (ii) floating rate definitions used, (iii) the currency in which the notional and payment amounts are specified, (iv) stated final term of the swap (also known as maturity), (v) notional structure over the life of the swap (constant, amortizing, roller coaster, *etc.*), (vi) floating rate frequency, (vii) whether optionality is included, and (viii) whether a single currency or more than one currency is used for denominating payments and notional amount. In effect, LCH recommended the use of a set of basic product specifications to identify and describe each class of swaps subject to the clearing requirement.

CME recommended a clearing determination for all non-option interest rate swaps denominated in a currency cleared by any qualified DCO. CME's request is similar to LCH's recommendation in that CME identifies currency and optionality as factors to consider. In addition, CME's request focuses on defining swaps subject to the

[88] LCH clears all four classes of swap products; IDCH is eligible to clear fixed-to-floating swaps, OIS, and FRAs; and CME clears fixed-to-floating swaps.

[89] TriOptima data, as of March 16, 2012. *See* Section II.F below for a description of the TriOptima Data. The TriOptima data provides information on nine other classes of swaps, none of which is included in the IRS submissions. Notably, one other type, swaptions, exceeded FRAs and basis swaps in terms of number of transactions completed in the sample. On a notional amount basis, swaptions represented less than half the notional amount of FRAs traded and a little less than the notional amount of basis swaps. Regardless, because swaptions are not being cleared by any DCOs at this time, they are not being considered in this proposal.

[90] By contract, the two parties to an OTC swap often (but not always) agree that only one payment is due and owing on each payment date equal to the net positive amount equal to the excess amount of the larger amount due from one party over the smaller amount due from the other party. For cleared swaps, generally speaking, the amount payable to or by a party on any given day is determined based on the aggregate net amount due from or owed to the party for all of its positions that are cleared.

clearing requirement in a manner that can be used by all DCOs and not by reference to a specific DCO. IDCH did not recommend a particular approach for structuring the clearing determination.

The Commission agrees with the general approach suggested by LCH and is proposing to establish a clearing requirement for classes of swaps, rather than for individual swap products.

As an alternative, the Commission considered whether to establish clearing requirements on a product-by-product basis. Such a determination would need to identify the multitude of legal specifications of each product that would be subject to the clearing requirement. Although the industry uses standardized definitions and conventions, the product descriptions would be lengthy and require counterparties to compare all of the legal terms of their particular swap against the terms of the many different swaps that would be included in a clearing requirement. In this regard, LCH stated that the clearing requirement ''would be sub-optimal for the overall market if participants are forced to read pages of rules to decipher whether or not a swap is required to be cleared, or to have to make complex and time consuming decisions at the point of execution.'' [91] The Commission shares this view and believes that for interest rate swaps, a product-by-product determination could be unnecessarily burdensome for market participants in trying to assess whether each swap transaction is subject to the requirement. A class-based approach would allow market participants to determine quickly whether they need to submit their swap to a DCO for clearing by checking initially whether the swap has the basic specifications that define each class subject to the clearing requirement.[92]

A product-by-product designation also would be difficult to administer because the Commission would be required to consider each and every product submitted. On the other hand, designating classes of interest rate swaps for the clearing requirement provides a cost effective, workable method for the Commission to review new swap products that DCOs will submit for clearing determinations on a going forward basis without undertaking a full Commission review of each and every swap product. For each new swap, or group, class, type, or category of swap submitted, the DCO can identify whether it believes the submission falls within a class of swaps already subject to the clearing requirement. For such swaps, as described in greater detail below, the Commission is proposing to delegate to the Director of the Division of Clearing and Risk, with the consultation of the General Counsel, the authority to confirm whether the swap fits within the identified class and is therefore subject to the clearing requirement. In this way, DCOs will not be required to submit lengthy submissions, and the Commission need not review swaps that are already part of a class of swaps that the Commission has determined are subject to a clearing requirement pursuant to section 2(h)(2) of the CEA. Only swaps that are in a new swap class that has not previously been reviewed, because it contains one or more class level specifications that are not contained within a class that has previously been reviewed, would be subject to full Commission review.

Request for Comment

The Commission invites comment on the interest rate swaps class definitions.

- Are the definitions in harmony with industry practice?
- Should the Commission establish a clearing requirement for classes of swaps or for individual swap products?
- Would a product-by-product determination impose a greater burden on market participants than the proposed class-based approach?

v. Interest Rate Swap Specifications

After consideration of the IRS submissions received, the practical considerations of classifying swaps as described in the preceding section, the portfolio-based risk management approaches used by DCOs, and existing market practice for classifying and trading swap products based on common economic results, the Commission has analyzed the IRS submissions received pursuant to section 2(h)(2)(D) of the CEA and § 39.5, and is proposing to classify the interest rates swaps submitted using the following affirmative specifications for each class: (i) Currency in which the notional and payment amounts are specified; (ii) rates referenced for each leg of the swap; and (iii) stated termination date of the swap. The Commission also is proposing three ''negative'' specifications for each class: (i) No optionality (as specified by the DCOs); (ii) no dual currencies; and (iii) no conditional notional amounts.[93]

The Commission has chosen these three affirmative specifications because it believes that they are fundamental specifications used by counterparties to determine the economic result of a swap transaction for each party. Counterparties enter into swaps to achieve particular economic results. For example, counterparties may enter into interest rate swaps to hedge an economic risk, to facilitate a purchase, or to take a view on the future direction of an interest rate. The counterparties enter into a swap that they believe will best achieve their desired economic result at a reasonable cost.

The classes of swaps reflect general categories of desired economic results. As noted above, the IRS submissions identified four different classes of swap contracts that are being cleared at this time: Fixed-to-floating swaps, basis swaps, OIS, and FRAs. These classes of interest rates swaps reflect industry categorization and allow counterparties to achieve a particular economic result. For example, a fixed-to-floating swap may be used by a counterparty to hedge interest rate risk related to bonds it has issued or which it owns. Because the categorization of interest rate swaps into one of these basic classes reflects fundamental characteristics of a particular swap, counterparties can immediately assess whether a particular swap they are considering might be of a class that is subject to required clearing.

All three submitters also identified currency as a specification for distinguishing swaps that are subject to clearing.[94] A swap that requires

[91] LCH IRS submission, at 6.

[92] In addition, as noted by LCH, a product-by-product requirement may be evaded more easily because the specifications of a particular swap contract would need to match the specifications of each product subject to a clearing requirement. The clearing requirement could be evaded by adding, deleting, or modifying one or more of the contract's specifications, including minor specifications that have little or no impact on the economics of the swap. By using a class-based approach that allows for ranges of contract specifications established by the DCOs within each class, the Commission is reducing the potential for evasion in accordance with section 2(h)(4)(A) of the CEA, which directs the Commission to prescribe rules necessary to prevent evasion of the clearing requirements.

[93] The term ''conditional notional amount'' refers to notional amounts that can change over the term of a swap based on a condition established by the parties upon execution such that the notional amount of the swap is not a known number or schedule of numbers, but may change based on the occurrence of some future event. This term does not include what are commonly referred to as ''amortizing'' or ''roller coaster'' notional amounts for which the notional amount changes over the term of the swap based on a schedule of notional amounts known at the time the swap is executed. Furthermore, it would not include a swap containing early termination events or other terms that could result in an early termination of the swap if a DCO clears the swap with those terms.

[94] As noted above, the notional amount of the swap is a critical element to pricing every swap because it is the amount by which the interest rate for each leg is multiplied by to calculate the payment streams for each counterparty. However, the notional amount is not really a specification that differentiates one class of swaps from another

calculation or payment in a currency different than the currency of the related underlying purposes of the swap would introduce currency risk.[95] Thus, the currency designated for the swap is a basic factor in precisely achieving the economic results of the swap desired by each party. For example, if a party wants to hedge a commercial business risk denominated in dollars, then the party is likely to enter into a swap calculated and payable in dollars. Entering into a swap in a currency that is different from the currency in which the risk to be hedged is denominated would unnecessarily introduce currency risk and reduce the effectiveness of the swap.

The swaps listed by all three DCOs in their IRS submissions all identified the interest rates used for each leg of the swap as a basic term that defines the swap. The rates are basic determinants of the economic value of each stream of payments of an interest rate swap. It is therefore an important determinant for achieving each party's desired economic result. For example, if a party wants to hedge a loan obligation for which the interest rate is based on the London Interbank Offered Rate (commonly referred to as LIBOR), then the party can accurately hedge that risk by entering into a swap for which it receives LIBOR to offset its variable LIBOR risk. Using a different variable rate index would unnecessarily add basis risk to the swap and inhibit the party's desired result of hedging the risk inherent in changes in LIBOR over the life of its loan.

Finally, the stated termination date, or maturity, of a swap is a basic specification for establishing the value of a swap transaction because interest rate swaps are based on an exchange of payments over a specified period of time ending on the stated termination date. The value of a swap at any one point in time depends in part on the value of each payment stream over the remaining life of the swap. For example, if a party wants to hedge variable interest rate risk for bonds it has issued that mature in ten years, it will generally enter into a swap with a stated termination date that matches the final maturity date of the bonds being hedged.[96] To terminate the swap prior to such date would result in only a partial hedge and to execute a swap with a stated termination date that is later than the final bond maturity date would simply create exposed rate risk during the extended period beyond the final maturity date of the bonds.

As a general matter, the four class-defining specifications identified by the Commission are used by all three submitters when identifying the swaps they clear. By using these basic specifications to identify the swaps subject to the clearing requirement, counterparties contemplating entering into a swap can determine quickly as a threshold matter whether the particular swap may be subject to a clearing requirement. If the swap has the basic specifications of a class of swaps subject to a clearing requirement, the parties will know that they need to verify whether a DCO will clear that particular swap. This will reduce the burden on swap counterparties related to determining whether a particular swap may be subject to the clearing requirement.

The Commission also considered whether to define classes of swaps on the basis of other product specifications. Other potential specifications are numerous because of the nearly limitless alternative interest rate swaps that are theoretically possible. These alternative specifications fall into two general categories: Specifications that are commonly used to address mechanical issues for most swaps, and specifications that are less common and address idiosyncratic issues related to the particular needs of a counterparty. Examples of specifications that are commonly used to address mechanical issues for most swaps considered by the Commission include: Floating rate reset tenors, floating rate reset dates, reference city for business days, business day convention, day count fraction, spread added or subtracted from the variable rate, compounding method, effective date, averaging method, payment dates, period end dates, upfront payments, and consent to legal jurisdiction. These specifications are specifically identified for most swap transactions executed today. While these specifications may affect the value of the swap in a mechanical way, they are not, generally speaking, fundamental to determining the economic result the parties are trying to achieve. For example, the day count fraction selected affects calculation periods and therefore the amounts payable for each payment period. However, the parties, and the DCOs, can make mechanical adjustments to period pricing at the time a swap is cleared based on the day count fraction alternative selected by the parties and the day count fraction does not drive the economic result the parties are trying to achieve.

Furthermore, DCOs can provide clearing for the standard alternatives of each of these specifications without affecting risk management. Using the same day count fraction example, LCH will accept U.S. dollar-LIBOR trades for clearing with nine alternative day count fractions based on the common day count fractions used in the market.[97] While this specification, and other specifications of this kind, may affect the amounts owed on a swap, they can be accounted for mechanically in the payment amount calculations and do not change the substantive economic result the parties want to achieve.

Examples of the latter are special representations added to address particular legal issues, unique termination events, special fees, and conditions tied to events specific to the parties. None of the DCOs clear interest rate swaps with terms in the second group. Accordingly, such specifications are not included in the classes of swaps subject to the clearing requirement proposed by this rule, and the Commission considered only the first group of more common specifications that are identified by the submitting DCOs in their product specifications.

In short, the Commission recognizes that these other specifications may have an effect on the economic result to be achieved with the swap.[98] However, it

because every swap has a notional amount. By contrast, the currency in which the notional and payment amounts are specified does distinguish one class of swaps from others.

[95] For example, parties seeking to hedge interest rate risk in connection with bonds or to invest funds using swaps are more likely to enter into swaps that designate the same currency in which the bonds are payable or that the funds to be invested are held.

[96] Although hedging an economic risk expected to remain outstanding for ten years with a matching ten year swap may generally be the most efficient and precise approach, the Commission recognizes that parties may achieve a similar result by using swaps with different stated termination dates. However, such substitution generally provides a less precise hedge.

[97] Each DCO identifies the standard term or range of terms it will accept for each specification. Accordingly, swap counterparties can review the DCO's product specifications to determine whether a swap will satisfy the DCO's requirements for these specifications. Additionally, DCOs are likely to develop a screening mechanism by which a party can enter the terms of a specific swap and determine whether the DCO will clear it. It is also likely that third-party vendors will develop or are developing similar screeners to apply to multiple DCOs. If counterparties want to enter into a swap that is in a class subject to required clearing and no DCO will clear the swap because it has other specifications that the DCOs will not accept, then the parties can still enter into that transaction on an uncleared basis.

[98] LCH recommended in its submission that floating rate tenor (also known as frequency) also be a class level specification and the Commission acknowledges that floating rate tenor can, in some cases, be a fundamental specification for achieving the economic benefits of an interest rate swap. However, it is the Commission's preliminary view that floating rate tenor is more akin to the other non-class specifications in that it is not fundamental to all economic results that may be

Continued

believes that counterparties may account for the effects of such specifications with adjustments to other specifications or in the price of the swap. Furthermore, DCOs account for various alternatives or range of alternatives for these terms without impairing risk management. Finally, as described above in more detail, including these specifications in the description of the swaps subject to a clearing requirement could increase the burden on counterparties when checking whether a swap may be subject to required clearing. Accordingly, the Commission has determined not to include other, non-class defining specifications in the swap class definition.

The Commission also considered whether there are product specifications that the Commission should explicitly exclude from the initial clearing requirement determination. In this regard, the Commission considered swaps with optionality, multiple currency swaps, and swaps with conditional notional amounts. The Commission determined that these three specifications should be included as so-called ''negative'' specifications.

Optionality and swaps referencing more than one currency for calculation or payment purposes, raise concerns regarding adequate pricing measures and consistency across swap contracts that make them difficult for DCOs to effectively risk manage. LCH, CME, and IDCH currently do not clear interest rate swaps with such specifications. Furthermore, LCH and CME indicated that interest rate swaps with optionality or that reference multiple currencies should not be included for consideration of a clearing requirement at this time. LCH noted that, at this time, there is a lack of reliable market data and no market consensus on valuation models for swaps with these specifications, which significantly impairs a DCO's ability to set margin levels effectively for such products. Given these factors, the Commission is proposing to exclude swaps with optionality or that reference multiple currencies from this clearing requirement determination.

Finally, LCH recommended that the Commission exclude from the clearing requirement swaps whose notional amount over the term of the swap is conditional, and therefore, at the time of execution, cannot be definitively identified by a number or schedule of numbers for the term of the swap. For example, the parties may agree to a formula for calculating the notional amount based on an index or the occurrence of future events such as prepayments on a pool of mortgages. The IRS submissions indicated that all three submitters would clear swaps with constant notional amounts through the final termination date. LCH also clears amortizing and roller coaster notional schedules for certain classes of swaps so long as the notional amounts for the contract are known at the time the swap is cleared. None of the DCOs clears swaps for which the notional amount throughout the term of the swap is not specifically known at the time the swap is executed. The Commission understands that conditional notional amount swaps are, at this time, difficult for DCOs to price effectively and risk manage. Accordingly, while this may change over time if certain market conventions develop in this area, conditional notional amount swaps cannot be subject to the clearing requirement determination.

To reach a determination as to which interest rate swaps shall be subject to the clearing requirement, the Commission will consider in the following section the IRS submissions received pursuant to section 2(h)(2)(D) of the CEA and § 39.5 within the framework of the classes and specifications identified. In summary, the Commission will consider four classes of interest rate swaps for the clearing requirement: Fixed-to-floating swaps, basis swaps, FRAs, and OIS. Within each class, the Commission will further consider the following product specifications to define which swaps shall be required to be cleared: Currency, floating rate indexes referenced, stated termination dates, use of dual currencies, optionality, and notional amount certainty.

Request for Comments

- The Commission invites comment on the six principle swap specifications identified by the Commission as being used by counterparties to determine the economic result of a swap transaction within each class.
- Should more specifications be added? If so, what are they and how are they fundamental to determining the economic result of a swap? Should any of the specifications be eliminated?

F. Proposed Determination Analysis for Interest Rate Swaps

i. Consistency With Core Principles for Derivatives Clearing Organizations

Section 2(h)(2)(D)(i) of the CEA requires the Commission to review whether a swap submission is consistent with the core principles for DCOs in making its clearing determination. LCH, CME, and IDCH already clear all swaps identified in their respective IRS submissions and therefore each is subject to the Commission's review and surveillance procedures summarized above. Accordingly, the three DCOs already are required to comply with the core principles set forth in section 5b(c)(2) of the CEA with respect to the swaps being considered by the Commission for the clearing requirement.

To monitor compliance, the Commission has conducted periodic examinations of LCH, CME, and IDCH. During an examination, the Commission requests certain data regarding cleared transactions, fund transfers, margin requirement calculations, risk management testing and other issues that is provided as of a specific review date. In this manner, the Commission gets a snap-shot of information that the Commission staff uses to reconcile selected accounts and other information. Subsequently, the Commission goes onsite, typically for several days, to interview relevant parties and to test whether various policies and procedures established by the DCOs in their respective rule books comply with the CEA's core principles for DCOs and other regulatory requirements.

As discussed above, following the review of data and the onsite visits, the Commission undertakes extensive analysis and discusses any questions and potential deficiencies with staff and management of the DCO to address any deficiencies and improvements that can be implemented by the DCO. To ensure that the DCOs are in compliance with the core principles, a detailed analysis is done to assess the DCO's policies and procedures regarding pricing, margining, back-testing, and their IRS portfolio risk management procedures. Furthermore, the Commission assesses the DCOs' procedures and policies regarding: (1) Onboarding new clearing members; (2) establishing the financial resources available to the DCOs and testing the sufficiency of those resources; and (3) assessing the default management and settlement procedures.

More specifically, the DCOs give the Commission documentation that details relevant official policies and

considered by parties when contemplating a swap and it is a specification for which the DCOs can fairly easily offer all of the standard tenors that parties may consider.

procedures. The DCOs also provide evidence (such as margining, pricing data, and back-testing results) that confirms that the policies and methodologies are effective. Finally, the Commission goes onsite to the DCOs and interviews relevant parties and observes the procedures real-time to confirm that the DCOs are in effect following their stated policies. Additionally, the Commission, if feasible, will independently verify the analysis of any data provided by the DCOs.

The Commission's Risk Surveillance Group (RSG) conducts daily risk management surveillance of all DCOs.[99] If any issues arise, the RSG and the DCOs work in concert to understand and quickly address those issues. CME, LCH, and IDCH have worked collaboratively with the Commission in this regard and have provided accessible points of contact within the DCOs' respective organizations to expedite information flow.

All three submitting DCOs have asserted that they are capable of maintaining compliance with the core principles following a clearing requirement determination for the swaps that they clear, and the Commission has no reason to believe such assertions are not accurate at this time. The Commission does not believe that subjecting any of the interest rates swaps identified in the IRS submissions to a clearing requirement would alter compliance by the respective DCOs with the core principles. Accordingly, the Commission believes that each of the IRS submissions are consistent with section 5b(c)(2) of the CEA.

Request for Comment

- The Commission requests comment on whether the proposed interest rate swaps clearing requirement determination would alter any DCO's ability to comply with the DCO core principles.

ii. Consideration of the Five Statutory Factors for Clearing Requirement Determinations

As explained above, section 2(h)(2)(D)(ii) of the CEA identifies five factors the Commission shall take into account in making a clearing requirement determination. The process for submission and review of swaps for a clearing requirement determination is further detailed in § 39.5. This section provides the Commission's consideration of the five factors in the context of the requirements of § 39.5 for interest rate swaps.

a. Outstanding Notional Exposures, Trading Liquidity, and Adequate Pricing Data

Section 2(h)(2)(D)(ii)(I) of the CEA requires the Commission to take into account the existence of outstanding notional exposures, trading liquidity, and adequate pricing data. For purposes of this factor, the Commission considered the market data regarding outstanding notional amounts, trade liquidity, and pricing. Unlike CDS for which substantially all of the trading data has been collected and is stored in one place, there is no single data source for notional exposures and trading liquidity for the entire interest rate swap market.[100] However, the Commission considered several sources of data on the interest rate swap market that collectively provides the information the Commission needs to make a clearing requirement determination. The data sources considered include: general quarterly estimates published by the Bank for International Settlements (BIS data); market data published weekly by TriOptima (TriOptima data) covering swap trade information submitted voluntarily by 14 large derivatives dealers (G14 Dealers); trade-by-trade data provided voluntarily by the G14 Dealers to the OTC Derivatives Supervisors Group for a three month period between June and August 2010 (ODSG data); and trade-by-trade data provided by LCH for the first calendar quarter of 2012 and summary cleared swap open interest information (LCH data).[101] The G14 Dealers and LCH trade-by-trade data was provided to the Commission on a confidential basis and consent was granted for publication of the summary information in this proposal.

Each of these data sources has a number of limitations that are important to understand when considering the data. The following is a brief discussion of these limitations and how the data sets, when considered together, provide a more complete picture of outstanding notional amounts, trade liquidity, and pricing for the Commission's consideration of the swaps submitted.

The BIS data set covers the largest portion of the interest rate swap market over time and therefore is useful for reaching general conclusions regarding full market size and longer term market trends. However, the BIS data provides only summary information that is not granular enough to inform the clearing requirement considerations at the proposed class level.

TriOptima's data set updates are published weekly and provide more detail than the BIS data covering most of the class level specifications considered by the Commission. The TriOptima data is limited to the extent it only contains information gathered by TriOptima and therefore does not include all OTC interest rate swaps. Also, the TriOptima data shows outstanding notional and trade numbers as of a set date and does not provide an indication of trade liquidity over time.[102]

The ODSG data provided detailed information on a trade-by-trade basis, thereby providing sufficient information for class-level consideration. This information is useful for considering trading liquidity. However, the ODSG data set is limited in several ways that can skew analysis of the data. The ODSG data covered transactions confirmed on the MarkitWire platform, a trade confirmation service offered by MarkitSERV, between June 1, 2010 and August 31, 2010, where at least one party was a G14 Dealer. The dataset does not include transactions that took place between two non-G14 Dealer parties, with such parties representing an estimated 11% of the notional volume activity in MarkitSERV.[103] The number of non-G14 Dealer swap trades that are not entered on MakitSERV has not been estimated and could be significant. The omission of certain classes of participants and trades in the

[99] The only exception is IDCH. At this time, RSG does not actively monitor the risk posed by IDCH and its participants because IDCH does not have any open interest.

[100] *See* Bank of England, ''Thoughts on Determining Central Clearing Eligibility of OTC Derivatives,'' Financial Stability Paper No. 14, March 2012, at 11, available at *http://www.bankofengland.co.uk/publications/Documents/fsr/fs_paper14.pdf.*

[101] All DCOs are required to begin providing daily trade-by-trade data to the Commission as of November 8, 2012. CME also provided some information in this area, but because CME clears a small set of interest rate swaps for a relatively short period of time, CME's data is considered too limited to provide any indication of the complete interest rate swap market. The Commission recognizes that the LCH data also has limited value for its consideration of the first factor because it includes only cleared swaps, and not uncleared swaps. However, because LCH clears a large portion of the swaps products it offers clearing for (based on available information, LCH has cleared approximately 50 to 90 percent of the dealer open interest in the different interest rate swap products that it clears), its data provides some indication of the possible notional exposures and liquidity in the products submitted by LCH that the Commission is considering. Given the limitations on other available data, the Commission believes it is useful to consider the LCH data along with the market-wide BIS data, ODSG data, and TriOptima data.

[102] The TriOptima data does not indicate how many trades are new for each reporting period rather than carry-over trades from the prior period. Accordingly, it is not possible to determine the amount of new trading activity from one reporting period to the next.

[103] NY Fed Analysis at 6.

sample will bias transaction and notional volume statistics downward. It may also distort the proportions of products seen relative to each other.

The ODSG dataset also does not include transactions that were manually confirmed either by choice or necessity. It is estimated that the data set represents roughly 78% of G14 Dealer interest rate transaction activity.[104] The three-month time frame in 2010 also introduces limitations into analysis of the data set. This time frame represented a period in the midst of historically low central bank interest rate policy across major currencies and novel liquidity measures taken in response to the 2008 financial crisis. The short period also could be affected by seasonal patterns, and the possibility exists that the markets have fundamentally changed since the data was gathered. The lack of manually confirmed trades in the data suggests an overrepresentation of standardized transactions such as OIS and plain vanilla interest rate swaps and underrepresentation of non-standard classes such as exotics and basis swaps. For instance, exotic product structures not eligible for electronic matching are estimated to make up 2% of the OTC interest rate derivative market.[105]

The LCH data provides summary data on outstanding notional amounts for different classes of swaps and the first quarter 2012 data provide detailed information on a trade-by-trade basis thereby providing sufficient information for class-level consideration. The LCH data is limited in that it only includes swaps cleared by LCH. It is noted, however, that LCH has cleared about 50% of the interest rate swap market and higher levels of certain kinds of swaps indicating a reasonably high inclusion rate. This data set also has the advantage of being more current than the ODSG data and BIS data and is specific to the swaps that are under consideration in this Commission determination.

The TriOptima data and ODSG data are both based, in large part, on data provided by the G14 Dealers. Additionally, the TriOptima data is published by TriOptima in formats that, for the class specifications considered by the Commission, can be analyzed in a manner similar to the analysis of the ODSG data. In fact, the Commission has found the TriOptima data and the ODSG data to be complementary in some ways. The TriOptima data is current and provides fairly detailed information about the gross notional amounts and total trade numbers for each class specification considered in this proposal. However, the TriOptima data does not provide enough information to assess periodic trade liquidity for each specification. Because the ODSG data is provided on a trade-by-trade basis, the Commission and other regulators have been able to make more granular assessments of this information, particularly for purposes of considering trading liquidity. Accordingly, although the ODSG data is nearly two years old, it is useful for confirming whether observations based on the current TriOptima data are consistent with historical trends and also to indicate trading liquidity.

For this proposal, the Commission is considering only the swaps identified in the DCOs' IRS submissions. Accordingly, where possible, the Commission presents and discusses only the data for swaps identified in the submissions. For example, although the ODSG data identifies twenty-eight different currencies in which swaps were traded during the period covered by the data set, only the seventeen currencies identified in the submissions were considered. In addition, the ODSG data shows all transactions recorded on MarkitServ including not only new, price-forming transactions, but also administrative transactions such as amendments, assignments, compression trades, and internal, inter-affiliate trades that may not be price forming.[106] Because the Commission is considering notional amounts and trading liquidity, non-price-forming trades have been removed from the ODSG data presented below.

The following analysis of interest rate swap data is presented based on the four swap classes and class specifications discussed above. This information is used by the Commission to determine whether there exists significant outstanding notional amounts, trading liquidity, and pricing data to include each class and specification identified in the IRS submissions.

1. Interest Rate Swap Class

The Commission first considered data relevant to the different interest rate swap classes included in the IRS submissions starting with the BIS data.

TABLE 5—BANK FOR INTERNATIONAL SETTLEMENTS INTEREST RATE SWAPS OUTSTANDING NOTIONAL BY CLASS[107]

[Amounts in billions of U.S. dollars]

	June 2009	Dec. 2009	June 2010	Dec. 2010	June 2011	Dec. 2011
All Derivatives	$594,553	$603,900	$582,685	$601,046	$706,884	$647,762
Interest Rate Swaps[108]	341,903	349,288	347,508	364,377	441,201	402,611
FRAs	46,812	51,779	56,242	51,587	55,747	50,576
Options	48,513	48,808	48,081	49,295	56,291	50,911
Total interest rate swaps	437,228	449,875	451,831	465,260	553,240	504,098

The BIS data shows only notional amounts for three large categories: FRAs, swaps with options, and other interest rate swaps. It does not provide information on daily trading liquidity or break out other kinds of interest rate swaps such as basis swaps, OIS, or inflation swaps.

However, the BIS data is useful in providing certain big picture information. It indicates that interest rate swaps in total constitute nearly 80% of the derivatives market and interest rate swap notional amounts generally increased for all three kinds of swaps between 2008 and 2011.

Additionally, all three classes of swaps identified by the BIS data have substantial notional amounts outstanding. As of December 2011, FRAs had about $50.5 trillion outstanding, options had about $51 trillion outstanding, and other interest rate swaps had about $403 trillion

[104] *Id.* at 6.

[105] *Id.* at 5.

[106] The NY Fed Analysis noted that for the ODSG interest rate swap data set the number and volume of non-price-forming trades were significantly greater than the number and volume of trades that were new economic activity. NY Fed Analysis, at 8.

[107] BIS data.

[108] This row excludes FRAs and options.

outstanding. Furthermore, the BIS data shows that over the three year period covered in Table 5, total interest rate swaps reported grew by about 15%. Given this information, none of the kinds of swaps identified by the BIS should be eliminated from consideration by the Commission for a clearing requirement based on the BIS data alone. However, the BIS data does not provide enough detail to reach further determinations regarding the swaps identified in the IRS submissions.

TABLE 6—TRIOPTIMA DATA INTEREST RATE SWAPS OUTSTANDING NOTIONAL AND TRADE COUNT BY CLASS [109]

Swap class	Notional amount (USD BNs)	Percent of total notional	Total trade count	Percent of total trade count
Fixed-to-Floating	$299,818	52	3,239,092	75
FRA	67,145	12	202,888	5
OIS	43,634	8	109,704	3
Basis Swap	27,593	5	119,683	3
Other	132,162	23	617,637	14
Total	570,352	100.00	4,289,004	100

TABLE 7—ODSG DATA INTEREST RATE SWAPS TRADING ACTIVITY BY CLASS [110]

Swap class	Notional amount traded in quarter (USD BNs)	Trade count in quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades
Fixed-to-Floating	$15,858	123,337	$1,201	9,344
OIS	16,563	12,792	1,255	969
FRA	6,931	5,936	525	450
Basis Swap	2,307	3,173	175	240
Other	2,820	16,073	214	1,218
Total	44,479	161,311	3,370	12,221

The TriOptima data and the ODSG data identify notional amounts and trade counts for all four classes of swaps identified in the IRS submissions. Outstanding notional amounts are provided in the TriOptima data and BIS data. Trading liquidity as an indication of how effectively DCOs can risk manage a portfolio of swaps can be evidenced in several ways. The data available for this purpose includes total notional amount outstanding, total number of swaps outstanding, and the average number of transactions over a given period of time. The TriOptima data indicates liquidity through the total notional amount outstanding and total number of trades outstanding at a given time. The ODSG data provides an indication of liquidity in terms of the number of trades during the calendar quarter covered by the data and the average weekly number of trades during the period.

The TriOptima data shows that all four classes have significant outstanding notional amounts with basis swaps being the lowest at about $27.6 trillion and the highest being fixed-to-floating swaps at $288.8 trillion. Total trade counts for each type are also significant with the lowest being 109,704 for OIS and the highest being fixed-to-floating swaps at 3,239,092. The ODSG data confirms these observations historically.

The average number of swap trades per week for each class of swaps is shown in the last column of Table 7. According to the ODSG data set, basis swaps were traded at the lowest frequency compared to the other three classes at 240 times on average each week during the ODSG data period. Because the ODSG data is from the summer of 2010 and gross notional amounts and trading activity in interest rate swaps have both increased generally, the Commission believes that trading activity has likely increased for all classes.

TABLE 8—LCH DATA INTEREST RATE SWAPS NOTIONAL OUTSTANDING AND TRADE COUNT CLEARED BY CLASSES [111]

Swap class	Notional cleared in Quarter (USD BNs)	Number of swaps cleared in quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades	Total notional outstanding (USD BNs)
Fixed-to-Floating	$17,022	117,780	$1,309	9,060	$226,016
FRA	11,271	31,630	867	2,433	27,707
OIS	8,731	6,848	672	527	36,510

[109] TriOptima data, as of March 16, 2012. The TriOptima data provides information on nine other classes of swaps, none of which is included in the submissions. Notably, one other type, swaptions, exceeded FRAs and basis swaps in terms of number of transactions completed in the sample. On a notional amount basis, swaptions represented less than half the notional amount of FRAs traded and a little less than the notional amount of basis swaps. Regardless, because swaptions were not included in the list of swaps cleared in the IRS submissions, swaptions are not being considered for the clearing requirement determination because no DCO is clearing swaptions at this time.

[110] NY Fed Analysis at 7. The ODSG data includes swaps entered into between June and August, 2010 as voluntarily reported by the G14 Dealers. The ODSG data provides information on other classes of swaps, none of which is included in the submissions.

[111] The data covers swaps cleared by LCH during the first calendar quarter, 2012. Total Notional Outstanding Cleared is as of March 31, 2012.

TABLE 8—LCH DATA INTEREST RATE SWAPS NOTIONAL OUTSTANDING AND TRADE COUNT CLEARED BY CLASSES [111]—Continued

Swap class	Notional cleared in Quarter (USD BNs)	Number of swaps cleared in quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades	Total notional outstanding (USD BNs)
Basis	1,610	2,940	124	226	11,378
Total	38,634	159,198	2,972	12,246	301,612

The LCH data generally confirms the assessment of market-wide data. There is substantial outstanding notional volumes and trade liquidity for each of the four classes already being cleared at LCH.

LCH cleared the following percentage of each class of swap as reported by TriOptima: [112]

- 75% of the Fixed-to-Floating swaps,
- 41% of FRAs,[113]
- 84% of OIS, and
- 41% of Basis Swaps.

Accordingly, a substantial portion of each class is already being cleared voluntarily.

Swap Class Conclusion

The Commission concludes that the four classes of swaps currently being cleared have significant outstanding notional amounts and trading liquidity. The Commission further notes that a substantial percentage of each of the four classes is already cleared by DCOs.

2. Currency

As discussed above in Section II.E, the currency in which the notional and payment amounts are specified is a primary product specification and all four data sources provide interest rate swap data by currency.

TABLE 9—BANK FOR INTERNATIONAL SETTLEMENTS: INTEREST RATE SWAPS NOTIONAL BY CURRENCY [114]

(Amounts Outstanding in Billions of U.S. Dollars)

	June 2009	Dec 2009	June 2010	Dec 2010	June 2011	Dec 2011
EUR	$160,668	$175,790	$161,515	$177,831	$219,094	$184,702
USD	154,174	153,373	164,119	151,583	170,623	161,864
JPY	57,452	53,855	55,395	59,509	65,491	66,819
GBP	32,591	34,257	36,219	37,813	50,109	43,367
CAD	3,227	3,427	4,411	4,247	6,905	6,397
SEK	5,294	4,696	4,461	5,098	5,832	5,844
CHF	4,713	4,807	4,650	5,114	6,170	5,395
Other	19,108	19,669	21,061	24,064	29,017	29,709
All Currencies	437,228	449,875	451,831	465,260	553,240	504,098

The BIS data addresses seven of the seventeen currencies identified in the submissions individually. All seven currencies have substantial outstanding notional amounts as of December 2011, ranging from nearly $5.4 trillion for the Swiss franc to about $185 trillion in euro. Although several currencies showed decreases in total notional outstanding from one reporting period to the next, most such decreases were around ten percent or less, and, after such decreases, total notional amounts for those currencies generally rebounded.[115] For all currencies, the outstanding notional amounts were higher at the end of the most recent three-year period as compared to the beginning of the period.

The Commission believes that the BIS data supports the conclusion that there exists significant outstanding notional amounts in each currency identified in the BIS data and that there is no indication that notional amounts in those currencies are decreasing at a rate that would warrant elimination of those currencies from consideration for a clearing requirement.

TABLE 10—TRIOPTIMA DATA INTEREST RATE SWAPS OUTSTANDING NOTIONAL AND TRADE COUNT BY CURRENCY [116]

Currency	Notional amount (USD BNs Eqv.)	Percent of total notional	Total trade count	Percent of total trade count
Euro	$176,481	36	1,115,504	28
US Dollar	175,777	35	1,300,862	33
Yen	64,083	13	568,871	14
British Pound	43,337	9	419,611	11
Other [117]	36,4905	7	536,887	14

[112] Percentages are calculated based on total notional amount cleared by LCH divided by total notional outstanding as reported by TriOptima. The TriOptima data is used because it is the most current data set that provides data broken out according to the classes currently being cleared.

[113] LCH started clearing FRAs in December 2011 and cleared volumes have increased significantly each month since the start date.

[114] BIS data.

[115] To some extent, such decreases may have resulted from increased trade compression exercises during the subsequent reporting period.

[116] TriOptima data, as of March 16, 2012.

TABLE 10—TRIOPTIMA DATA INTEREST RATE SWAPS OUTSTANDING NOTIONAL AND TRADE COUNT BY CURRENCY [116]—Continued

Currency	Notional amount (USD BNs Eqv.)	Percent of total notional	Total trade count	Percent of total trade count
Total	496,168	100	3,941,735	100

TABLE 11—ODSG DATA INTEREST RATE SWAPS NOTIONAL TRADING ACTIVITY BY CURRENCY [118]

Currency	Notional traded in quarter (USD BNs)	Trade count in quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades
EUR	$18,410	45,114	$1,395	3,418
USD	11,013	48,876	834	3,703
GBP	7,248	16,282	549	1,233
JPY	4,263	18,799	323	1,424
Other [119]	3,048	20,412	231	1,546
Total	43,982	149,483	3,332	11,324

The TriOptima data shows that total outstanding notional amounts as of March 16, 2012, ranged from $400 billion for Czech koruna to over $176 trillion notional amount for euros.[120] While there may be sufficient outstanding notional amounts in all seventeen currencies, the Commission takes note that there is a clear demarcation between the four currencies with the highest outstanding notional amounts: euro, U.S. dollar, British pound, and yen, and all other currencies. As Table 10 shows, the four top currencies range from about 9% to 36% of the total notional amount of all interest rate swaps outstanding and 11%to 33% of the total number of trades. The remaining currencies range from about 2% down to 0.1% of the total notional amount traded and 3% down to 0.2%of total number of trades. In fact, the four major currencies accounted for about 93% of the total notional amount outstanding in the TriOptima data set.

The ODSG data provides an indication of trading liquidity in terms of average weekly notional amount traded and number of new trades completed during the period covered by the data set. Of the four major currencies, Japanese yen had the lowest weekly average notional at $323 billion and the British pound had the lowest average number of trades each week at 1,233.

The TriOptima data provides an overall, more current view of trades outstanding, which provides a broader picture of the trading potential for each currency for purposes of DCO risk management. As of March 16, 2012, all but one of the seventeen currencies had outstanding trade counts in excess of 14,000 with the exception being the Danish krone at 6,849. Again, the four highest currencies by trade count: euro, U.S. dollar, British pound, and yen, accounted for about 85% of the total number of trades recorded and outstanding at the time the data was collected.

TABLE 12—LCH DATA INTEREST RATE SWAPS NOTIONAL OUTSTANDING AND TRADE COUNT CLEARED BY CURRENCY [121]

Currency	Notional cleared in quarter (USD BNs)	Number of swaps cleared in quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades	Total notional outstanding (USD BNs)
EUR	$19,207	61,039	$1,477	4,695	$115,695
USD	12,111	51,710	932	3,978	107,734
GBP	2,801	12,976	216	998	25,339
JPY	2,799	12,374	215	952	37,696
Other	1,716	21,099	132	1,623	15,146
Total	38,634	159,198	2,972	12,246	301,612

The LCH data shows that the relative notional amount and number of swaps in each currency cleared is generally correlated with the notional amount and number of swaps of each currency reported by the more general market data sets. As a percentage of the total notional amount outstanding as reported by TriOptima, LCH cleared the following percentages: [122]

- 66% of euro,
- 61% of U.S. dollars,

[117] Thirteen other currencies are cleared by LCH: AUD, CHF, SEK, CAD, ZAR, NZD, NOK, HKD, PLN, SGD, HUF, DKK, and CZK.

[118] The ODSG data includes swaps entered into between June and August 2010 as voluntarily reported by the G14 Dealers.

[119] Includes the 13 other currencies cleared by LCH identified in its IRS submission. The ODSG data identified an additional 11 other currencies that were not cleared by any of the submitters.

[120] TriOptima data, as of March 16, 2012.

[121] The data covers swaps cleared by LCH during the first calendar quarter, 2012. Total Notional Outstanding is as of March 31, 2012.

[122] The TriOptima data is used for this calculation because it is the most current data set that provides data broken out according to the classes currently being cleared.

- 58% of British pounds,
- 59% of Japanese yen, and
- 42% of other currencies.

Of the interest rate swaps identifying U.S. dollars, euro, British pounds or yen as the applicable currency, significantly more than half are already being cleared by LCH. While the level of clearing of other currencies is, on a combined basis reasonably high at 42%, the Commission notes the level is noticeably lower than the percentage of swaps being cleared for the top four currencies.

Currency Specification Conclusion

The Commission believes that all of the data sets demonstrate the existence of significant outstanding notional amounts and trading liquidity in the seventeen currencies identified in the submissions. However, the Commission notes that swaps using the four currencies with the highest outstanding notional amounts and trade frequency: euro, U.S. dollar, British pound, and yen, account for an outsized portion of both notional amounts outstanding and trading volumes. Furthermore, the Commission notes that these four currencies are already being cleared more than the other currencies generally.

While it is important that this determination include a substantial portion of the interest rate swaps traded to have a substantive, beneficial impact on systemic risk, the Commission also recognizes that the proposed rule is the Commission's first swap clearing requirement determination. As noted in the phased implementation rules for the clearing requirement, the Commission believes that introducing too much required clearing too quickly could unnecessarily increase the burden of the clearing requirement on market participants. In recognition of these considerations, the Commission will focus the remainder of this initial clearing requirement determination analysis on swaps referencing the four most heavily traded currencies. The Commission notes that the decision not to include the other thirteen currencies at this time does not limit the Commission's authority to reconsider required clearing of those currencies in the future.

The Commission requests comment on whether any of the other thirteen currencies identified above should be included in the initial clearing requirement determination for interest rate swaps.

3. Floating Rate Index Referenced

The ODSG data and LCH data provide an indication of the rate indices used on a transaction-by-transaction basis. Rate indexes are currency specific. However, the BIS data and the TriOptima data do not provide information on the different rate indices referenced in interest rate swaps. The following tables present trading activity data for each rate index identified in the IRS submissions as being cleared for each of the four currencies the Commission is proposing to include in the clearing requirement determination.

TABLE 13—ODSG DATA INTEREST RATE SWAPS TRADING ACTIVITY BY RATE INDEX [123]

Rate Index	Notional traded in quarter (USD BNs)	Trade count for quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades
EUR–EURIBOR [124]	$9,366	38,213	$710	2,895
USD–LIBOR	9,080	46,620	688	3,532
EUR–EONIA *	9,022	6,496	684	492
GBP–SONIA *	4,934	2,011	374	152
JPY–LIBOR	4,015	18,491	304	1,401
GBP–LIBOR	2,296	12,417	174	941
USD–FedFunds *	1,887	1,951	143	148
EUR–LIBOR	1	5	0	0
Total	40,602	126,204	3,076	9,561

TABLE 14—LCH DATA INTEREST RATE SWAPS NOTIONAL OUTSTANDING AND TRADE COUNT BY RATE INDEX[125]

Rate index (by currency)	Notional cleared in quarter (USD BNs)	Number of swaps cleared in quarter	Average weekly notional traded (USD BNs)	Average weekly number of trades
EURO				
EURIBOR	$13,444	57,157	$1,034	4,397
EONIA	5,763	3,882	443	299
US Dollar				
LIBOR	10,905	50,197	839	3,861
FEDFUND	1,206	1,513	93	116
GBP				
LIBOR	1,067	11,550	82	888
SONIA	1,734	1,426	134	110
Yen				
LIBOR	2,799	12,374	215	952
Other Indexes	1,716	21,099	132	1,623
Total	38,634	159,198	2,972	12,246

[123] The ODSG data includes swaps entered into between June and August, 2010 as voluntarily reported by the G14 Dealers. This table includes only rate indexes used for the G4 currencies and that are cleared by LCH.

[124] ''Eur-Euribor'' category includes both Eur-Euribor-Reuters and Eur-Euribor-Telerate, which are both cleared by LCH.

* ''EONIA'', ''SONIA'', and ''FedFunds'' are floating rate indexes used to calculate OIS amounts only. The other indexes listed in the table are used for fixed-to-floating swaps, basis swaps, and FRAs.

[125] The data includes swaps cleared by LCH during the first calendar quarter, 2012.

The ODSG data shows minimal activity for EUR–LIBOR with about 1 billion of notional amount and five trades made for the three-month period in 2010 that the ODSG data covers. EUR–LIBOR does not appear on the LCH data table because, although swaps referencing that index can be cleared at LCH, LCH had no open interest for that index as of March 31, 2012. Given the minimal notional amounts and trade liquidity for the EUR–LIBOR index, the Commission has determined not to include EUR–LIBOR under the clearing requirement.

The other rate indexes all show significant notional amounts and trading liquidity. The rates with the least activity, the U.S. dollar Fedfund index and British pound-LIBOR index, each have over one trillion dollars in notional outstanding already cleared at LCH and on a weekly basis, $93 billion and $82 billion in notional amount, respectively, were cleared per week on average. In terms of number of trades cleared at LCH, swaps referencing Fedfunds were cleared on average 116 times per week and swaps referencing British pound-LIBOR were cleared 888 times per week on average. All of the other indices currently cleared have similar or substantially higher number of trades and notional amounts cleared.[126]

The rate indexes used for OTC interest rate swaps and the interest rate swaps identified for clearing by the DCOs reference not only the generic index, but a reference definition for the index such as the ISDA definition or Reuters definition. These reference definitions refer to the generic index and in addition, typically identify specifically where the calculating party shall look up the index and sometimes at what time the calculating party shall look up the index for calculation purposes. Additionally, these reference indices provide a standard alternative if the index is not available from the designated source at the designated time. While the Commission recognizes the importance of these features of the reference definitions and that each swap, both cleared and uncleared, should have these features, such features need not be included in the index rate specification for the Commission's clearing requirement determination because they are not definitive for the economic result achieved. Rather, the generic index itself is. If the parties to a swap identify a specific reference definition for an index, they need only confirm whether the DCO accepts that reference definition. If it does not, then the swap in question is not accepted for clearing and it is not subject to the clearing requirement.

Rate Index Specification Conclusion

The Commission concludes that with the exception of the EURO–LIBOR index, all of the rate indexes identified in the IRS submissions have significant outstanding notional amounts and trading liquidity. The Commission further notes that significant notional amounts of these rate indexes are already cleared by DCOs.

4. Stated Termination Dates

Stated termination date (sometimes referred to as ''maturities'') data is often presented by aggregating stated termination dates for swaps into specified term periods or ''buckets.'' The IRS submissions show that the DCOs have been clearing interest rate swaps with final termination dates out to at least ten years for all seventeen currencies and out to 50 years for some classes and currencies cleared.

The use of maturity buckets eases the discussion of the range of termination dates. As the tables below show, interest rate swaps can be multi-year contracts with termination dates out to fifty years or more depending on the class and currency of the swap. Also, stated termination dates can fall on any day of the year. Given this continuum of termination dates, the DCOs have indicated that they manage the cleared swap portfolio risk using a swap curve.[127] Swap curves are also used by market participants to price interest rate swaps. By pricing swaps in this way, the economic results of an interest rate swap can be fairly closely approximated, and therefore hedged, using two or more other swaps with different maturities principally by matching the weighted average duration of those swaps with the duration of the swap being hedged.[128] In the same manner, a large portfolio of interest rate swaps can be hedged fairly closely with a small number of hedging swaps that have the same duration as the entire portfolio or subsets of related swaps within the portfolio. In effect, for DCO risk management purposes, the termination dates of interest rate swaps are assessed based on how they affect the overall duration aspects of the portfolio of swaps cleared.[129] Accordingly, the primary determination with respect to the stated termination date specification is, for each class and currency, at what point, if any, along the continuum of swap maturities is there insufficient notional outstanding and trading liquidity to structure the swap curve effectively for DCO risk management purposes.

The TriOptima data provided sufficient detail to discern notional amounts and trade counts only for each swap class. The ODSG data provided sufficient detail to discern notional amounts and trade counts only for each currency. The LCH data provided enough detail for both swap class and currency.

Regarding maturity buckets, the BIS data only provides information for interest rate swaps in three periods: up to one year, between one year and five years, and more than five years. Because the BIS data does not provide granular detail beyond the five year maturity date, it does not provide enough detail to inform the Commission's determination regarding the IRS submissions under consideration. Accordingly, the BIS data was not considered for the stated termination date specification.

TABLE 15—TRIOPTIMA DATA INTEREST RATE SWAPS NOTIONAL BY MATURITY PERIOD AND CLASS [130]

[U.S. dollar equivalent in billions]

Product type	Maturity 0≤2 years	Maturity 2≤5 years	Maturity 5≤10 years	Maturity 10≤20 years	Maturity 20≤30 years	Maturity 30+ Years
Fixed-to-Floating:						
—Notional	$118,523	$80,101	$66,049	$19,872	$13,207	$2,067

[126] British pound-SONIA has about the same number of trades and per week trading average as Fedfunds, but has a higher outstanding notional amount at $1.734 trillion.

[127] The ''swap curve'' is the term generally used by market participants for interest rate swap pricing and is similar to, and is sometimes established, in part, based on, ''yield curves'' used for pricing bonds.

[128] Other factors, such as convexity, may also be taken into account in determining the appropriate hedge ratio between the initial swap and the other swaps used to hedge its exposure.

[129] For further discussion of the use of portfolio risk management by DCOs, see the discussion of interest rate swap market conventions and risk management in Section II.E above.

TABLE 15—TRIOPTIMA DATA INTEREST RATE SWAPS NOTIONAL BY MATURITY PERIOD AND CLASS[130]—Continued

[U.S. dollar equivalent in billions]

Product type	Maturity 0≤2 years	Maturity 2≤5 years	Maturity 5≤10 years	Maturity 10≤20 years	Maturity 20≤30 years	Maturity 30+ Years
—Trade Count	823,434	890,622	908,880	303,927	270,074	42,155
FRA:						
—Notional	$66,040	$1,060	$45	$0	$0	$0
—Trade Count	201,164	1,646	78	0	0	0
OIS:						
—Notional	$41,783	$1,450	$258	$64	$74	$4
—Trade Count	77,982	26,067	3,740	1,376	510	29
Basis Swap:						
—Notional	$17,324	$6,032	$2,633	$950	$561	$94
—Trade Count	39,632	34,080	24,590	12,638	8,197	546

TABLE 16—LCH DATA: INTEREST RATE SWAPS NOTIONAL OUTSTANDING CLEARED BY MATURITY PERIOD AND CLASS[131]

[U.S. dollar equivalent in billions]

Product type	Maturity 0≤2 years	Maturity 2≤5 years	Maturity 5≤10 years	Maturity 10≤20 years	Maturity 20≤30 years	Maturity 30≤50 years
Fixed-to-Floating:						
—Notional	$7,773	$4,448	$3,569	$747	$463	$52
—Trade Count	22,431	34,930	40,086	8,551	10,701	1,127
FRA:						
—Notional	$11,184	$0	$0	$0	$0	$0
—Trade Count	31,584	0	0	0	0	0
OIS:						
—Notional	$8,714	$0	$0	$0	$0	$0
—Trade Count	6,848	0	0	0	0	0
Basis Swap:						
—Notional	$1,423	$129	$37	$14	$5	$1
—Trade Count	1,485	736	394	226	84	15

The TriOptima data and LCH data presented above is useful in considering the distribution of final termination dates based on swap class. For fixed-to-floating swaps and basis swaps, there was significant outstanding notional amounts and number of trades for all maturity buckets.

For FRAs, the TriOptima data shows a steep drop off after two years, although there is still over $1 trillion dollars of outstanding notional amount in the 2≤5 year bucket and 1,646 trades. The notional amount outstanding falls below $50 billion after the five year maturity. The LCH data shows substantial outstanding notional amounts out to two years and none thereafter. The IRS submissions provide that the DCOs do not clear FRAs with payment dates beyond three years. Accordingly, the Commission need not consider FRAs with maturities beyond three years until such time as a DCO submits such swaps for clearing.

For OIS, the TriOptima data shows notional amounts for all maturity buckets, but the drop off was steep beyond two years. After ten years, outstanding notional amounts drop below $100 billion for each maturity bucket. The LCH data shows no outstanding notional amounts cleared beyond two years. The IRS submissions provide that the DCOs do not accept for clearing OIS swaps beyond two years. Accordingly, the Commission is not considering OIS swaps beyond two years in this clearing requirement determination.

TABLE 17—ODSG DATA: INTEREST RATE SWAPS TRADING ACTIVITY BY MATURITY PERIOD AND CURRENCY[132]

[U.S. dollar equivalent in billions]

Currency	Maturity 0≤2 years	Maturity 2≤5 years	Maturity 5≤10 years	Maturity 10≤20 years	Maturity 20≤30 years	Maturity 30≤50 years
EUR	$14,596	$1,699	$1,510	$447	$287	$34
USD	6,796	1,991	1,999	247	220	5
GBP	6,521	348	263	72	54	17
JPY	2,970	782	448	91	16	0
Other	2,597	325	142	16	3	0
Total	33,480	5,143	4,362	872	580	56

[130] TriOptima data, as of March 16, 2012.

[131] The data covers swaps cleared by LCH during the first calendar quarter, 2012.

[132] The ODSG data includes swaps entered into between June and August, 2010 as voluntarily reported by the G14 Dealers. Only currencies and swap classes identified in the IRS submissions are included.

TABLE 18—LCH DATA INTEREST RATE SWAPS NOTIONAL OUTSTANDING CLEARED BY MATURITY PERIOD AND CURRENCY [133]

[U.S. Dollar Equivalent in Billions]

Currency	Maturity 0≤2 years	Maturity 2≤5 years	Maturity 5≤10 years	Maturity 10≤20 years	Maturity 20≤30 years	Maturity 30≤50 years
EUR	$14,697	$1,922	$1,759	$477	$269	$35
USD	8,850	1,796	1,176	154	133	2
GBP	2,143	256	268	59	51	16
JPY	2,204	254	262	56	12	0
Other	1,200	349	141	13	3	0
Total	29,094	4,577	3,606	760	468	53

The ODSG data and LCH data in the two preceding tables show notional amounts traded for maturity buckets by currency. As shown, there were traded and cleared notional amounts for euro, U.S. dollars and British pounds out to the 30 to 50 year bucket and for yen out to the twenty to thirty year bucket. The LCH data confirms that substantial notional amounts of euros, U.S. dollars and British pounds are being cleared out to fifty years and yen out to 30 years.

Stated Termination Date Specification Conclusion

For the classes of swaps, the TriOptima data show that there is significant outstanding notional amounts and number of trades out to 50 years for fixed-to-floating swaps and basis swaps, out to three years for OIS, and out to two years for FRAs. With respect to currencies, the ODSG data set and LCH data show significant outstanding notional amounts and number of trades out to 50 years for U.S. dollars, euros, and British pounds and out to 30 years for yen.

5. Adequate Pricing Data

In reaching its proposed determination, the Commission also is taking into account the adequacy of the pricing data for the four classes of interest rate swaps. LCH submits there is adequate pricing data for its risk and default management. It explains that its risk and default management is based on the following factors under normal and stressed conditions:

- Outstanding notional, by maturity bucket and currency;
- Number of participants with live open positions, by maturity bucket and currency;
- Notional throughput of the market, by maturity bucket and currency;
- Size tradable by maturity bucket that would not adjust the market price;
- Number of potential direct clearing members clearing the products that are part of the mutualized default fund and default management process;
- Interplay between on-the-run and off-the-run contracts; and
- Product messaging components and structure.

LCH carries out a fire drill of its default management procedures and readiness twice a year. According to LCH, the fire drill presents an opportunity to further benchmark market liquidity and behavior and for models and assumptions to be recalibrated based on practitioner input. LCH also tests liquidity assumptions from the outset when developing clearing capabilities for a new product and thereafter, on a daily basis. This testing informs how LCH develops and modifies its risk management framework to provide adequate risk coverage in compliance with the core principles applicable to DCOs. Based on this framework, LCH contends that there is adequate pricing data for the swaps offered for clearing.

IDCH submits that there is adequate pricing data to produce the IDCH-generated discount curve (the IDCH Curve). IDCH values each open position at the end of each trading day by valuing each leg of the cash flows of the contract (fixed and floating) according to discount factors produced by the IDCH Curve. The IDCH Curve is a zero-coupon yield curve that is updated on a continual basis and includes a composite of swap rates. IDCH generates a unique IDCH Curve for each reference rate that is available for clearing and calibrates each of these IDCH Curves to the discount curve to value at-market instruments at par.

CME publicly represents that its interest rate swap valuations are fully transparent and rely on pricing inputs obtained from wire service feeds. Further, CME uses conventional pricing methodologies, including OIS discounting, to produce its zero coupon curve. In addition, customers are provided with direct access to daily reports showing curve inputs, daily discount factors, and valuations for each cleared swap position.

It is also worth noting that those interest rate swaps that are the subject of this proposal are capable of being priced off of deep and liquid debt markets. Because of the stability of access to pricing data from these markets, the pricing data for non-exotic interest rate swaps that are currently being cleared is generally viewed as non-controversial.

Based on consideration of the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data, the Commission preliminarily has determined to include interest rate swaps with the following specifications in the clearing requirement rule.

TABLE 19—INTEREST RATE SWAP DETERMINATION

	Fixed-to-Floating Swap Class			
Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.

[133] The data covers swaps cleared by LCH during the first calendar quarter, 2012.

TABLE 19—INTEREST RATE SWAP DETERMINATION—Continued

4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Basis Swap Class				
Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Forward Rate Agreement Class				
Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts	No	No	No	No.
Overnight Index Swap Class				
Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)..	
2. Floating Rate Indexes	FedFunds	EONIA	SONIA..	
3. Stated Termination Date Range	7 days to 2 years	7 days to 2 years	7 days to 2 years..	
4. Optionality	No	No	No..	
5. Dual Currencies	No	No	No..	
6. Conditional Notional Amounts	No	No	No..	

Request for Comments

- Should the Commission consider other data to determine whether there are outstanding notional exposures, trading liquidity, or adequate pricing data to support the proposed clearing requirements? If so, please provide or identify any additional data that may assist the Commission in this regard.
- Do the four classes of interest rate swaps that would be subject to the proposed clearing requirement have significant outstanding notional amounts and trading liquidity?
- Should the Commission include the other thirteen currencies currently being cleared in its initial clearing requirement determination?
- Should the Commission include stated termination dates that are shorter than those that are listed, particularly for the fixed-to-floating and basis swaps?
- If the option in an interest rate swaption is exercised and not cash settled, should the resulting swap be subject to the clearing requirement if it meets the specifications included in the proposed clearing requirement?
- Is there adequate pricing data for DCO risk and default management of the interest rate swaps that would be subject to the proposed rule?

b. Availability of Rule Framework, Capacity, Operational Expertise and Resources, and Credit Support Infrastructure

Section 2(h)(2)(D)(ii)(II) of the CEA requires the Commission to take into account the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear the proposed classes of swaps on terms that are consistent with the material terms and trading conventions on which they are now traded. The Commission believes that LCH, CME, and IDCH have developed rule frameworks, capacity, operational expertise and resources, and credit support infrastructure to clear the interest rate swaps they currently clear on terms that are consistent with the material terms and trading conventions on which those swaps are being traded. The Commission notes that LCH already clears more than half the global interest rate swaps in the four proposed classes of the clearing requirement and that CME and IDCH also already clear the more commonly traded swaps under this clearing requirement proposal.

Importantly, the Commission notes that the three DCOs each developed their interest rate swap clearing offerings in conjunction with market participants and in response to the specific needs of the marketplace. In this manner, the clearing services of each DCO are designed to be consistent with the material terms and trading conventions of a bilateral, uncleared market.

LCH submits that it has the capability and expertise to not only manage the risks inherent in the current book of interest rate swaps cleared, but also the capability to manage the increased volume that the clearing requirement for all of its currently clearable products could generate. LCH states that its clearing model seamlessly allows interest rate swaps to be cleared on identical terms for both new and existing, bilateral OTC swaps. Existing bilateral swaps are regularly back loaded into LCH's cleared swaps book. In order to be able to securely risk manage, and technologically and operationally process this volume of trades and diversity of underlying product (*i.e.,* all of the unique underlying features of every single swap), LCH has developed operational models, controls, and risk algorithms to ensure that it can process trades, and is capable of calculating the level of risk it has with any counterparty—both direct clearing members and their customers. LCH believes its SwapClear service is proof that the interest rate swap market and all of its features can

be safely cleared with the right systems, controls, risk management, operational framework, and expertise, and it points to the orderly and successful close out of the Lehman Brothers International Europe's interest rate swap portfolio. LCH notes that in so doing, no other clearing member or clearing member's customer was harmed and, less than half of the defaulter's initial margin was used.

CME's submission cites to its rule books to demonstrate the availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear qualified, interest rate swap contracts on terms that are consistent with the material terms and trading conventions on which the contracts are then traded.

IDCH submits that its rule book provides a rule framework for clearing members and customers of clearing members to clear U.S. dollar interest rate swaps on terms that are consistent with the material terms and trading conventions on which they would trade interest rate swaps and forward rate agreements in the OTC market. The IDCH rule book also sets forth clearing member criteria and obligations, and descriptions of the clearing process, the settlement process (including the collection of performance bond and protection of customer collateral), and the default process.

IDCH also claims that it has the capacity, operational expertise and resources, and credit support infrastructure to clear U.S. dollar interest rate swaps on terms that are consistent with the material terms and trading conventions on which interest rate swaps and forward rate agreements are traded in the OTC market. IDCH states that it has the financial capacity to clear such swaps as demonstrated by the financial resources backing its obligations under the cleared contracts, which includes initial margin posted by clearing members (for their proprietary account and customer accounts), guaranty fund deposits posted by clearing members, and assessment powers against clearing members. IDCH notes that it has been registered as a DCO since 2008 and has dedicated tremendous resources to developing its operational capacity to clear interest rate swaps. It claims that the capacity of the IDCH clearing systems is scalable and has been tested to manage the anticipated volume of interest rate contracts. IDCH also says that its clearing systems presently have the capacity to manage the clearing of up to 220,000 contracts with 550 value-at-risk (VaR) scenarios being used for portfolio revaluation. The architecture of the systems is designed to be scalable with hardware and has been tested to manage the clearing of up to two million interest rate swaps using the same 550 VaR scenarios for revaluation.

Having taken into account the three DCOs' availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure, the Commission is proposing the determination and rules described below.

Request for Comments

- The Commission requests comment on all aspects of this factor, including whether or not commenters agree that the three DCOs clearing interest rate swaps can satisfy the factor's requirements.
- Has the Commission sufficiently taken into account the three DCOs' availability of rule framework, capacity, operational expertise and resources, and credit support infrastructure? Are there additional or alternative considerations that should be reviewed by the Commission?

c. Effect on the Mitigation of Systemic Risk

Section 2(h)(2)(D)(ii)(III) of the CEA requires the Commission to take into account the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the DCO available to clear the contract. CME, LCH, and IDCH submit that subjecting interest rate swaps to central clearing would help mitigate systemic risk. As noted above, the Commission believes that the market for these swaps is significant and mitigating counterparty risk through clearing likely would reduce systemic risk in that market and in the industry, generally.

According to LCH, if all clearable swaps are required to be cleared, the inevitable result will be a less disparate marketplace from a systemic risk perspective. CME submits that the 2008 financial crisis demonstrated the potential for systemic risk arising from the interconnectedness of OTC derivatives market participants and submits that centralized clearing will reduce systemic risk.

IDCH submits that, given the tremendous size of the interest rate derivatives market, the potential mitigation of systemic risk through centralized clearing of interest rate swaps is significant. IDCH argues that clearing such swaps brings the risk mitigation and collateral and operational efficiency afforded to cleared and exchange-traded futures contracts to bilaterally negotiated OTC interest rate derivatives. The submission of interest rate swaps for clearing affords the parties the credit, risk management, capital, and operational benefits of central counterparty clearing of such transactions, and facilitates collateral efficiency. Cleared swaps allow market participants to free up counterparty credit lines that would otherwise be committed to open bilateral contracts. Additionally, according to IDCH, an efficient system for centralized clearing allows parties to mitigate the risk of a bilateral OTC derivative. Instead of holding offsetting positions with different counterparties and being exposed to the risk of each counterparty, a party may enter into an economically offsetting position that is cleared. Although the positions are not offset, the initial margin requirement will be reduced to close to zero. To eliminate risk without using centralized clearing, the party must enter into a tear-up agreement with the counterparty, or enter into a novation.

While the clearing requirement would remove a large portion of the interconnectedness of current OTC markets that leads to systemic risk, the Commission notes that central clearing, by its very nature, concentrates risk in a handful of entities. However, the Commission observes that central clearing was developed and designed to handle such concentration of risk.

LCH has extensive experience risk managing very large volumes of interest rate swaps; as noted above, it is believed that about half of the interest rate swaps are cleared by LCH. CME submits that it has the necessary resources available to clear the swaps that are the subject of its submission. The Commission notes that CME or its predecessors have cleared futures since 1898 and is the largest futures clearinghouse in the world. CME has not defaulted during that time. IDCH submits that the IDCH framework provides IDCH with scalable financial resources sufficient to clear a large volume of interest rate swaps.

Accordingly, the Commission believes that LCH, CME, and IDCH would be able to manage the risk posed by clearing swaps that are required to be cleared. In addition, the Commission believes that the central clearing of the interest rate swaps that are the subject of this proposal would serve to mitigate counterparty credit risk thereby having a positive effect on the reducing systemic risk. Having taken into account the effect on the mitigation of systemic risk, the Commission is proposing the determination and rules described below.

Request for Comments

- Would the proposed clearing requirement reduce systemic risk?
- Would the proposed clearing requirement increase the risk to LCH, CME, or IDCH? If so, please explain why.
- Are LCH, CME, and IDCH capable of handling any increased risk that would result from the proposed clearing requirement?

d. Effect on Competition

Section 2(h)(2)(D)(ii)(IV) of the CEA requires the Commission to take into account the effect on competition, including appropriate fees and charges applied to clearing. As discussed above, of particular concern to the Commission is whether this proposed determination would harm competition by creating, enhancing, or entrenching market power in an affected product or service market, or facilitating the exercise of market power. Market power is viewed as the ability to raise price, including clearing fees and charges, reduce output, diminish innovation, or otherwise harm customers as a result of diminished competitive constraints or incentives.[134]

The Commission has identified one putative service market as potentially affected by this proposed clearing determination: A DCO service market encompassing those clearinghouses that currently (or with relative ease in the future could) clear the interest rate swaps subject to this proposal. Without defining the precise contours of this market at this time, the Commission recognizes that, depending on the interplay of several factors, this proposed clearing requirement potentially could impact competition within the affected market. Of particular importance to whether any impact is, overall, positive or negative, is: (1) Whether the demand for these clearing services and swaps is sufficiently elastic that a small but significant increase above competitive levels would prove unprofitable because users of the interest rate swap products and DCO clearing services would substitute other clearing services co-existing in the same market(s); and (2) the potential for new entry into this market. The availability of substitute clearing services to compete with those encompassed by this proposed determination, and the likelihood of timely, sufficient new entry in the event prices do increase above competitive levels, each operate independently to constrain anticompetitive behavior.

Any competitive import would likely stem from the fact that the proposed determination would remove the alternative of not clearing for interest rate swaps subject to this proposal. The proposed determination would not specify who may or may not compete to provide clearing services for the interest rate swaps subject to this proposal (as well as those not required to be cleared).

To the extent that parties to interest rate swaps subject to this proposal consider clearing the swaps reasonably interchangeable with not clearing them, the proposed determination would eliminate at least one competitive substitute within the clearinghouse services market for the interest rate swaps identified in this proposal. Given the risk-mitigation purpose and benefit of migration to voluntary interest rate swap clearing, however, the Commission sees some basis to doubt that counterparties to cleared swaps would consider the alternative of not clearing interest rate swaps subject to this proposal as a reasonable substitute to a degree sufficient that they should be viewed as populating the same relevant market.[135] Furthermore, if the alternative of not clearing the interest rate swaps subject to this proposal falls outside of the relevant services market that includes clearing, the proposed clearing determination should not impact competition in the clearing services market. The Commission requests comment on the extent to which foregoing clearing is considered reasonably interchangeable with clearing the interest rate swaps subject to this proposal and, in particular, if parties transacting interest rate swaps subject to this proposal would forego clearing if clearinghouses raised the price of clearing five percent. The Commission also requests comment on whether a different percentage than five percent should be used.

Moreover, even if cleared and non-cleared transactions of the type subject to this proposal are now within the same relevant market, removing the uncleared option through this proposed rulemaking is not determinative of negative competitive impact. Other factors—including the availability of other substitutes within the market or potential for new entry into the market—may constrain market power.

Additionally, the potential for new entry may constrain market power in an otherwise concentrated clearing services market. The Commission does not foresee that the proposed determination constructs barriers that would deter or impede new entry into a clearing services market.[136] Indeed, there is some basis to expect that the determination could foster an environment conducive to new entry. For example, the proposed clearing determinations, and the prospect that more may follow, is likely to reinforce, if not encourage, growth in demand for clearing services. Demand growth, in turn, can enhance the sales opportunity, a condition hospitable to new entry.[137] The Commission requests comment on the extent to which: (1) Entry barriers currently do or do not exist with respect to a clearing services market for the interest rate swaps subject to this proposal; (2) the proposed determinations may lessen or increase these barriers; and (3) the proposed determinations otherwise may encourage, discourage, facilitate, and/or dampen new entry into the market.

Request for Comments

In addition to what is noted above, the Commission requests comment, and quantifiable data, on whether the required clearing of any or all of these swaps will create conditions that create, increase, or facilitate an exercise of: (1) Clearing services market power in LCH, CME, and IDCH, and/or any other clearing service market participant, including conditions that would dampen competition for clearing services and/or increase the cost of clearing services; and/or (2) market power in any product markets for interest rate swaps, including conditions that would dampen competition for these product markets and/or increase the cost of interest rate swaps involving the interest rate swaps identified in this proposal. The Commission seeks comment, and quantifiable data, on the likely cost increases associated with clearing, particularly those fees and charges

[134] *See* Section II.D above for more detailed discussion.

[135] In other words, the Commission questions that, faced with an assumed five percent non-transitory increase in the price of clearing the identified interest rate swaps, including fees and other charges, that the parties to these interest rate swap transactions would forego clearing in sufficient volume to render the price increase unprofitable.

[136] That said, the Commission recognizes that (1) to the extent the clearing services market for the interest rate swaps identified in this proposal, after foreclosing uncleared swaps, would be limited to a concentrated few participants with highly aligned incentives, and (2) the clearing services market is insulated from new competitive entry through barriers—*e.g.,* high sunk capital cost requirements; high switching costs to transition from embedded, incumbents; and access restrictions—the proposed determination could have a negative competitive impact by increasing market concentration.

[137] *See, e.g.,* Horizontal Merger Guidelines at § 9.2 (entry likely if it would be profitable which is in part a function of ''the output level the entrant is likely to obtain'').

imposed by DCOs, and the effects of such increases on counterparties currently participating in the market. The Commission also seeks comment regarding the effect of competition on DCO risk management. The Commission also welcomes comment on any other aspect of this factor.

e. Legal Certainty in the Event of the Insolvency

Section 2(h)(2)(D)(ii)(V) of the CEA requires the Commission to take into account the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property. The Commission is proposing this clearing requirement based on its view that there is reasonable legal certainty with regard to the treatment of customer and swap counterparty positions, funds, and property in connection with cleared swaps, namely the interest rate swaps subject to this proposal, in the event of the insolvency of the relevant DCO (CME, LCH, or IDCH) or one or more of the DCO's clearing members.

The Commission concludes that, in the case of a clearing member insolvency at CME or IDCH, subchapter IV of Chapter 7 of the U.S. Bankruptcy Code (11 U.S.C. 761–767) and Part 190 of the Commission's regulations would govern the treatment of customer positions.[138] Pursuant to section 4d(f) of the CEA, a clearing member accepting funds from a customer to margin a cleared swap, must be a registered FCM. Pursuant to 11 U.S.C. 761–767 and Part 190 of the Commission's regulations, the customer's interest rate swap positions, carried by the insolvent FCM, would be deemed ''commodity contracts.'' [139] As a result, neither a clearing member's bankruptcy nor any order of a bankruptcy court could prevent either CME or IDCH from closing out/liquidating such positions. However, customers of clearing members would have priority over all other claimants with respect to customer funds that had been held by the defaulting clearing member to margin swaps, such as the interest rate swaps subject to this proposal.[140] Thus, customer claims would have priority over proprietary claims and general creditor claims. Customer funds would be distributed to swap customers, including interest rate swap customers, in accordance with Commission regulations and section 766(h) of the Bankruptcy Code. Moreover, the Bankruptcy Code and the Commission's rules thereunder (in particular 11 U.S.C. 764(b) and 17 CFR 190.06) permit the transfer of customer positions and collateral to solvent clearing members.

Similarly, 11 U.S.C. 761–767 and Part 190 would govern the bankruptcy of a DCO, in conjunction with DCO rules providing for the termination of outstanding contracts and/or return of remaining clearing member and customer property to clearing members.

With regard to LCH, the Commission understands that the default of a clearing member of LCH would be governed by the rules of that DCO. LCH, a DCO based in the United Kingdom, has represented that under English law its rules would supersede English insolvency laws. Under its rules, LCH would be permitted to close out and/or transfer positions of a defaulting clearing member that is an FCM pursuant to the U.S. Bankruptcy Code and Part 190 of the Commission's regulations. According to LCH's submission, the insolvency of LCH itself would be governed by both English insolvency law and Part 190.

LCH has obtained legal opinions that support the existence of such legal certainty in relation to the protection of customer and swap counterparty positions, funds, and property in the event of the insolvency of one or more of its clearing members. In addition, LCH has obtained a legal opinion from U.S. counsel regarding compliance with the protections afforded to FCM customers under New York law.

Request for Comments

The Commission invites comment regarding whether there is reasonable legal certainty in the event of an insolvency of a DCO or one or more of its clearing members with regard to the treatment of customer and swap counterparty positions, funds, and property.

III. Proposed Rule

The Commission is proposing the following rules under section 2(h)(2), as well as its authority under sections 5b(c)(2)(L) and 8a(5) of the CEA. In issuing a determination regarding whether a swap or class of swaps is required to be cleared, ''the Commission may require such terms and conditions to the requirement as the Commission determines to be appropriate.'' [141]

A. Proposed § 50.1 Definitions

Proposed § 50.1 sets forth two defined terms: ''business day'' and ''day of execution.'' The definition of business day would exclude Saturdays, Sundays, and legal holidays. This definition is being proposed as a means of addressing situations where executing counterparties are located in different time zones. It is intended to avoid difficulties associated with end-of-day trading by deeming swaps executed after 4:00pm, or on a day other than a business day, to have been executed on the immediately succeeding business day. The Commission recognizes that market participants should not be required to maintain back-office operations 24 hours a day or 7 days a week in order to meet the proposed deadline for submitting swaps that are required to be cleared to a DCO. The Commission also is attempting to be sensitive to possible concerns about timeframes that may discourage trade execution late in the day. To account for time-zone issues, the ''day of execution'' has been defined to be the calendar day of the party to the swap that ends latest, giving the parties the maximum amount of time to subject their swaps to a DCO while still requiring such submission on a same-day basis.

B. Proposed § 50.2 Treatment of Swaps Subject to a Clearing Requirement

Proposed § 50.2(a) would require all persons, other than those who elect the exception for non-financial entities in accordance with § 39.6, to submit a swap that is part of the class described in § 50.4 for clearing by a DCO as soon as technologically practicable and no later than the end of the day of execution. The objective of this provision is to ensure that swaps subject to a clearing requirement are submitted to DCOs for clearing in a timely manner. The Commission notes that this proposal regarding timing of submission to a DCO is consistent with the real-time public reporting rules and the rules mandating deadlines for the reporting of swap data to SDRs, both of which use ''as soon as technologically practicable'' as the applicable standard.[142]

For purposes of this rule, the Commission clarifies that submission of a swap by a market participant to its FCM clearing member would be deemed

[138] The Commission observes that an FCM or DCO also may be subject to resolution under Title II of the Dodd-Frank Act to the extent it would qualify as covered financial company (as defined in section 201(a)(8) of the Dodd-Frank Act).

[139] If an FCM is also registered as a broker-dealer, certain issues related to its insolvency proceeding would also be governed by the Securities Investor Protection Act.

[140] Claims seeking payment for the administration of customer property would share this priority.

[141] Section 2(h)(2)(D)(iii) of the CEA.

[142] *See* 17 CFR 43.2, Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1243–44 (Jan. 9, 2012); and 17 CFR 45.3, Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136, 2199–2200 (Jan. 13, 2012).

to meet the requirements for submitting the swap to a DCO. Once a customer submits a swap to its FCM, the timeliness considerations are governed by other straight-through-processing rules recently finalized by the Commission.[143] Under § 1.74(a), FCMs that are clearing members of DCOs shall coordinate with DCOs to establish systems that enable the FCM or DCO to accept or reject each trade submitted for clearing by a customer of the FCM as quickly as would be technologically practicable if fully automated systems were used. Similarly, under § 1.74(b), FCM clearing members must accept or reject each trade submitted to it by a customer as quickly as would be technologically practicable if fully automated systems were used. Those market participants that clear on their own behalf would be required to submit their swaps to a DCO directly and pursuant to the proposed timeframe.

Proposed § 50.2(b) would require persons subject to § 50.2(a) to undertake reasonable efforts to determine whether a swap is required to be cleared. The Commission would consider such reasonable efforts to include checking the Commission's Web site or the DCO's Web site for verification of whether a swap is required to be cleared. Similarly, market participants could consult third-party service providers for such verification. This reasonable efforts standard is intended to provide market participants with clarity as to what is expected of them when they enter into a swap that has the specifications of one of the classes identified in proposed § 50.4.

Ideally, DCOs will design and develop systems that will enable market participants and trading platforms to check whether or not their swap is subject to a clearing requirement and be provided with an answer within seconds (or faster). This technology would provide a single-stop solution for the market with regard to checking eligibility under a required clearing regime.

C. Proposed § 50.3 Notice to the Public

Proposed § 50.3(a) would require each DCO to post on its Web site a list of all swaps that it will accept for clearing and clearly indicate which of those swaps the Commission has determined are required to be cleared pursuant to part 50 of the Commission's regulations and section 2(h)(1) of the CEA. The proposed rule builds upon the requirements of § 39.21(c)(1), which requires each DCO to disclose publicly information concerning the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO. Proposed § 50.3(b) would require the Commission to post on its Web site a list of those swaps it has determined are required to be cleared and all DCOs that are eligible to clear such classes of swaps. The Commission believes that this will provide market participants with sufficient notice regarding which swaps are subject to a clearing requirement.

D. Proposed § 50.4 Classes of Swaps Required To Be Cleared

As discussed at length above, proposed § 50.4 sets forth the classes of interest rate swaps and CDS that the Commission has determined are required to be cleared. Proposed § 50.4(a) includes a table listing those types of interest rate swaps the Commission would require to be cleared; proposed § 50.4(b) includes a table listing those types of CDS indices the Commission would require to be cleared. The Commission believes that this format provides market participants with a clear understanding of which swaps are required to be cleared. By using basic specifications to identify the swaps subject to the clearing requirement, counterparties contemplating entering into a swap can determine quickly as a threshold matter whether or not the particular swap may be subject to a clearing requirement. If the swap has the basic specifications of a class of swaps determined to be subject to a clearing requirement, the parties will know that they need to verify whether a DCO will clear that particular swap. This will reduce the burden on swap counterparties related to determining whether a particular swap may be subject to the clearing requirement.

E. Proposed § 50.5 Clearing Transition Rules

Proposed § 50.5 would codify section 2(h)(6) of the CEA. Under proposed § 50.5(a), swaps that are part of a class described in § 50.4 but were entered into before the enactment of the Dodd-Frank Act would be exempt from clearing so long as the swap is reported to an SDR pursuant to § 44.02 and section 2(h)(5)(A) of the CEA. Similarly, under proposed § 50.5(b), swaps entered into after the enactment of the Dodd-Frank Act but before the application of the clearing requirement would be exempt from the clearing requirement if reported pursuant to § 44.03 and section 2(h)(5)(B) of the Act.

F. Proposed § 50.6 Delegation of Authority

Proposed § 50.6(a) would delegate to the Director of the Division of Clearing and Risk, or the Director's designee, with the consultation of the General Counsel or the General Counsel's designee, the authority to determine whether a swap falls within a class of swaps described in § 50.4 and to communicate such a determination to the relevant DCOs. The Commission believes that the Division of Clearing and Risk has the requisite expertise to make such a determination and that the most expeditious way for the marketplace to be apprised of a such a determination would be for the Division of Clearing and Risk to make the determination itself and to communicate it directly to the relevant DCOs.

Swaps that contain the specifications described in § 50.4 would be presumed to fall within a class of swaps already subject to a clearing requirement. In this manner, the Commission hopes to facilitate DCOs' ability to add new swaps to particular classes without undue burden.

G. Proposed § 50.10 Prevention of Evasion of the Clearing Requirement and Abuse of an Exception or Exemption to the Clearing Requirement

The Commission is proposing § 50.10 to prevent evasion of the clearing requirement and prevent abuse of any exemption or exception to the clearing requirement under the Commission's new rulemaking authority provided in the Dodd-Frank Act amendments to sections 2(h)(4)(A)[144] (Prevention of Evasion) and 2(h)(7)(F)[145] (Abuse of the End-User Exception) of the CEA and under the Commission's existing rulemaking authority in section 8a(5)[146] (General Rulemaking Authority) of the CEA. Proposed § 50.10 would prohibit (a) evasions of the requirements of section 2(h), (b) abuse of the end-user exception to the clearing requirement, and (c) abuse of any exemption or exception to the requirements of section 2(h), including any exemption or exception that the Commission may provide by rule, regulation, or order.

Section 2(h) of the CEA provides two express rulemaking provisions specifically addressing prevention of evasion and prevention of abuse of the clearing requirement. Section 2(h)(4)(A) states that the Commission shall prescribe rules and issue interpretations

[143] Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278, 21307 (Apr. 9, 2012).

[144] Section 2(h)(4) of the CEA, 7 U.S.C. 2(h)(4).

[145] Section 2(h)(7)(F) of the CEA, 7 U.S.C. 2(h)(7)(F).

[146] Section 8a(5) of the CEA, 7 U.S.C. 12a(5).

of rules as determined by the Commission to be necessary to prevent evasions of the clearing requirements under section 2(h) of the CEA. Section 2(h)(7)(F) provides that the Commission may prescribe such rules or issue interpretations of the rules as the Commission determines to be necessary to prevent abuse of the exceptions to the clearing requirement. The Commission preliminarily views evasion of the clearing requirement and abuse of an exemption or exception to the clearing requirement, including the end-user exception, to be related concepts and are informed by new enforcement authority under the Dodd-Frank Act, which added new sections 6(e)(4)–(5) [147] and 9(a)(6) [148] to CEA.

Proposed § 50.10(a) would make it unlawful for any person to knowingly or recklessly evade, participate in, or facilitate an evasion of any of the requirements of section 2(h) of the CEA. Proposed § 50.10(a) is informed by and consistent with section 6(e)(4) and (5) of the CEA, which states that any DCO, SD, or MSP that ''knowingly or recklessly evades or participates in or facilitates an evasion of the requirements of section 2(h) shall be liable for a civil monetary penalty in twice the amount otherwise available for a violation of section 2(h).'' Proposed § 50.10(a), however, would apply to any person. In addition, proposed § 50.10(a) would apply to any requirement under section 2(h) of the CEA or any Commission rule or regulation promulgated thereunder. These requirements include the clearing requirement under section 2(h)(1), reporting of data under section 2(h)(5), and the trade execution requirement under section 2(h)(8), among other requirements.[149]

The Commission notes, however, that section 2(h)(1)(A) [150] of the CEA provides that it ''shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing'' to a DCO if the swap is required to be cleared. Unlike the knowing or reckless standard under proposed § 50.10(a), section 2(h)(1)(A) imposes a non-scienter standard on swap market participants. Therefore, any person engaged in a swap that is required to be cleared under section 2(h) and proposed Part 50 of the Commission's Regulations, and such person did not submit the swap for clearing, absent an exemption or exception, would be subject to a Commission enforcement action regardless of whether the person knowingly or recklessly failed to submit the swap for clearing.

Proposed § 50.10(b) makes it unlawful for any person to abuse the end-user exception to the clearing requirement as provided under section 2(h)(7) of the CEA and § 39.6.[151] Proposed § 50.10(b) is adopted under the authority in both section 2(h)(4)(A) and section 2(h)(7)(F). The Commission preliminarily believes that an abuse of the end-user exception to the clearing requirement may also, depending on the facts and circumstances, be an evasion of the requirements of section 2(h). The Commission's view is informed by section 9(a)(6) of the CEA, which cross-references both the prevention of evasion authority in section 2(h)(4) and prevention of abuse of the exception to the clearing requirement in section 2(h)(7)(F). Section 9(a)(6) states that it ''shall be a felony punishable by a fine of not more than $1,000,000 or imprisonment for not more than 10 years, or both, together with the costs of prosecution, for * * * [a]ny person to abuse the end user clearing exemption under section 2(h)(4), as determined by the Commission.'' Therefore, the Commission is proposing to interpret a violation of section 9(a)(6) of the CEA to also be a violation of proposed § 50.10(b).

Proposed § 50.10(c) makes it unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the CEA, including any exemption or exception, as the Commission may provide by rule, regulation, or order. This provision is informed by the Dodd-Frank Act amendments in section 2(h)(4)(A) to prescribe rules necessary to prevent evasions of the clearing requirements, section 2(h)(7)(F) to prescribe rules necessary to prevent abuse of the exceptions to the clearing requirements, and the Commission's general rulemaking authority in section 8a(5) to promulgate rules that, in the judgment of the Commission, are reasonably necessary to accomplish any purposes of the CEA. Therefore, the Commission preliminarily believes that proposed § 50.10(c) is necessary to prevent abuses of any exemption or exception to the requirements of section 2(h).

The Commission believes a ''principles-based'' approach to proposed § 50.10 is appropriate. The Commission is not proposing to provide a bright-line test of non-evasive or abusive conduct, because such an approach may be a roadmap for engaging in evasive or abusive conduct or activities. Nevertheless, the Commission is proposing additional guidance regarding evasion and abuse in order to provide clarity to market participants.[152]

The Commission proposes to interpret these rules in a manner similar to its interpretation of the anti-evasion rules that it recently adopted in its rulemaking to further define the term swap.[153] The Commission proposes to determine on a case-by-case basis, whether particular transactions or other activities constitute an evasion of the requirements of section 2(h) of the CEA or the regulations promulgated thereunder or an abuse of any exemption or exception to the requirements of section 2(h). Each such transaction or activity would be evaluated on a case-by-case basis with consideration given to all the facts and circumstances.

Similar to its approach in the rules further defining the term ''swap,'' the Commission proposes that it would not consider transactions or other activities structured in a manner solely motivated by a legitimate business purpose to constitute evasion or abuse. Additionally, when determining whether particular conduct is an evasion of the requirements of section 2(h) or an abuse of any exemptions or exceptions to those requirements, the Commission will consider the extent to which the conduct involves deceit, deception, or other unlawful or illegitimate activity.

The Commission recognizes that market participants may engage in conduct or activities, such as structuring a transaction in a particular way, for legitimate business purposes, without any intention to evade the requirements of section 2(h) of the CEA or abuse any exemptions or exceptions thereunder. Thus, in evaluating whether a person has evaded such requirements or abused

[147] Section 6(e)(4)–(5) of the CEA, 7 U.S.C. 9a(4)–(5).

[148] Section 9(a)(6) of the CEA, 7 U.S.C. 13(a)(6).

[149] For example, it would be a violation of proposed § 50.10(a) for a SEF to knowingly or recklessly evade or participate in or facilitate an evasion of the trade execution requirement under section 2(h)(8).

[150] Section 2(h)(1)(A) of the CEA, 7 U.S.C. 2(h)(1)(A).

[151] *See* End-User Exception to the Clearing Requirement for Swaps, adopted by the Commission on July 10, 2012, available at *www.cftc.gov.*

[152] Examples described in the guidance are illustrative and not exhaustive of the transactions, instruments, or entities that could be considered evasive. In considering whether a transaction, instrument, or entity is evasive, the Commission will consider the facts and circumstances of each situation.

[153] *See* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Section VII, adopted by the Commission on July 10, 2012, available at *www.cftc.gov.*

an exemption or exception, the Commission proposes to consider the extent to which a person has a legitimate business purpose in connection with the relevant conduct or activities. This proposed analytical method will be useful in the overall analysis of potentially knowingly or recklessly evasive conduct or abusive conduct. The Commission proposes to view legitimate business purpose considerations on a case-by-case basis in conjunction with all other relevant facts and circumstances.

Moreover, the Commission recognizes that it is possible that a person intending to evade the requirements of section 2(h) or abuse an exemption or exception thereunder may attempt to justify its actions by claiming that such actions are legitimate business practices in its industry. Therefore, the Commission proposes to retain the flexibility, via an analysis of all relevant facts and circumstances, to confirm not only the legitimacy of the business purpose of those actions but whether the actions could still be determined to be evasive or abusive. Because market participants engage in conduct and activities, such as structuring transactions and instruments, in a particular way for various reasons, it is essential that all relevant facts and circumstances be considered, including legitimate business purposes, before reaching any conclusion as to evasion or abuse.

When determining whether a particular activity constitutes an evasion of the requirements of section 2(h) or an abuse of any exemption or exception to such requirements, the Commission proposes to consider the extent to which the activity involves deceit, deception, or other unlawful or illegitimate activity. The Commission believes that although it is likely that fraud, deceit, or unlawful activity will be present where evasion or abuse has occurred, these factors are not prerequisites to finding a violation of proposed rule § 50.10. Rather, fraud, deceit, or unlawful activity is one circumstance the Commission proposes to consider when evaluating a person's conduct or activities.

Finally, when considering all the relevant facts and circumstances under a potential violation of proposed rule § 50.10, the Commission would not consider the form, label, or written documentation of any relevant agreement, contract or transaction to be dispositive. This approach is intended to prevent evasion and abuse through clever draftsmanship of a form, label, or other written documentation. Therefore, the Commission proposes to look beyond the form of the agreement, contract or transaction to examine its actual substance and purpose to prevent any evasion or abuse through clever draftsmanship.

In addition to the prohibitions under proposed § 50.10, the Commission notes that additional provisions of the CEA may also be applicable to evasive or abusive practices. For example, the Commission notes that swaps, whether cleared or uncleared, must be reported to a registered SDR, or if no SDR will accept the swap, to the Commission.[154] In that regard, the Commission has proposed that to be eligible to qualify for certain exceptions or to be able to rely on certain exemptions, at least one party to the swap must report certain information to an SDR or to the Commission. Regulation 39.6(b)(4), for example, requires at least one party to a swap that has elected to use the end-user exception to the clearing requirement to report whether the swap is used to hedge or mitigate commercial risk.[155]

Considering this regulatory regime, certain evasive or abusive practices, such as making false statements or submission in connection with the clearing requirement, may also violate other provisions of the CEA. For example, section 6(c)(2)[156] of the CEA, which makes it unlawful for any person to make any false or misleading statement of material fact to the Commission, including in any report filed with the Commission or any other information relating to a swap. Furthermore, section 9(a)(4)[157] of the CEA makes it a felony for any person to willfully falsify a material fact, make any false or fraudulent statements or representations, or make or use any false writing or document or fraudulent statement or entry to an SDR. Thus, the Commission may bring enforcement actions under proposed § 50.10, section 6(c)(2), and section 9(a)(4), among other statutory provisions and rules, to prevent evasions of the requirements of section 2(h) and abuses of any exemption or exception to such requirements.

Request for Comment

The Commission requests comment on all aspects of the proposed rules and specifically on:

- Should the Commission clarify in the proposed rules that the clearing requirement applies to all new swaps and all changes in the ownership of a swap, such as assignment, novation, exchange, transfer, or conveyance?
- Is proposed § 50.10 and the guidance set forth in this section sufficient to address concerns of evasion of the requirements of section 2(h) or an abuse of any exemption or exception to such requirements? Is further guidance necessary? If so, what further guidance would be appropriate?
- Should the Commission prohibit certain specific practices that would be evasions of the requirements of section 2(h)?
- Should the Commission prohibit certain specific practices that would be an abuse of the end-user exception?
- Should the Commission prohibit certain specific practices that would be an abuse of any other exemption or exception to the requirements of section 2(h)?

IV. Implementation

The Commission is proposing to require compliance with the clearing requirement for the classes of swaps identified in proposed § 50.4 according to the compliance schedule contained in § 50.25.[158] Under this schedule, compliance with the clearing requirement will be phased by type of market participant entering into a swap subject to the clearing requirement.

V. Cost Benefit Considerations

A. Statutory and Regulatory Background

The regulations contained in this proposal identify certain classes of swaps that are required to be cleared pursuant to the Dodd-Frank Act's[159] clearing requirement incorporated within amended section 2(h)(1)(A) of the CEA.[160] This clearing requirement is designed to standardize and reduce counterparty risk associated with swaps, and, in turn, mitigate the potential

[154] *See* section 2(a)(13)(G) of the CEA, 7 U.S.C. 2(a)(13)(G), and section 4r(a)(1) of the CEA, 7 U.S.C. 6r(a)(1).

[155] *See* End-User Exception to the Clearing Requirement for Swaps, adopted by the Commission on July 10, 2012, available at *www.cftc.gov.*

[156] Section 6(c)(2) of the CEA, 7 U.S.C. 9(c)(2).

[157] Section 9(a)(4) of the CEA, 7 U.S.C. 13(a)(4). *See also* section 9(a)(3) of the CEA, 7 U.S.C. 13(a)(3).

[158] The Commission proposed a compliance schedule for the clearing requirement in September 2011, 76 FR 58186 (Sept. 20, 2011), and is finalizing 17 CFR 50.25 concurrently.

[159] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[160] This section states: ''It shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization that is registered under this Act or a derivatives clearing organization that is exempt from registration under this Act if the swap is required to be cleared.''

systemic impact of such risks and reduce the likelihood for swaps to cause or exacerbate instability in the financial system. It reflects a fundamental premise of the Dodd-Frank Act: the use of properly functioning central clearing can reduce systemic risk.

Regulation 39.5 provides an outline for the Commission's review of swaps for required clearing.[161] Regulation 39.5 allows the Commission to review swaps submitted by DCOs or those swaps that the Commission opts to review on its own initiative.[162] Under section 2(h)(2)(D) of the CEA, in reviewing swaps for required clearing, the Commission must take into account the following factors: (1) Significant outstanding notional exposures, trading liquidity and adequate pricing data, (2) the availability of rule framework, capacity, operational expertise and credit support infrastructure, (3) the effect on the mitigation of systemic risk, (4) the effect on competition and (5) the existence of reasonable legal certainty in the event of the insolvency of the DCO or one or more of its clearing members.[163] Regulation 39.5 also directs DCOs to provide to the Commission other information, such as product specifications, participant eligibility standards, pricing sources, risk management procedures, a description of the manner in which the DCO has provided notice of the submission to its members and any additional information requested by the Commission. This information is designed to assist the Commission in identifying those swaps that are required to be cleared.

B. Overview of Swap Clearing

i. How Clearing Reduces Risk

When a bilateral swap is cleared, the clearinghouse becomes the counterparty to each of the original participants in the swap. This standardizes counterparty risk for the original swap participants in that they each bear the same risk—*i.e.,* the risk attributable to facing the clearinghouse as counterparty. In addition, clearing mitigates counterparty risk to the extent that the clearinghouse is a more creditworthy counterparty relative to the original swap participants. Clearinghouses have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities.

Given the variety of effective clearinghouse tools to monitor and manage counterparty risk, the Commission believes that DCOs will continue to be some of the most creditworthy counterparties in the swap markets. These tools include the contractual right to: (1) Collect initial and variation margin associated with outstanding swap positions; (2) mark positions to market regularly (usually one or more times per day) and issue margin calls whenever the margin in a customer's account has dropped below predetermined levels set by the DCO; (3) adjust the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying product; and (4) close out the swap positions of a customer that does not meet margin calls within a specified period of time.

Moreover, in the event that a clearing member defaults on their obligations to the DCO, the latter has a number of remedies to manage associated risks, including transferring the swap positions of the defaulted member, and covering any losses that may have accrued with the defaulting member's margin on deposit. In order to transfer the swap positions of a defaulting member and manage the risk of those positions while doing so, the DCO has the ability to: (1) Hedge the portfolio of positions of the defaulting member to limit future losses; (2) partition the portfolio into smaller pieces; (3) auction off the pieces of the portfolio, together with their corresponding hedges, to other members of the DCO; and (4) allocate any remaining positions to members of the DCO. In order to cover the losses associated with such a default, the DCO would typically draw from (in order): (1) The initial margin posted by the defaulting member; (2) the guaranty fund contribution of the defaulting member; (3) the DCO's own capital contribution; (4) the guaranty fund contribution of non-defaulting members; and (5) an assessment on the non-defaulting members. These mutualized risk mitigation capabilities are largely unique to clearinghouses, and help to ensure that they remain solvent and creditworthy swap counterparties even when dealing with defaults by their members or other challenging market circumstances.

ii. Movement of Swaps Into Clearing

There is significant evidence that some parts of the OTC swap markets (the IRS and CDS markets in particular) have been migrating into clearing over the last few years in response to natural market incentives as well as in anticipation of the Dodd-Frank Act's clearing requirement. LCH Clearnet data, for example, shows that the outstanding volume of interest rate swaps cleared by LCH has grown steadily since at least November 2007, as has the monthly registration of new trade sides. Data provided to the Commission shows that the notional amount of cleared IRS is approximately $72 trillion as of January 2007, and just over $236 trillion in September 2010, an increase of 228% in three and a half years.[164] Together, those facts indicate increased demand for LCH clearing services related to interest rate swaps, a portion of which preceded the Dodd-Frank Act.[165] Data available through CME and TriOptima indicate similar patterns of growing demand for interest rate swap clearing services, though their publically available data does not provide a picture of demand prior to the passage of the Dodd-Frank Act.[166]

In addition to IRS clearing, major CDS market participants are clearing their CDS indices and single names in significant volumes. As explained above, in 2008, the Federal Reserve Bank of New York (FRBNY) began encouraging market participants to establish a central counterparty to clear CDS.[167] In the past four years, CDS clearing has grown significantly. In total, CFTC-registered DCOs are currently holding more than $20 billion in aggregate in initial margin to cover cleared CDS positions.[168] Additionally, publicly available data shows that CME's CDS guaranty fund has approximately $629 million; ICE Clear Credit has a guaranty fund equal to $4.4 billion; and ICE Clear Europe has a

[161] 76 FR 44464 (July 26, 2011).

[162] *See* § 39.5(b), § 39.5(c). Under section 2(h)(2)(B)(ii) of the CEA, ''[a]ny swap or group, category, type, or class of swaps listed for clearing by a [DCO] as of the date of enactment shall be considered submitted to the Commission.''

[163] Section 2(h)(2)(D) of the CEA and § 39.5(b)(ii).

[164] Data provided to the Commission by LCH.

[165] *See http://www.lchclearnet.com/swaps/volumes/.*

[166] *See http://www.cmegroup.com/trading/interest-rates/cleared-otc/index.html#data* and *http://www.trioptima.com/repository/historical-reports.html.*

[167] *See* Federal Reserve Bank of New York, Press Release, ''New York Fed Welcomes Further Industry Commitments on Over-the-Counter Derivatives,'' Oct. 31, 2008, available at *http://www.newyorkfed.org/newsevents/news/markets/2008/an081031.html,* which references documents prepared by market participants describing the importance of clearing. *See also* Ciara Linnane and Karen Brettell, ''NY Federal Reserve pushes for central CDS counterparty,'' Reuters, Oct. 6, 2008, available at *http://www.reuters.com/article/2008/10/06/cds-regulation-idUSN0655208920081006.*

[168] Based on Commission data for registered DCOs as of May 10, 2012.

guaranty fund €2.7 billion for its CDS business.[169]

Notably, the move toward central clearing has been particularly pronounced during times of crisis, as market participants have voluntarily used central clearing as a way of protecting against counterparty credit risk. The bankruptcy of Enron, in 2001, led to the emergence of clearing for OTC energy swaps in the United States. After Enron's failure, many counterparties to energy swaps realized the benefits of substituting the creditworthiness of a clearing house for that of their bilateral counterparties. Much of the impetus for moving OTC energy swaps into clearing resulted from the credit crisis that developed following Enron's collapse.[170] According, to CME, its ClearPort service ''filled a major void in the aftermath of the Enron collapse, particularly in the OTC market for natural gas, which was left without a central OTC marketplace.'' [171]

iii. The Clearing Requirement and Role of the Commission

In the Dodd-Frank Act, Congress directed that clearing shift from a voluntary practice to a mandatory practice for certain swaps and gave the Commission responsibility for determining which swaps would be required to be cleared. Therefore, the costs and benefits of required clearing are attributable, in part, to the Act itself, and, in part, to Commission action, taking the form of an exercise of discretion to determine which swaps are required to be cleared. Because the requirements of the Dodd-Frank Act and the discretion of the Commission operate in concert in this way, it is impossible to distinguish precisely between those costs and benefits that result from the Dodd-Frank Act's clearing requirement, considered in the abstract, and those that result from the Commission's determinations that particular types of swaps will be required to be cleared. Also, because voluntary clearing of swaps has increased over past years (may be due in part to anticipation of the clearing requirement to be imposed under the Dodd-Frank Act, but may also be due in part to a realization of the benefits of clearing after the financial crisis), it is impossible to determine precisely the extent to which any increased use of clearing would result from statutory or regulatory requirements, as compared to swap market participants' desires to use clearing to obtain its risk-reducing benefits.[172]

The Commission also recognizes that there might not be a linear relationship between the quantity of swaps that are cleared (whether measured by number of swaps, the notional value of swaps or some other measure of swap quantity, such as the exposure resulting from the swaps) and the costs and benefits resulting from clearing. For example, if the Commission were to assume that the proposed rule would result in a doubling of the quantity of a certain type of swap that is cleared, it would not necessarily be the case that the costs and benefits of clearing that type of swap would double. Rather, the relationship could be non-linear for a variety of reasons (such as variations among the users of that type of swap). In fact, it may be reasonable to assume that where the costs of clearing are relatively low and the benefits are relatively high, market participants already voluntarily clear swaps even in the absence of a clearing requirement. The Commission requests comment on the relationship between the requirement that the swaps identified in the proposal be cleared and the costs and benefits of that requirement, including on whether that relationship is linear or non-linear.

For all these reasons, the Commission has determined that the costs and benefits related to the required clearing of the classes of IRS and CDS subject to this proposal are attributable, in part to (1) Congress's stated goal of reducing systemic risk by, among other things, requiring clearing of swaps and (2) the Commission's discretion in selecting swaps or classes of swaps in order to achieve those ends. The Commission will discuss the costs and benefits of the overall move from voluntary clearing to required clearing for the swaps subject to this proposal.

The Commission requests comment on this assumption, and in particular on the extent to which swap market participants' use of clearing results from a regulatory requirement that specific swaps be cleared (*i.e.,* the rules proposed here), the Dodd-Frank Act's general clearing requirement, or other motivations for the use of clearing, including, among other things, independent business reasons and incentives from other regulators, such as prudential authorities.

C. Consideration of the Costs and Benefits of the Commission's Action

i. CEA Section 15(a)

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

In the sections that follow the Commission considers: (1) Costs and benefits of required clearing for the classes of swaps identified in this proposal; (2) alternatives contemplated by the commission and their costs and benefits relative to the approach proposed herein; (3) the impact of required clearing for the proposed classes of swaps on the 15(a) factors.

ii. Costs and Benefits of Required Clearing Under the Proposal

In order to clear swaps in the classes identified in this proposal, certain market participants are likely to face certain startup and ongoing costs relating to technology and infrastructure, new or updated legal agreements, ongoing fees from service providers, and costs related to collateralization of their positions. The per-entity costs related to changes in technology, infrastructure, and legal agreements are likely to vary widely, depending on each market participant's existing technology infrastructure, legal agreements, operations, and anticipated needs in each of these areas. For market participants that already use clearing, some of these costs may be expected to be lower, while the opposite would

[169] *See http://www.cmegroup.com/clearing/cme-clearing-overview/safeguards.html* for data regarding CME's guaranty fund, as of May 10, 2012; *https://www.theice.com/clear_credit.jhtml* for data on the size of ICE Clear Credit's guaranty fund; and *https://www.theice.com/clear_europe_cds.jhtml* for data on the size of ICE Clear Europe's guaranty fund for CDS, as of May 10, 2012.

[170] ''Has OTC Energy Clearing Finally Taken Off?'' in Markets 03, a publication from FIA available at: *http://www.futuresindustry.org/downloads/Outlook/OTCenergy.pdf. See also,* ''Energy: An example for regulators to study,'' Financial Times, Nov 3, 2011, available at *http://www.ft.com/intl/cms/s/0/c5bfba26-fb3e-11e0-8df6-00144feab49a.html#axzz1zkpvIkJd.*

[171] CME Group, ''Stepping Out of Uncertainty,'' (2009), available at *http://www.cmegroup.com/company/history/magazine/Summer2009/steppingout.html.*

[172] It is also possible that some market participants would respond to the proposed rule's requirement that certain types of swaps be cleared by decreasing their use of such swaps. This possibility contributes to the uncertainty regarding how the proposed rule will affect the quantity of swaps that are cleared.

likely be true for market participants that begin to use clearing only because of the requirement. The costs of collateralization, on the other hand, are likely to vary depending on whether an entity is subject to capital requirements or not, and the differential between the cost of capital for the assets they uses as collateral, and the returns they realize on those assets. Commenters are requested to address the extent to which factors such as these will affect the costs of clearing for various market participants.

There are also significant benefits associated with increased clearing, including reducing and standardizing counterparty risk, increased transparency, and easier access to the swap markets. These effects together will contribute significantly to the stability and efficiency of the financial system. It is impossible, at this point, to quantify these benefits with any degree of precision. The Commission notes, however, that the extraordinary financial system turbulence of 2008 has had profound and long-lasting adverse effects on the real economy, and therefore reducing systemic risk provides significant, if unquantifiable, benefits.[173] Also, as is the case for the costs related to clearing, these benefits would be relatively less to the extent that market participants are already using clearing in the absence of a requirement. Commenters are requested to address this aspect of the analysis as well.

a. Technology, Infrastructure, and Legal Costs

With respect to technology, for market participants that already use swap clearing or transact in futures, many of the backend requirements for technology that supports cleared swaps are likely to be quite similar, and therefore necessary changes to those systems are likely to require a relatively lower costs. Market participants that are not currently using clearing for swaps or transacting in futures, however, may need to implement appropriate middleware to connect with an FCM that will clear their transactions.

Similarly for legal fees, the costs related to clearing the swaps that are subject to the proposed clearing requirement are likely to vary widely depending on whether market participants already use clearing or transact in futures. For those market participants that have not already engaged an FCM, it has been estimated that smaller financial institutions will spend between $2,500 and $25,000 reviewing and negotiating legal agreements when establishing a new business relationship with an FCM.[174] The Commission does not have information necessary to confirm these estimates or determine to what degree these estimates would apply to larger entities establishing a relationship with an FCM. In addition, the Commission does not have information to determine costs associated with entities that already have established relationships with one or more FCMs but need to revise those agreements. In all cases such costs are likely to depend significantly on the specific business needs of each entity and therefore are expected to vary widely among market participants.

In addition, the Commission is exercising the anti-evasion rulemaking authority granted to it by the Dodd-Frank Act. Generally, proposed rule § 50.10 states that it is unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the CEA, to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the CEA and Commission rule § 39.6, or to abuse any exemption or exception to the requirements of section 2(h) of the CEA, including any exemption or exception as the Commission may provide by rule, regulation, or order.

Although proposed rule § 50.10 does not set forth a bright line test to define evasion or abuse, the proposed rule is expected to help ensure that would-be evaders cannot engage in conduct or activities that constitute an evasion of the requirements of section 2(h) or an abuse of any exemption or exception to such requirements. The Commission also proposes guidance as to how it would determine if such evasion or abuse has occurred, while at the same time preserving the Commission's ability to determine, on a case-by-case basis, with consideration given to all the facts and circumstances, that other types of transactions or activities constitute an evasion or abuse under proposed § 50.10.

The Commission proposes that participants in the markets should already have policies and procedures in place to ensure that their employees, affiliates, and agents will refrain from engaging in activities, including devising transactions, for the purpose of evading, or in reckless disregard of, the requirements of section 2(h) of the CEA and Commission rules and regulations promulgated thereunder or to abuse any exemption or exception to such requirements. Given that the proposed rule imposes no affirmative duties (*i.e.,* reporting or recordkeeping), it is unlikely that it will impose any additional ongoing costs beyond the pre-existing costs associated with ensuring that the firm is not engaging in unlawful conduct. In that regard, the Commission believes that it will not be necessary for firms that currently have adequate compliance programs to hire additional staff or significantly upgrade their systems to comply with the proposed rule. Firms may, however, incur some one-time costs such as costs associated with training traders and staff on the proposed rule. In addition, market participants may incur costs when deciding whether particular conduct or activity could be construed as being an evasion of the requirements of section 2(h) or an abuse of any exemption or exception to such requirements. However, the proposed rules and proposed guidance explain what constitutes evasive or abusive conduct, which should serve to mitigate such costs.

The Commission requests comment, including any quantifiable data and analysis, on the changes that market participants will have to make to their technological and legal infrastructures in order to clear the swaps that are subject to the proposed clearing requirement. How many market participants may have to establish new relationships with FCMs, or significantly upgrade those relationships? What updates to legal documentation are necessary, if any, for entities that already have an existing FCM relationship? If commenting on this subject, please clarify whether the comment relates to market participants that currently transact in: (1) Uncleared

[173] For example, the PEW Economic Policy Group estimates total costs of the acute stage of the crisis for U.S. interests were approximately $12.04 trillion, including lost GDP, wages, real estate wealth, equity wealth, and fiscal costs. Their estimates include $7.4 trillion in losses in the equity markets between June 2008 and March 2009, but do not include subsequent gains in equity markets that restored markets to their mid-2008 levels by the end of 2009. In addition, their calculations do not include continued declines in real estate markets subsequent to March 2009. *See* Pew Economic Policy Group, ''The Cost of the Financial Crisis: The Impact of the September 2008 Economic Collapse,'' March 2010. The IMF estimated that the cost to the banking sector of the financial crisis through 2010 was approximately $2.2 trillion and reported a range of estimates for total cost to the taxpayer of GSE bailouts that ranged from $160 billion (Office of Management and Budget, February 2010) to $500 billion (Barclays Capital, December 2009). *See* IMF, ''Global Financial Stability Report: Responding to the Financial Crisis and Measuring Systemic Risks,'' October 2010. Both studies acknowledge that the estimates are subject to uncertainties.

[174] *See* Chatham Financial letter at 2, available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58077* and Webster Bank letter at 3, available at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=58076.*

swaps without margin agreements; (2) uncleared swaps with margin agreements; (3) cleared swaps; and/or (4) futures. If possible, please quantify costs and the specific platforms being implemented, or changes being made to existing platforms.

b. Ongoing Costs Related to FCMs and Other Service Providers

In addition to costs associated with technological and legal infrastructure, market participants transacting in swaps subject to the proposed clearing requirement will bear ongoing costs associated with fees charged by FCMs. Regarding fees, DCOs typically charge FCMs an initial transaction fee for each of the FCM's customers' IRS that are cleared, as well as an annual maintenance fee for each of their customers' open positions. Not including customer-specific and volume discounts, the transaction fees for IRS at the CME range from $1 to $24 per million notional amount for IRS and the maintenance fees are $2 per year per million notional amount for open positions.[175] LCH transaction fees for IRS range from $1–$20 per million notional amount, and the maintenance fee ranges from $5–$20 per swap per month, depending on the number of outstanding swap positions that an entity has with the clearinghouse.[176] For CDS, ICE Clear Credit charges an initial transaction fee of $6 per million notional amount. There is no maintenance fee charged by ICE for maintaining open CDS positions.[177]

FCMs will also bear additional fees with respect to their house accounts at the DCO to the extent that they clear more swaps due to the clearing requirement. For example, for IRS that they clear through CME, clearing members are charged a transaction fee that ranges from $0.75 to $18.00 per million notional, depending on the transaction maturity.[178] Members, however, are not charged annual maintenance fees for their open house positions.[179] For CDS, clearing members at ICE Clear Credit are charged $5 per transaction per million notional and there is no maintenance fee.[180]

As discussed above, it is difficult to predict precisely how the proposed requirement to clear the classes of swaps covered by this proposed rule will increase the use of swap clearing, as compared to the use of clearing that would occur in the absence of the requirement. However, the Commission expects that application of the clearing requirement to the swaps covered by the proposed rule will generally increase the use of clearing, leading to the ongoing transaction costs noted above.

In addition, the Commission understands that FCM customers that only transact in swaps occasionally are typically required to pay a monthly or annual fee to each FCM that ranges from $75,000 to $125,000 per year.[181] Again, although it is impossible to predict precisely how many FCM customers would be subject to such fees based on the proposed clearing requirement for CDS and IRS, the Commission expects that some market participants that previously did not use clearing would be subject to the requirements of the proposed rule.

The Commission requests comment on whether the cited fee information is accurate and typical, as well as, the extent to which such fees are expected to result from the requirement to clear the classes of swaps subject to the proposed rule. Comment is also requested on whether the increased use of clearing that may result is expected to change such fees, and if so, how. The Commission also requests additional comment, data, and analysis regarding the fee structures of FCMs in general, and in particular as they relate to the clearing of the types of swaps covered by the proposed rule. Specifically, the Commission requests comment on the following:

- Do the fees described above typically include fees charged by the DCO to the FCM for the FCM customer's swap positions?
- Do FCMs typically charge a similar fee to customers that are more active in trading swaps, and are such fees are generally greater, lesser, or similar to the fees charged to less active institutions?
- Do such maintenance fees exist for larger customers, and if so, approximately how much charged?

c. Costs Related to Collateralization of Cleared Swap Positions

As mentioned above, market participants that enter into the classes of swaps covered by the proposed rule will be required to post collateral at the DCO. Of course, the incremental cost of collateral resulting from the application of the proposed clearing requirement depends on the extent to which such swaps are already being cleared (even in the absence of the requirement) or otherwise collateralized. The incremental cost also depends on whether such swaps are, if not collateralized, priced to include implicit contingent liabilities and counterparty risk born by the counterparty to the swap.

A conservative approach would be to assume that the swaps that would be covered by the proposed clearing requirement currently are uncleared, completely uncollateralized, and not priced to include implicit contingent liabilities and counterparty risk born by the counterparty. In this case, imposition of the clearing requirement for those types of swaps would create additional costs due to: (1) The spread between cost of capital and returns on that capital for assets posted to meet initial margin for the entire term of the swap; and (2) the spread between cost of capital and returns on that capital for assets posted to meet the variation margin to the extent a party is ''out of the money'' on each swap. Under the assumptions mentioned above, if every IRS and CDS that is not currently cleared were moved into clearing, the maximum additional initial margin that would need to be posted is approximately $19.2 billion for IRS and $53 billion for CDS. However, for the reasons described below, these numbers likely overestimate the amount of additional initial margin that would need to be posted.[182]

The Commission calculated its estimated additional initial margin amounts based on the following assumptions. According to representations made to the Commission by LCH, they clear approximately 51% of the IRS market. The total amount of initial margin on deposit at LCH for IRS is approximately $20 billion.[183] Therefore, if all remaining IRS were moved into

[175] *See* CME pricing charts at: *http://www.cmegroup.com/trading/cds/files/CDS-Fees.pdf;*

http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Customer-Fee.pdf;

and *http://www.cmegroup.com/trading/interest-rates/files/CME-IRS-Self-Clearing-Fee.pdf [hereinafter ''CME Pricing Charts'']*.

[176] *See* LCH pricing for clearing services related to OTC IRS at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

[177] *See* ICE Clear Credit fees for CDS at: *https://www.theice.com/publicdocs/clear_credit/circulars/ICEClearCredit%20Fee%20Schedule%20Notice_FINAL.pdf.*

[178] *See* CME Pricing Charts.

[179] *See id.*

[180] *See* LCH pricing for clearing services related to OTC IRS at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

[181] *See* letters from Chatham and Webster Bank.

[182] There also is a possibility that the numbers calculated above under-estimate the amount of additional initial margin that will need to be posted under a required clearing regime for IRS and CDS. For instance, there may be numerous market participants with directional portfolios that will be unable to benefit from margin offsets. However, the Commission continues to believe that its estimates are more likely to overstate the required additional margin.

[183] The total amount of initial margin on deposit at CME for IRS is $5 billion, but for purposes of this estimate, the Commission is not including that amount.

clearing, approximately $19.2 billion ($20B/0.51 − $20B = 19.2B) would have to be posted in initial margin.

Similarly, the initial margin related to CDS currently on deposit at CME, ICE Clear Credit, and ICE Clear Europe is approximately $21.4 billion.[184] This amount includes initial margin based on both index-based CDS and single-name CDS positions. BIS data indicates that approximately 36.6% of the CDS market comprises index-based CDS.[185] If we assume that approximately 36.6% of the overall portfolio-based CDS margin (*i.e.,* CDS indices and single-name CDS margined together) currently held by DCOs for CDS positions is related to index-based CDS, and then add any margin held by DCOs attributable solely to index-based CDS, we can estimate that approximately $9.0 billion in margin currently held by those DCOs is related to index-based CDS. ISDA data indicates that 14.5% of the index-based CDS market is currently cleared.[186] Therefore, if the entire index-based CDS market moved into clearing, $53 billion ($9.0/.145 − $9.0 = $53) in initial margin would have to be posted at DCOs.[187] Again, it is highly probable that these estimates significantly overstate the amount of additional capital that would be posted for a number of reasons described below.

First, this analysis assumes that every IRS and index-based CDS not currently cleared is brought into clearing under the proposed rule. However, in this rule the Commission has proposed required clearing only for certain classes of IRS and CDS, and not for all IRS and CDS. Therefore, there will still be certain types of IRS, such as those related to the thirteen additional currencies cleared by LCH, that are not required to be cleared. Moreover, the clearing requirement will apply only to new swap transactions whereas market estimates include legacy transactions.

In addition, non-financial entities entering into swaps for the purpose of hedging or mitigating commercial risk are not required to use clearing under section 2(h)(7) of the CEA. As a consequence, many entities will not be required to clear, even when entering into IRS or CDS that are otherwise required to be cleared. Third, some IRS and CDS involve cross-border transactions to which the Commission's clearing requirement will not apply.[188] Fourth, collateral is already posted with respect to many non-cleared IRS and CDS. ISDA conducted a recent survey which reported that 93.4% of all trades involving credit derivatives, and 78.1% of all trades involving fixed income derivatives are subject to collateral agreements.[189] Moreover, ISDA estimated that the aggregate amount of collateral in circulation in the non-cleared OTC derivatives market at the end of 2011 was approximately $3.6 trillion.[190]

In any case, it is reasonable to assume that the requirement to clear the swaps covered by the proposed rule will result in increased use of clearing and increased posting of collateral with respect to such swaps. To calculate the additional collateral cost to market participants, we must estimate the difference between the cost of capital for the additional collateral and the returns on that capital. In comments regarding other Commission rules, commenters have often taken the view that the difference between the cost and returns on capital for funds that are used as collateral is substantial.

In a study commissioned by the Working Group of Commercial Energy Firms, for example, NERA used an estimate of 13.08% for the pre-tax weighted average cost of capital for the firm, and an estimate of 3.49% for the pre-tax yield on collateral, for a difference as 9.59% which NERA used as the net pre-tax cost of collateral.[191] However, these estimates use the borrowing costs for the entire firm, but only consider the returns on capital for one part of the firm, when determining the spread between the two. The result is an over-stated difference, and therefore a higher cost associated with collateral than would result if the costs of capital and returns of capital were compared on a consistent basis.[192]

However, the Commission notes that this cost is not only likely overstated, for the reasons mentioned above, but that it also may not be a new cost. Rather, it is a displacement of a cost that is embedded in uncleared, uncollateralized swaps. Entering into a swap is costly for any market participant because of the default risk posed by its counterparty, whether the counterparty is a DCO, swap dealer, or other market participant. When a market participant faces the DCO, the DCO accounts for that counterparty risk by requiring collateral to be posted, and the cost of capital for the collateral is part of the cost that is necessary in order to maintain the swap position. When a market participant faces a dealer or other counterparty in an uncleared swap, however, the uncleared swap contains an implicit line of credit upon which the market participant effectively draws when its swap position is out of

[184] The total amount of initial margin on deposit only includes those amounts reported to the Commission by registered DCOs. Other clearinghouses, such as LCH.Clearnet.SA, clear the indices included in the proposed determination, however, the relative size of the open interest in the relevant CDS indices is substantially smaller than each of the DCOs included in this calculation.

[185] BIS estimates that the gross notional value of outstanding CDS contracts is $28.6 trillion, and that $10.5 trillion of that is index related CDS. *See* BIS data, available at *http://www.bis.org/statistics/otcder/dt21.pdf.*

[186] ISDA has estimated that 14.5% of the index-based CDS market is currently being cleared, whereas the total outstanding notional at CME, ICE Clear Europe, and ICE Clear Credit represents approximately 7.5% of the global index-based CDS market estimated by BIS. Such a discrepancy would be expected if one or more of the following occurred: (1) If ISDA overestimated the percentage of the index-based CDS that is currently being cleared; (2) if BIS overestimated the size of the global index-based swap market; (3) if a significant amount of compression occurs as index-based CDS are moved into clearing; and/or (4) if a significant portion of the cleared index-based CDS market is held at clearinghouses other than CME, ICE Clear Europe, and ICE Clear Credit. The Commission believes that the compression of CDS positions moving into clearing is the most likely explanation, and therefore has used the ISDA estimate. However, the Commission also requests comment from the public regarding the accuracy of ISDA and BIS estimates regarding index-based CDS markets, and requests from the public any additional data for purposes of determining with greater certainty how much of the index-based CDS market is currently being cleared.

[187] Both estimates assume that additional IRS brought into clearing would have similar margin requirements per unit of notional to those IRS that are already in clearing, and assumes that additional CDS brought into clearing would have similar margin requirements per unit of notional to those CDS that are already being cleared. These assumptions, in turn, imply similar levels of liquidity, compression, netting, and similar tenors for the swaps that are currently cleared and those that are not. While the Commission recognizes that these factors are not likely to be identical among both groups of products, adequate information to quantify the impact of each of these possible differences between the two groups of swaps on the amount of additional collateral that would have to be posted is not available.

[188] *See* Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41213 (July 12, 2012).

[189] *See* ISDA Margin Survey 2012, at 15, available at: *http://www2.isda.org/functional-areas/research/surveys/margin-surveys/.* Although it is unclear exactly how many of the derivatives covered by this survey are swaps, it is reasonable to assume that a large part of them are.

[190] This estimate, however, does not adjust for double counting of collateral assets. The same survey reports that as much as 91.1% of cash used as collateral and 43.8% of securities used as collateral are being reused, and therefore are counted two or more times in the ISDA survey. *See* ISDA Margin Survey 2012, at 20 and 11, respectively.

[191] The NERA study is available at: *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=50037* and their comments defending their cost of capital are available in their letter at *http://comments.cftc.gov/PublicComments/ViewComment.aspx?id=57015.*

[192] This aspect of the NERA study has been described in greater detail by MIT professors John Parsons and Antonio Mello, available at: *http://bettingthebusiness.com/2012/01/22/phantom-costs-to-the-swap-dealer-designation-and-otc-reform/* and *http://bettingthebusiness.com/2012/03/19/nera-doubles-down/.*

the money. Counterparties charge for this implicit line of credit in the spread they offer on uncollateralized, uncleared swaps. It can be shown that the cash flows of an uncollateralized swap (*i.e.,* a swap with an implicit line of credit) are, over time, substantially equivalent to the cash flows of a collateralized swap with an explicit line of credit.[193] And because the counterparty risk created by the implicit line of credit is the same as the counterparty risk that would result from an explicit line of credit provided to the same market participant, to a first order approximation, the charge for each should be the same as well.[194] This means that the cost of capital for additional collateral posted as a consequence of requiring uncollateralized swaps to be cleared does not introduce an additional cost, but rather takes a cost that is implicit in an uncleared, uncollateralized swap and makes it explicit. This observation applies to capital costs associated with both initial margin and variation margin.

The Commission invites further comment regarding the total amount of additional collateral that would be posted due to required clearing of the classes of swaps designated in this proposal. Furthermore, the Commission invites comment regarding the cost of capital and returns on capital for that collateral, as well as on the cost of the implicit line of credit embedded in uncleared, uncollateralized swaps. The Commission, in particular, welcomes any quantifiable data and analysis that commenters are willing to share regarding these subjects.

Another impact of the proposed rule may be that financial institutions are required to hold additional capital with respect to their swap positions pursuant to prudential regulatory capital requirements. Basel III standards are designed to incentivize central clearing of derivatives by applying a lower capital weighting to them than for similar uncleared derivatives positions. Therefore, the Commission expects that the capital that financial institutions are required to hold is likely to be reduced as a consequence of their increased use of swap clearing. The Commission invites comment on the effects of required clearing on the capital requirements for financial institutions. To the extent possible, please quantify the relevant costs and benefits and explain the effect of the relevant capital standards.

In addition, operational costs may result from the collateral requirements that apply to the proposed clearing requirement. With uncleared swaps, counterparties may agree not to collect variation margin until certain thresholds of exposure are reached, thus reducing or perhaps entirely eliminating the need to exchange variation margin as exposure changes. DCOs, on the other hand, collect and pay variation margin on a daily basis and sometimes more frequently. As a consequence, increased required clearing may increase certain operational costs associated with moving variation margin to and from the DCO. On the other hand, increased clearing is also likely to lead to benefits from reduced operational costs related to valuation disputes, as parties to cleared swaps agree to abide by the DCO's valuation procedures. To the extent that the requirement to clear the types of swaps covered by the proposed rule leads to increased use of clearing, these costs and benefits are likely to result. The Commission invites further comment regarding the costs and benefits associated with operational differences related to the collateralization of uncleared versus cleared swaps.

Increases in clearing as a result of the proposed clearing requirement also may result in additional costs for clearing members in the form of guaranty fund contributions. However, it also may be that increased clearing of swaps would decrease guaranty fund contributions for certain clearing members. Market participants that currently transact swaps bilaterally and do not clear such swaps must either become clearing members of an appropriate DCO or submit such swaps for clearing through an existing clearing member, once the clearing requirement applies to such swaps. A party that chooses to become a clearing member of a DCO must make a guaranty fund contribution. A party that chooses to clear swaps through an existing clearing member may have a share of the clearing member's guaranty fund contribution passed along to it in the form of fees. While the addition of new clearing members and new customers for existing clearing members may result in existing clearing members experiencing an increase in their guaranty fund requirements, it should be noted that if (1) new clearing members are not among the two clearing members used to calculate the guaranty fund and (2) any new customers trading through a clearing member do not increase the size of uncollateralized risks at either of the two clearing members used to calculate the guaranty fund, all else held constant, existing clearing members may experience a decrease in their guaranty fund requirement.[195]

d. Benefits of Clearing

As noted above, the benefits of swap clearing, in general, are significant. Thus, to the extent that the proposed clearing requirement for certain classes of IRS and CDS leads to increased use of clearing, these benefits are likely to result. As is the case for the costs noted above, it is impossible to predict the precise extent to which the use of clearing will increase as a result of the proposed rule, and therefore the benefits of the proposed rule cannot be precisely quantified. But the Commission believes that the benefits of increased clearing resulting from the proposed rule will be significant, because the classes of swaps required to be cleared by the proposed rule represent a substantial portion of the total swap markets. Currently outstanding IRS and CDS indices have notional amounts of about $504 trillion and $10.4 trillion, respectively, which is a substantial part of the $648 trillion notional global swaps market.[196] As noted above, the proposed rule requires that only certain classes of IRS and CDS indices be cleared, but such classes likely represent the most common swaps within those overall asset classes, and therefore are likely to constitute a relatively large portion of those asset classes. By requiring these particular swaps to be cleared, the benefits of clearing are expected to be realized across a relatively large portion of the

[193] Mello, Antonio S., and John E. Parsons, ''Margins, Liquidity, and the Cost of Hedging.'' MIT Center for Energy and Environmental Policy Research, May 2012, available at *http://dspace.mit.edu/bitstream/handle/1721.1/70896/2012–005.pdf?sequence=1.*

[194] *See id.,* Mello and Parsons state in their paper, ''Hedging is costly. But the real source of the cost is not the margin posted, but the underlying credit risk that motivates counterparties to demand that margin be posted.'' *Id.* at 12. They go on to demonstrate that, ''To a first approximation, the cost charged for the non-margined swap must be equal to the cost of funding the margin account. This follows from the fact that the non-margined swap just includes funding of the margin account as an embedded feature of the package.'' *Id.* at 15–16.

[195] In order to calculate the size of their guaranty funds, clearinghouses for swaps generally stress their clearing members' portfolios under a number of extreme, but plausible, scenarios in order to identify the two clearing members with the largest losses. The resulting loss calculation of those two clearing members is used to size the guaranty fund. Once that amount is established, the clearinghouse will require contributions of all clearing members based on their relative ''losses'' under the stress scenarios. Assuming that the portfolios of new clearing members and new customers do not alter the overall sizing of the guaranty fund, but that the new clearing members are making contributions to the guaranty fund based on their relative potential losses, the overall guaranty fund contribution for existing clearing members may decrease.

[196] BIS data, December 2011, available at: *http://www.bis.org/statistics/derstats.htm.*

market. The Commission requests comment on whether such benefits will result from the proposed rule and, if so, the expected magnitude of such benefits.

The proposed rule's requirement that certain classes of swaps be cleared is expected to increase the number of swaps in which market participants will face a DCO, and therefore, will face a highly creditworthy counterparty. DCOs are some of the most creditworthy counterparties in the swap market because they have at their disposal a number of risk management tools that enable them to manage counterparty risk effectively. Those tools include contractual rights that enable them to use margin to manage current and potential future exposure, to close out and transfer defaulting positions while minimizing losses that result from such defaults, and to protect solvency during the default of one or more members through a waterfall of financial contributions from which they can draw, as outlined above. Also, clearing protects swap users from the risk of having to share in loss mutualization among FCMs if one DCO member defaults and such measures are necessary.

This proposed rule requires that classes of swaps that are required to be cleared must be submitted to clearing ''as soon as technologically practicable after execution, but in any event by the end of the day of execution.'' [197] This conforms to the requirements established in the recently finalized rule regarding timing of acceptance for clearing,[198] which is designed to promote rapid submission of these swaps for clearing and reduce the unnecessary counterparty risk that can develop between the time of execution and submission to clearing.[199]

The Commission expects that the requirement for rapid submission, processing, and acceptance or rejection of swaps for clearing will be beneficial in several respects. It is important to note that when two parties enter into a bilateral swap with the intention of clearing it, each party bears counterparty risk until the swap is cleared. Once the swap is cleared, the clearinghouse becomes the counterparty to each of the original parties, which minimizes and standardizes counterparty risk.

Where swaps of the type covered by the proposed rule are not executed on an exchange, the proposed rule should significantly reduce the amount of time needed to process them. Although costs associated with latency-period counterparty credit risk cannot be completely eliminated in this context, the rules will reduce the need to discriminate among potential counterparties in off-exchange swaps, as well as the potential costs associated with rejected swaps. By reducing the counterparty risk that could otherwise develop during the latency period, these rules promote a market in which all eligible market participants have access to counterparties willing to trade on terms that approximate the best available terms in the market. This may improve price discovery and promote market integrity.

In addition, absent proposed § 50.10 and related interpretations, certain risks could increase in a manner that the Commission would not be able to measure accurately. Proposed § 50.10 and related interpretations are expected to bring the appropriate scope of swaps within the requirements of section 2(h), which will facilitate the achievement of the benefits of swap clearing and trade execution, among others. Activity conducted solely for a legitimate business purpose, absent other indicia of evasion or abuse, would not constitute a violation of proposed § 50.10 as described in the Commission's proposed interpretation.

D. Costs and Benefits of the Proposed Rule as Compared to Alternatives

The Commission's proposal to apply the clearing requirement initially to certain CDS and IRS is a function of both the market importance of these products and the fact that they already are widely cleared. In order to move the largest number of swaps to required clearing in its initial determination, the Commission believes that it is prudent to focus on swaps that are widely used and for which there is already a blueprint for clearing and appropriate risk management. CDS and IRS that match these factors are therefore well suited for required clearing.

As noted above, IRS with a notional amount of $504 trillion are currently outstanding—the highest proportion of the $648 trillion global swaps market of any class of swaps.[200] CDS indices with a notional amount of about $10.4 trillion are currently outstanding.[201] While CDS indices do not have as prominent a share of the entire swaps market as IRS, uncleared CDS is capable of having a sizeable market impact, as it did during the 2008 financial crisis. In addition, many of the swaps within each of the classes proposed for required clearing are already cleared by one or more clearinghouses. LCH claims to clear IRS with a notional amount of about $284 trillion—meaning that, in notional terms, LCH clears 51% of the interest rate swap market.[202] The swap market has made a smooth transition into clearing CDS on its own initiative. As a result, DCOs, FCMs, and many market participants already have experience clearing the types of swaps that have been proposed for required clearing. The Commission expects, therefore, that DCOs and FCMs are equipped to handle the increases in volume and outstanding notional amount in these swaps that is likely to be cleared as the result of the proposed rule. Because of the wide use of these swaps and their importance to the market, and because these swaps are already cleared safely, the Commission is proposing to subject certain types of IRS and CDS to the initial clearing requirement.

The Commission is proposing certain key specifications for CDS and IRS that will inform whether a particular swaps falls within one of the classes of swaps that are required to be cleared. The two classes of CDS that are required to be cleared are (1) U.S. dollar-denominated CDS covering North America corporate credits and (2) euro-denominated CDS referencing European obligations. The four classes of IRS required to be cleared are (1) fixed-to-floating swaps, (2) basis swaps, (3) OIS, and (4) FRAs.

Regarding CDS, the Commission has outlined three key specifications comprising (1) region and nature of reference entity, (2) the nature of the CDS itself, and (3) tenor. Each of these specifications will assist market participants in determining whether a swap falls within the CDS classes of swaps required to be cleared. For the first, a distinguishing characteristic is whether the reference entity is in North American or European and whether it is one of Markit's CDX.NA.IG, CDX.NA.HY, iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe High Volatility indices. The second key specification relates to whether the CDS is tranched or untranched. The classes that are required to be cleared include only untranched CDS where the contract covers the entire index loss

[197] *See* proposed § 50.2(a).

[198] *See* Client Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 (Apr. 9, 2012).

[199] The Commission notes that if a market participant executed a swap that is required to be cleared on a SEF or DCM, then that market participant will be deemed to have met their obligation to submit the swap to a DCO because of the straight-through processing rules previously adopted by the Commission.

[200] BIS data, June 2011, available at *http://www.bis.org/publ/otc_hy1111.pdf.*

[201] *See id.*

[202] *See id.*

distribution of the indice and settlement is not linked to a specified number of defaults. Tranched swaps, first- or ''Nth'' to-default, options, or any other product variations on these indices are excluded from these classes. Finally, the third key specification entails whether a swap falls within a tenor, specific to an index, that is required to be cleared. The Commission has determined that each of the 3-, 5-, 7-, and 10-year tenors be included within the class of swaps subject to the clearing requirement determination for CDX.NA.IG; the 5-year tenor be included for CDX.NA.HY; each of the 5- and 10-year for ITraxx Europe; the 5-year for ITraxx Europe Crossover; and, the 5-year for ITraxx Europe High Volatility. In addition, it should be noted that only certain series will be viewed as required to be cleared.

The Commission had a number of alternatives to that proposed. First, the Commission could have used a narrower or broader group of reference entities. For example, the Commission has not included the CDX.NA.IG.HVOL within the North American swap class. While doing so would have increased the number of swaps required to be cleared, the Commission questions whether there is sufficient liquidity to justify required clearing at this time given that the recent series of CDX.NA.IG.HVOL have not been cleared by ICE (and are not offered at all by CME).

The Commission could also have endeavored to include tranched CDS. The Commission recognizes that there is a significant market for tranched swaps using the indices. In these transactions, parties to the CDS contract agree to address only a certain range of losses along the entire loss distribution curve. Other swaps such as first or ''Nth'' to default baskets, and options, also exist on the indices. However, these swaps are not being cleared currently and were not submitted by a DCO for consideration under § 39.5.

Regarding tenor, the Commission could have included more of those offered within the classes of swaps required to be cleared. For example, the CDX.NA.IG has 1- and 2-year tenors and the CDX.NA.HY, has 3-, 7-, and 10-year tenors that have not been included among the specified tenors. The iTraxx Europe has 3- and 7-year tenors and the Crossover and High Volatility each have 3-, 7-, and 10-year tenors that have not been included. In addition, the Commission could have included all series of active indices. The concern, regarding both tenors and series, is that certain tenors and series have lower liquidity and may be difficult for a DCO to adequately risk manage. While including more tenors and series would have increased the volume of swaps required to be cleared to some degree, the Commission proposes that doing so may have raised costs for DCOs and other market participants and been less desirable relative to the factors established in § 39.5.

With regard to IRS, as mentioned above, the Commission is proposing a clearing requirement for four classes of interest rate swaps: fixed-to-floating swaps, basis swaps, OIS, and FRAs. Within those four classes, the Commission is proposing three affirmative specifications for each class ((i) Currency used for in which the notional and payment amounts are specified, (ii) rates referenced for each leg of the swap, and (iii) stated termination date of the swap) and three ''negative'' specifications for each class ((i) No optionality (as specified by the DCOs); (ii) no dual currencies; and (iii) no conditional notional amounts).

The Commission considered whether to establish clearing requirements on a product-by-product basis. Such a determination would need to identify the multitude of legal specifications of each product that would be subject to the clearing requirement. Although the industry uses standardized definitions and conventions, the product descriptions would be lengthy and require counterparties to compare all of the legal terms of their particular swap against the terms of the many different swaps that would be included in a clearing requirement. The Commission believes that for interest rate swaps, a product-by-product determination could be unnecessarily burdensome for market participants in trying to assess whether each swap transaction is subject to the requirement. A class-based approach would allow market participants to determine quickly whether they need to submit their swap to a DCO for clearing by checking initially whether the swap has the basic specifications that define each class subject to the clearing requirement.

As an alternative to the classes selected, LCH recommended that the Commission use the following specifications to classify interest rate swaps for purposes of making a clearing determination: (i) Swap class (*i.e.,* what the two legs of the swap are (fixed-to-floating, basis, OIS, etc.)), (ii) floating rate definitions used, (iii) the currency designated for swap calculations and payments, (iv) stated final term of the swap (also known as maturity), (v) notional structure over the life of the swap (constant, amortizing, roller coaster, etc.), (vi) floating rate frequency, (vii) whether optionality is included, and (viii) whether a single currency or more than one currency is used for denominating payments and notional amount. CME recommended a clearing determination for all non-option interest rate swaps denominated in a currency cleared by any qualified DCO.

These alternative specifications fall into two general categories: specifications that are commonly used to address mechanical issues for most swaps, and specifications that are less common and address idiosyncratic issues related to the particular needs of a counterparty. Examples of the latter are special representations added to address particular legal issues, unique termination events, special fees, and conditions tied to events specific to the parties. None of the DCOs clear interest rate swaps with terms in the second group. As for mechanical specifications, while the Commission recognizes that such specifications may affect the value of the swap, such specifications are not, generally speaking, fundamental to determining the economic result the parties are trying to achieve.[203] The Commission has proposed the three affirmative specifications described above because it believes that they are fundamental specifications used by counterparties to determine the economic result of a swap transaction for each party.

The Commission also could have avoided the negative specifications for IRS, which would have had the effect of potentially including more IRS swaps within the universe of those required to be cleared. However, the Commission believes that swaps with optionality, multiple currency swaps, and swaps with conditional notional amounts raise concerns regarding adequate pricing measures and consistency across swap contracts. Such contingencies make them difficult for DCOs to effectively risk manage. Additionally, at this time, no DCO is offering them for clearing.

Another alternative considered by the Commission, but not proposed, was that of stating the clearing requirement in terms of a particular type of swap, rather than using broad characteristics to describe the type of swaps for which clearing would be required. For example, rather than requiring that all IRS that meet the six specifications in proposed § 50.4(a) be cleared, the rule could have specified that only certain

[203] As noted in Section II.E above, mechanical specifications include characteristics such as floating rate reset tenors, reference city for business days, business day convention, and others that have some small impact on valuation but that do not fundamentally alter the economic consequence of the swap for the parties that enter into it.

sub-types of those IRS—such as all such IRS with a term of five years—are required to be cleared. Such an approach might permit the Commission to account for variation in liquidity and outstanding notional values among different sub-types of swap, and thereby focus the clearing requirement on very particular swaps to account for these differences within the same general class. Also, generally speaking, limiting the clearing requirement to fewer swaps could reduce some costs associated with clearing.

However, this advantage was weighed against an important disadvantage of this approach. A highly focused clearing requirement could increase the ability for market participants to replicate the economic results of a swap that is required to be cleared by substituting a swap not required to be cleared; this greater latitude for clearing avoidance, in turn, could increase systemic risk and dampen the beneficial effects of clearing noted above.[204] Under the approach proposed by the Commission, all swaps that fall within identified classes are covered by the clearing requirement, which reduces the risk of such avoidance and the associated reduction of benefits. Moreover, stating the clearing requirement in more general terms reduces the costs associated with determining whether or not a particular swap is subject to the clearing requirement.

The Commission invites comment on the costs and benefits of identifying classes of swaps for clearing in a more focused or more general manner. If possible, please quantify costs and benefits that result either from the approach proposed by the Commission or from alternatives that you believe the Commission should consider.

The Commission also considered proposing required clearing for all seventeen currencies of IRS that are currently offered for clearing, but decided instead to propose required clearing at this time for IRS in four currencies (EUR, USD, GBP, and JPY). The Commission recognizes that requiring IRS in all seventeen currencies submitted by LCH Clearnet to be cleared would provide the benefit of some incremental reduction in overall counterparty, and thus systemic, risk attendant to clearing a greater portion of IRS. However, as noted above, the Commission proposes that initiating the clearing requirement in a measured manner with respect to IRS in the four specified currencies familiar to many market participants is the preferable approach at this time because it would give market participants an opportunity to identify and address any operational challenges related to required clearing. Moreover, the currencies included in the proposed classes constitute approximately 93% of cleared IRS, which suggests that significant reductions in counterparty risk and gains in systemic protection will be accomplished by limiting the clearing determination to them.

Similarly, the Commission considered requiring clearing of all CDS that are currently being cleared, but decided not to include, in the initial clearing requirement, certain types of CDS that have a less significant role in the current market.[205]

The Commission invites further comment on its decision-making with regard to the classes of IRS and CDS that would be required to be cleared. Commenters are also invited to submit any data or other information that they may have quantifying or qualifying the costs and benefits of the proposal with their comment letters.

E. Section 15(a) Factors

As noted above, the requirement to clear the classes of swaps covered by the proposed rule is expected to result in increased use of clearing, although it is impossible to quantify with certainty the extent of that increase. Thus, this section discusses the expected results from an overall increase in the use of swap clearing in terms of the factors set forth in section 15(a) of the CEA.

i. Protection of Market Participants and the Public

As described above, required clearing of the classes of swaps identified in this proposed rule is expected to reduce counterparty risk for market participants that clear those swaps because they will face the DCO rather than another market participant that lacks the full array of risk management tools that the DCO has at its disposal. This also reduces uncertainty in times of market stress because market participants facing a DCO are less concerned with the impact of such stress on the solvency of their counterparty for cleared trades.

By proposing to require clearing of certain classes of swaps, all of which are already available for clearing, the Commission expects to encourage a smooth transition by creating an opportunity for market participants to work out challenges related to required clearing of swaps while operating in familiar terrain. More specifically, the DCOs will clear an increased volume of swaps that they already understand and have experience managing. Similarly, FCMs likely will realize increased customer and transaction volume as the result of the requirement, but will not have to simultaneously learn how to operationalize clearing for new types of swaps. And the experience of FCMs with these products is also likely to benefit customers that are new to clearing, as the FCM guides them through initial experiences with cleared swaps.[206]

In addition, uncleared swaps subject to collateral agreements can be the subject of valuation disputes. These valuation disputes sometimes require several months, or longer, to resolve. Uncollateralized exposure can grow significantly during that time, leaving one of the two parties exposed to counterparty risk that was intended to be covered through a collateral agreement. DCOs reduce valuation disputes for cleared swaps as well as the risk that uncollateralized exposure can develop and accumulate during the time when such a dispute would have otherwise occurred, thus providing additional protection to market participants who transact in swaps that are required to be cleared.[207]

As far as costs are concerned, market participants that do not currently have established clearing relationships with an FCM will have to set up and maintain such a relationship in order to clear swaps that are required to be cleared. As discussed above, market participants that conduct a limited number of swaps per year will likely be required to pay monthly or annual fees that FCM's charge to maintain both the relationship and outstanding swap positions belonging to the customer. In addition, the FCM is likely to pass along fees charged by the DCO for establishing and maintaining open positions.

[204] For instance, in the example noted above, swaps with a term of five years and one day would not be required to be cleared.

[205] For instance, the Commission decided not to include CDX.NA.IG.HiVOL from the proposed determination given the lack of volume in the current on-the-run and recent off-the-run series. In addition, CME currently does not clear any HiVOL contracts, and ICE Clear Credit no longer clears the most recent series.

[206] As discussed in Section II.C and II.E above, DCOs offering clearing for CDS and IRS have established extensive risk management practices, which focus on the protection of market participants. *See also* Sections II.D and II.F for a discussion of the effect on the mitigation of systemic risk in the CDS market and in the IRS market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[207] *See* Sections II.D and II.F above for a further discussion of how DCOs obtain adequate pricing data for the CDS and IRS that they clear. Based on this pricing data, valuation disputes are minimized, if not eliminated for cleared swaps.

ii. Efficiency, Competitiveness, and Financial Integrity of Swap Markets

Swap clearing, in general, is expected to reduce uncertainty regarding counterparty risk in times of market stress and promote liquidity and efficiency during those times. Increased liquidity promotes the ability of market participants to limit losses by exiting positions effectively when necessary in order to manage risk during a time of market stress.

In addition, to the extent that positions move from facing multiple counterparties in the bilateral market to being run through a smaller number of clearinghouses, clearing facilitates increased netting. This reduces the amount of collateral that a party must post in margin accounts.

As discussed in Sections II.D and II.F above, in setting forth this proposal, the Commission took into account a number of specific factors that relate to the financial integrity of the swap markets. Specifically, the discussion above includes an assessment of whether the DCOs clearing CDS and IRS have the rule framework, capacity, operational expertise and resources, and credit support infrastructure to clear CDS and IRS on terms that are consistent with the material terms and trading conventions on which the contract is then traded. The proposal also considered the resources of DCOs to handle additional clearing, as well as the existence of reasonable legal certainty in the event of a clearing member or DCO insolvency.[208]

As discussed above, bilateral swaps create counterparty risk that may lead market participants to discriminate among potential counterparties based on their creditworthiness. Such discrimination is expensive and time consuming insofar as market participants must conduct due diligence in order to evaluate a potential counterparty's creditworthiness. Requiring certain types of swaps to be cleared reduces the number of transactions for which such due diligence is necessary, thereby contributing to the efficiency of the swap markets.

In proposing a clearing requirement for both CDS and IRS, the Commission must consider the effect on competition, including appropriate fees and charges applied to clearing. As discussed in more detail in Sections II.D and II.F above, there are a number of potential outcomes that may result from required clearing. Some of these outcomes may impose costs, such as if a DCO possessed market power and exercised that power in an anticompetitive manner, and some of the outcomes would be positive, such as if the clearing requirement facilitated a stronger entry-opportunity for competitors.

As far as costs are concerned, the markets for some swaps within the classes that are proposed to be required to be cleared may be less liquid than others. All other things being equal, swaps for which the markets are less liquid have the potential to develop larger current uncollateralized exposures after a default on a cleared position, and therefore will require posting of relatively greater amounts of initial margin.

iii. Price Discovery

Clearing, in general, encourages better price discovery because it eliminates the importance of counterparty creditworthiness in pricing swaps cleared through a given DCO. That is, by making the counterparty creditworthiness of all swaps of a certain type essentially the same, prices should reflect factors related to the terms of the swap, rather than the idiosyncratic risk posed by the entities trading it.[209]

As discussed in sections II.D and II.F above, DCOs obtain adequate pricing data for the CDS and IRS that they clear. Each DCO establishes a rule framework for its pricing methodology and rigorously tests its pricing models to ensure that the cornerstone of its risk management regime is as sound as possible.

iv. Sound Risk Management Practices

If a firm enters into swaps to hedge certain positions and then the counterparty to those swaps defaults unexpectedly, the firm could be left with large outstanding exposures. As stated above, when a swap is cleared the DCO becomes the counterparty facing each of the two original participants in the swap. This standardizes and reduces counterparty risk for each of the two original participants. To the extent that a market participant's hedges comprise swaps that are required to be cleared, the requirement enhances their risk management practices by reducing their counterparty risk.

In addition, from systemic perspective, required clearing reduces the complexity of unwinding/transferring swap positions from large entities that default. Procedures for transfer of swap positions and mutualization of losses among DCO members are already in place, and the Commission anticipates that they are much more likely to function in a manner that enables rapid transfer of defaulted positions than legal processes that would surround the enforcement of bilateral contracts for uncleared swaps.[210]

v. Other Public Interest Considerations

In September 2009, the President and the other leaders of the ''G20'' nations met in Pittsburgh and committed to a program of action that includes, among other things, central clearing of all standardized swaps.[211] Together, IRS and CDS represent more than 75% of the notional amount of outstanding swaps, and therefore, requiring the most active, standardized classes of swaps within those groups to be cleared represents a significant step toward the fulfillment of that commitment.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[212] The clearing requirement determinations and rules proposed by the Commission will affect only eligible contract participants (ECPs) because all persons that are not ECPs are required to execute their swaps on a DCM, and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation; not by operation of any clearing requirement.[213]

[208] *See* Section II.C and II.E.

[209] *See* Chen, K., *et al.* ''An Analysis of CDS Transactions: Implications for Public Reporting,'' September 2011, Federal Reserve Bank of New York Staff Reports, at 14, available at *http://www.newyorkfed.org/research/staff_reports/sr517.pdf.*

[210] As discussed in Sections II.C and II.E above, sound risk management practices are critical for all DCOs, especially those offering clearing for CDS and IRS. In the discussion above, the Commission considered whether each DCO submission under review was consistent with the core principles for DCOs. In particular, the Commission considered the DCO submissions in light of Core Principle D, which relates to risk management. *See also* Sections II.D and II.F for a discussion of the effect on the mitigation of systemic risk in the CDS market and in the IRS market, as well as the protection of market participants during insolvency events at either the clearing member or DCO level.

[211] A list of the G20 commitments made in Pittsburgh can be found at: *http://www.g20.utoronto.ca/analysis/commitments-09-pittsburgh.html.*

[212] *See* 5 U.S.C. 601 *et seq.*

[213] To the extent that this rulemaking affects DCMs, DCOs, or FCMs, the Commission has previously determined that DCMs, DCOs, and FCMs are not small entities for purposes of the RFA. *See,* respectively and as indicated, 47 FR 18618, 18619,

The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[214] However, in its proposed rulemaking to establish a schedule to phase in compliance with certain provisions of the Dodd-Frank Act, including the clearing requirement under section 2(h)(1)(A) of the CEA, the Commission received a joint comment (Electric Associations Letter) from the Edison Electric Institute (EEI), the National Rural Electric Cooperative Association (NRECA) and the Electric Power Supply Association (EPSA) asserting that certain members of NRECA may both be ECPs under the CEA and small businesses under the RFA.[215] These members of NRECA, as the Commission understands, have been determined to be small entities by the Small Business Administration (SBA) because they are ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.''[216] Although the Electric Associations Letter does not provide details on whether or how the NRECA members that have been determined to be small entities use the IRS and CDS that are the subject of this rulemaking, the Electric Associations Letter does state that the EEI, NRECA and EPSA members ''engage in swaps to hedge commercial risk.'' [217] Because the NRECA members that have been determined to be small entities would be using swaps to hedge commercial risk, the Commission expects that they would be able to use the end-user exception from the clearing requirement and therefore would not be affected to any significant extent by this rulemaking.

Thus, because nearly all of the ECPs that may be subject to the proposed clearing requirement are not small entities, and because the few ECPs that have been determined by the SBA to be small entities are unlikely to be subject to the clearing requirement, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules herein will not have a significant economic impact on a substantial number of small entities. The Commission invites public comment on this determination.

B. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [218] imposes certain requirements on federal agencies (including the Commission) in connection with conducting or sponsoring any collection of information as defined by the PRA. Proposed § 50.3(a), which would require each DCO to post on its Web site a list of all swaps that it will accept for clearing and clearly indicate which of those swaps the Commission has determined are required to be cleared, builds upon the requirements of § 39.21(c)(1), which requires each DCO to disclose publicly information concerning the terms and conditions of each contract, agreement, and transaction cleared and settled by the DCO. Thus, this rulemaking will not require a new collection of information from any persons or entities. The Commission invites public comment on whether this rulemaking will require a new collection of information.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, as amended, and in particular section 2(h) of the Act, the Commission hereby adopts an amendment to Chapter I of Title 17 of the Code of Federal Regulation by proposing to amend part 50 as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

1. The authority citation for part 50 reads as follows:

Authority: 7 U.S.C. 2(h), 7a-1 as amended by Pub. L. 111–203, 124 Stat. 1376.

2. Add new part 50 to read as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

Subpart A—Definitions and Clearing Requirement

Sec.
§ 50.1 Definitions.
50.2 Treatment of swaps subject to a clearing requirement.
50.3 Notice to the public.
50.4 Classes of swaps required to be cleared.
50.5 Swaps exempt from a clearing requirement.
50.6 Delegation of Authority.
50.7–9 [Reserved]
50.10 Prevention of Evasion of the Clearing Requirement and Abuse of an Exception or Exemption to the Clearing Requirement.
50.11–24 [Reserved]

Subpart B—Compliance Schedule

50.25 Clearing Requirement Compliance Schedule.
50.26–49 [Reserved]

Subpart C—Exceptions to Clearing Requirement

§ 50.50–100 [Reserved]

§ 50.1 Definitions.

For the purposes of this part,

Business day means any day other than a Saturday, Sunday, or [legal] holiday.

Day of execution means the calendar day of the party to the swap that ends latest, provided that if a swap is (A) entered into after 4:00 p.m. in the location of a party, or (B) entered into on a day that is not a business day in the location of a party, then such swap shall be deemed to have been entered into by that party on the immediately succeeding business day of that party, and the day of execution shall be determined with reference to such business day.

§ 50.2 Treatment of swaps subject to a clearing requirement.

(a) All persons executing a swap that (1) is not subject to an exception under section 2(h)(7) of the Act and § 39.6, and (2) is included in a class of swaps identified in § 50.4, shall submit such swap to a derivatives clearing organization for clearing as soon as technologically practicable after execution, but in any event by the end of the day of execution.

(b) Each person subject to the requirements of paragraph (a) shall undertake reasonable efforts to verify whether a swap is required to be cleared.

§ 50.3 Notice to the public.

(a) In addition to its obligations under § 39.21(c)(1), each derivatives clearing organization shall make publicly available on its Web site a list of all swaps that it will accept for clearing and identify which swaps on the list are required to be cleared under section 2(h)(1) of the Act and this part.

(b) The Commission shall maintain a current list of all swaps that are required to be cleared and all derivatives clearing organizations that are eligible to clear such swaps on its Web site.

Apr. 30, 1982 (DCMs and FCMs); and 66 FR 45604, 45609, Aug. 29, 2001 (DCOs).

[214] *See* 66 FR 20740, 20743 (Apr. 25, 2001).

[215] *See* joint letter from EEI, NRECA, and ESPA, dated Nov. 4, 2011, (Electric Associations Letter), commenting on Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011).

[216] Small Business Administration, Table of Small Business Size Standards, Nov. 5, 2010.

[217] *See* Electric Associations Letter, at 2. The letter also suggests that EEI, NRECA, and EPSA members are not financial entities. *See id.,* at note 5, and at 5 (the associations' members ''are not financial companies'').

[218] 44 U.S.C. 3507(d).

§ 50.4 Classes of swaps required to be cleared.

(a) *Interest rate swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

Fixed-to-Floating Swap Class

Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No.

Basis Swap Class

Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	28 days to 50 years	28 days to 50 years	28 days to 50 years	28 days to 30 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No.

Forward Rate Agreement Class

Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	LIBOR	EURIBOR	LIBOR	LIBOR.
3. Stated Termination Date Range.	3 days to 3 years	3 days to 3 years	3 days to 3 years	3 days to 3 years.
4. Optionality	No	No	No	No.
5. Dual Currencies	No	No	No	No.
6. Conditional Notional Amounts.	No	No	No	No.

Overnight Index Swap Class

Specification				
1. Currency	U.S. Dollar (USD)	Euro (EUR)	Sterling (GBP)	Yen (JPY).
2. Floating Rate Indexes	FedFunds	EONIA	SONIA	
3. Stated Termination Date Range.	7 days to 2 years	7 days to 2 years	7 days to 2 years.	
4. Optionality	No	No	No	
5. Dual Currencies	No	No	No	
6. Conditional Notional Amounts.	No	No	No	

(b) *Credit default swaps.* Swaps that have the following specifications are required to be cleared under section 2(h)(1) of the Act, and shall be cleared pursuant to the rules of any derivatives clearing organization eligible to clear such swaps under § 39.5(a) of this chapter.

North American Untranched CDS Indices Class

Specification	
1. Reference Entities	Corporate.
2. Region	North America.
3. Indices	CDX.NA.IG. CDX.NA.HY.
4. Tenor	CDX.NA.IG: 3Y, 5Y, 7Y, 10Y. CDX.NA.HY: 5Y.
5. Applicable Series	CDX.NA.IG 3Y: Series 15 and all subsequent Series, up to and including the current Series. CDX.NA.IG 5Y: Series 11 and all subsequent Series, up to and including the current Series. CDX.NA.IG 7Y: Series 8 and all subsequent Series, up to and including the current Series.

	CDX.NA.IG 10Y: Series 8 and all subsequent Series, up to and including the current Series. CDX.NA.HY 5Y: Series 11 and all subsequent Series, up to and including the current Series.
6. Tranched	No.

European Untranched CDS Indices Class

Specification	
1. Reference Entities	Corporate.
2. Region	Europe.
3. Indices	iTraxx Europe. iTraxx Europe Crossover. iTraxx Europe HiVol.
4. Tenor	iTraxx Europe: 5Y, 10Y iTraxx Europe Crossover: 5Y. iTraxx Europe HiVol: 5Y.
5. Applicable Series	iTraxx Europe 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe 10Y: Series 7 and all subsequent Series, up to and including the current Series. iTraxx Europe Crossover 5Y: Series 10 and all subsequent Series, up to and including the current Series. iTraxx Europe HiVol 5Y: Series 10 and all subsequent Series, up to and including the current Series.
6. Tranched	No.

§ 50.5 Clearing Transition Rules.

(a) Swaps entered into before July 21, 2010 shall be exempt from the clearing requirement under § 50.2 if reported to a swap data repository pursuant to section 2(h)(5)(A) of the Act and § 44.02 of this chapter.

(b) Swaps entered into before the application of the clearing requirement for a particular class of swaps under § 50.2 and § 50.4 shall be exempt from the clearing requirement if reported to a swap data repository pursuant to section 2(h)(5)(B) of the Act and § 44.03 of this chapter.

§ 50.6 Delegation of Authority.

(a) The Commission hereby delegates to the Director of the Division of Clearing and Risk or such other employee or employees as the Director may designate from time to time, with the consultation of the General Counsel or such other employee or employees as the General Counsel may designate from time to time, the authority:

(1) To determine whether one or more swaps submitted by a derivatives clearing organization under § 39.5 falls within a class of swaps as described in § 50.4; and

(2) To notify all relevant derivatives clearing organizations of that determination.

(b) The Director of the Division of Clearing and Risk may submit to the Commission for its consideration any matter which has been delegated in this section. Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 50.7–9 [Reserved].

§ 50.10 Prevention of Evasion of the Clearing Requirement and Abuse of an Exception or Exemption to the Clearing Requirement.

(a) It shall be unlawful for any person to knowingly or recklessly evade or participate in or facilitate an evasion of the requirements of section 2(h) of the Act or any Commission rule or regulation promulgated thereunder.

(b) It shall be unlawful for any person to abuse the exception to the clearing requirement as provided under section 2(h)(7) of the Act and § 39.6 of this chapter.

(c) It shall be unlawful for any person to abuse any exemption or exception to the requirements of section 2(h) of the Act, including any exemption or exception as the Commission may provide by rule, regulation, or order.

By the Commission.

Issued in Washington, DC, on July 24, 2012.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

Appendices to Clearing Requirement Determination Under Section 2(h) of the CEA—Commission Voting Summary and Statements of Commissioners

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

Appendix 1—Commission Voting Summary

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

Appendix 2—Statement of Chairman Gary Gensler

I support the proposal to require certain interest rate swaps and credit default swap (CDS) indices to be cleared as provided by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

For over a century, through good times and bad, central clearing in the futures market has lowered risk to the broader public. Dodd-Frank financial reform brings this effective model to the swaps market. One of the primary benefits of swaps market reform is that standard swaps between financial firms will move into central clearing, which will significantly lower the risks of the highly interconnected financial system.

The Dodd-Frank Act requires the Commission to determine whether a swap is required to be cleared. For purposes of this first set of determinations, the Commission has looked to swaps that are currently cleared based upon submissions from eight derivatives clearing organizations (DCOs).

This first proposed clearing determination would require that swaps within identified classes be cleared by a DCO. This first determination includes interest rate swaps in four currencies, as well as five CDS indices. The proposal addresses swaps that five DCOs are already clearing, including standard interest rate swaps in U.S. dollars, euros, British pounds and Japanese yen, as well as a number of CDS indices, including North American and European corporate names. Subsequently, the Commission will consider other swaps, such as agricultural, energy and equity indices.

I believe that the Commission's proposed determination for each class satisfies the five factors provided for by Congress in the Dodd-Frank Act, including the first factor that addresses outstanding exposures, liquidity and pricing data.

Under the proposal, a DCO would be required to post on its Web site a list of all swaps it will accept for clearing and must

indicate which swaps the Commission had determined are required to be cleared.

I look forward to receiving public input on this proposed rule.

Appendix 2—Statement of Commissioner Scott D. O'Malia

I respectfully concur with the Commodity Futures Trading Commission's (''Commission'') proposal to establish a clearing requirement for certain classes of credit default swaps and interest rate swaps pursuant to the Commission's authority under new section 2(h)(1)(A) of the Commodity Exchange Act (''CEA'').[1] Centralized clearing is a vital part of the Dodd-Frank Act reforms and is expected to reduce counterparty credit risks, improve transparency and fairness around the setting of margin requirements, increase market liquidity, and reduce overall systemic risks.

I am pleased that the Commission's proposal thoughtfully incorporates comments received in response to my July 28, 2011 letter[2] to the public seeking comment on the five substantive criteria that the Commission is required to consider in making mandatory clearing determinations.[3] The comments help provide the necessary clarity and guidance that the markets have sought regarding how the Commission will consider and weigh these criteria.

Today's proposal also (1) includes a more reasoned cost-benefit analysis that is based on an appropriate pre-Dodd-Frank baseline, (2) discusses a variety of alternatives based on public comments, and (3) asks a series of questions in the absence of available data. Once again, I am encouraged that Commission staff is working with technical experts from the Office of Management and Budget (''OMB'') to improve our cost-benefit analyses. It is my hope that the Commission's final rule similarly benefits from our cooperative relationship with OMB.

Once this proposal is published in the **Federal Register**, the 90-day clock will start. The Commission will review all comments, and discuss its final determination for clearing the majority of swaps in due course. I implore commenters to provide feedback and to submit data as soon as possible so that the Commission can account for the actual impact that today's rule will have on market liquidity, margining, and the reduction of risks.

[FR Doc. 2012–18382 Filed 8–6–12; 8:45 am]

BILLING CODE 6351–01–P

[1] 7 U.S.C. 2(h). Congress amended section 2(h) of the CEA under section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010) (''Dodd-Frank Act'').

[2] My letter, and comments submitted in response thereto, can be found on the Commission's Web site at: *http://www.cftc.gov/About/Commissioners/ScottDOMalia/reviewofswaps.*

[3] Specifically, section 2(h)(2)(D)(ii) requires the Commission consider the following five factors based on a Commission initiated review of a swap submission: (1) The existence of significant outstanding notional exposures, trading liquidity, and adequate pricing of data; (2) the availability of rule framework, capacity operational expertise and resources, and credit support infrastructure to clear the contract on terms that are consistent with the material terms and trading conventions on which the contract is then traded; (3) the effect on the mitigation of systemic risk, taking into account the size of the market for such contract and the resources of the derivatives clearing organization (''DCO'') available to clear the contract; (4) the effect on competition, including appropriate fees and charges applied to clearing; and (5) the existence of reasonable legal certainty in the event of the insolvency of the relevant DCO (or one or more of its clearing members) with regard to the treatment of customer and swap counterparty positions, funds, and property.

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Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2012 (FY 2013); Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1440–N]

RIN 0938–AR22

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System—Update for Fiscal Year Beginning October 1, 2012 (FY 2013)

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

ACTION: Notice.

SUMMARY: This notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the fiscal year (FY) beginning October 1, 2012 through September 30, 2013.

DATES: *Effective Date:* The updated IPF prospective payment rates are effective for discharges occurring on or after October 1, 2012 through September 30, 2013.

FOR FURTHER INFORMATION CONTACT: Dorothy Myrick or Jana Lindquist, (410) 786–4533 (for general information). Mary Carol Barron, (410) 786–7943, or Bridget Dickensheets, (410) 786–8670, (for information regarding the market basket and labor-related share).

Theresa Bean, (410) 786–2287 (for information regarding the regulatory impact analysis).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose

This notice updates the prospective payment rates for Medicare inpatient hospital services provided by inpatient psychiatric facilitates for discharges occurring during the fiscal year (FY) beginning October 1, 2012 through September 30, 2013.

Section 124 of the Medicare, Medicaid and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of the 1999 (BBRA) (Pub. L. 106–113) required implementation of the inpatient psychiatric facilities (IPF) prospective payment system (PPS). Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units that includes an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

To implement these provisions, we published various notices, and proposed and final rules in the **Federal Register**.

B. Summary of the Major Provisions

In this notice, we update the IPF PPS, as specified in 42 CFR 412.428. The updates include the following:

- The FY 2008-based Rehabilitation, Psychiatric, and Long Term Care (RPL) market basket update of 2.7 percent adjusted by a 0.1 percentage point reduction as required by section 1886(s)(2)(A)(ii) of the Social Security Act (the Act) and a 0.7 percentage point reduction as required by 1886(s)(2)(A)(i) of the Act.
- The fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- The electroconvulsive therapy payment by a factor specified by CMS.
- The national urban and rural cost-to-charge ratio medians and ceilings.
- The cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.
- Description of the ICD–9–CM and MS–DRG classification changes discussed in the annual update to the hospital inpatient PPS regulations.
- Use of the best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.
- The MS–DRG listing and comorbidity categories to reflect the ICD–9–CM revisions effective October 1, 2012.
- Retaining the 17 percent adjustment for IPFs located in rural areas, the 1.31 adjustment for IPFs with a qualifying emergency department, the 0.5150 teaching adjustment to the Federal per diem rate, the MS–DRG adjustment factors and comorbidity adjustment factors currently being paid to IPFs for RY 2012

C. Summary of Costs and Benefits

Provision description	Total costs	Total benefits
FY 2013 IPF PPS payment rate update ..	The overall economic impact of this notice is an estimated $36 million in increased payments to IPFs during FY 2013.	

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Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding meanings in alphabetical order below:

BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113)
CBSA Core-Based Statistical Area
CCR Cost-to-charge ratio
CAH Critical access hospital
DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision
DRGs Diagnosis-related groups
FY Federal fiscal year (October 1 through September 30)
ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
IPFs Inpatient psychiatric facilities
IRFs Inpatient rehabilitation facilities
LTCHs Long-term care hospitals
MedPAR Medicare provider analysis and review file
RPL Rehabilitation, Psychiatric, and Long-Term Care
RY Rate Year (July 1 through June 30)
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248)

II. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the inpatient psychiatric facilities (IPF) prospective payment system (PPS) in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and recalculate the Federal per diem base rate and the patient-and facility-level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041). In the May 6, 2011 IPF PPS final rule (76 FR 26432), we changed the payment rate update period to a rate year (RY) that coincides with a fiscal year (FY) update. Therefore, future update notices will be published in the **Federal Register** in the summer to be effective on October 1. For further discussion on changing the IPF PPS payment rate update period from a RY to a FY, see the IPF PPS final rule published in the **Federal Register** on May 6, 2011 (76 FR 26434 through 26435).

Updates to the IPF PPS, as specified in 42 CFR § 412.428, include the following:

- A description of the methodology and data used to calculate the updated Federal per diem base payment amount.
- The rate of increase factor as described in § 412.424(a)(2)(iii), which is based on the Excluded Hospital with Capital market basket under the update methodology of section 1886(b)(3)(B)(ii) of the Act for each year (effective from the implementation period until June 30, 2006).
- For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the IPF's payment, which is based on the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket.
- The best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.
- Updates to the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- Description of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) coding and diagnosis-related groups (DRGs) classification changes discussed in the annual update to the hospital inpatient prospective payment system (IPPS) regulations.
- Update to the electroconvulsive therapy (ECT) payment by a factor specified by CMS.
- Update to the national urban and rural cost-to-charge ratio medians and ceilings.
- Update to the cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.

Our most recent IPF PPS annual update occurred in the May 6, 2011 **Federal Register** final rule (76 FR 26432) (hereinafter referred to as the May 2011 IPF PPS final rule) that set forth updates to the IPF PPS payment rates for RY 2012. That final rule updated the IPF PPS per diem payment rates that were published in the April 2010 IPF PPS notice in accordance with our established policies.

Since implementation of the IPF PPS, we have explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that include as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Because we are now approximately 7 years into the system, we believe that we have enough data to begin that process. Therefore, we have begun the necessary analysis to make future refinements. While we do not propose to make refinements in this notice, as explained in section V.D.3 below, we expect that in the future rulemaking, for FY 2014, we will be ready to propose potential refinements.

B. Overview of the Legislative Requirements of the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) required implementation of the IPF PPS. Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units that includes an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

To implement these provisions, we published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS Web site *http://www.cms.hhs.gov/InpatientPsychFacilPPS/.*

Section 3401(f) of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 10319(e) of that Act and by section 1105(d) of the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) (hereafter referred to as ''the Affordable Care Act'') added subsection (s) to section 1886 of the Act.

Section 1886(s)(1) is titled ''Reference to Establishment and Implementation of System'' and it refers to section 124 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, which relates to the establishment of the IPF PPS.

Section 1886(s)(2)(A)(i) of the Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 (that is, a RY that coincides with a FY) and each subsequent RY. For the RY beginning in 2012 (that is, FY 2013), the reduction is equal to 0.7 percentage point, which we are implementing in this notice. Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for RY beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2012 (that is, FY 2013), section 1886(s)(3)(B) of the Act requires the reduction to be 0.1 percentage point. We are implementing that provision in this FY 2013 IPF PPS notice.

Section 1886(s)(4) of the Act requires the establishment of a quality data reporting program for the IPF PPS beginning in RY 2014. We proposed new requirements for quality reporting for IPFs in the ''Hospital Inpatient Prospective Payment System for Acute Care Hospitals and the Long Term Care Hospital Prospective Payment System and Fiscal Year 2013 Rates'' proposed rule (May 11, 2012) (77 FR 27870, 28105 through 28116).

C. General Overview of the IPF PPS

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as authorized under section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem Federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and it provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) Medicare program.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget neutrality.

The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect higher per diem costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost of living adjustment for IPFs located in Alaska and Hawaii, and presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: outlier cases; stop-loss protection (which was applicable only during the IPF PPS transition period); interrupted stays; and a per treatment adjustment for patients who undergo ECT.

A complete discussion of the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of BBRA does not specify an annual update rate strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final Federal per diem base rate to be budget neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

III. Transition Period for Implementation of the IPF PPS

In the November 2004 IPF PPS final rule, we provided for a 3-year transition period. During this 3-year transition period, an IPF's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decreasing percentage of the IPF PPS payment that is based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after January 1, 2008, IPF PPS payments are based on 100 percent of the Federal rate.

IV. Changing the IPF PPS Payment Rate Update Period From a Rate Year to a Fiscal Year

In the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432), we revised the IPF PPS payment rate update period by switching from a RY (that is July 1 through June 30) to a period that coincides with a FY (that is, October 1 through September 30). Beginning with the update period that begins in 2012, that is, FY 2013, we now refer to update periods as FY. We specified that this change in the annual update period would allow us to consolidate Medicare publications by aligning the IPF PPS update with the annual update of the ICD–9–CM codes, which are effective on October 1 of each year. In addition to our annual proposed and final rulemaking documents, we publish a change request transmittal every August updating the ICD–9–CM codes related to the DRG and comorbidity adjustments. By aligning the IPF PPS with the same update period as the ICD–9–CM codes, we eliminated the need to publish a transmittal off-cycle.

We maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing the psychiatric care. When the IPF PPS was implemented, we adopted the same diagnostic code set and DRG patient classification systems (that is, the CMS DRGs) that was used at the time under the hospital prospective payment system (IPPS). Every year, changes to the ICD–9–CM coding system are addressed in the IPPS proposed and final rules. These changes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update. This change to the

annual payment rate update period allows the annual update to the rates and the ICD–9–CM coding update to occur on the same schedule and appear in the same **Federal Register** document.

Our intent in making the change in the payment rate update schedule was to place the IPF PPS on the same update cycle as other PPSs, making it administratively efficient. To smoothly transition into a payment update period that runs from October 1 through September 30, we proposed and finalized that the RY 2012 period run from July 1, 2011 through September 30, 2012, so that the RY 2012 would be 15 months. As proposed and finalized, after RY 2012, the rate update period for the IPF PPS payment rates and other policy changes begin on October 1 through September 30. Therefore, the update cycle for FY 2013 will be October 1, 2012 through September 30, 2013. In the May 2011 final rule, we changed the regulations at § 412.402 to add the term ''Inpatient Psychiatric Facilities prospective payment system rate year'' which means October 1 through September 30. We proposed and finalized that the RY would be referred to as a FY. For further discussion of the 15-month market basket update for RY 2012 and changing the payment rate update period from a RY to a FY, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and the RY 2012 IPF PPS final rule (76 FR 26432).

V. Market Basket for the IPF PPS

A. Background

The input price index (that is, the market basket) that was used to develop the IPF PPS was the Excluded Hospital with Capital market basket. This market basket was based on 1997 Medicare cost report data and included data for Medicare participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer hospitals, and children's hospitals. Although ''market basket'' technically describes the mix of goods and services used in providing hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term ''market basket'' as used in this document refers to a hospital input price index.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a FY 2002-based market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the Rehabilitation, Psychiatric, and Long-Term Care (RPL) market basket).

We excluded cancer and children's hospitals from the RPL market basket because these hospitals are not reimbursed through a PPS; rather, their payments are based entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which are implemented in regulations at § 413.40. Moreover, the FY 2002 cost structures for cancer and children's hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs. A complete discussion of the FY 2002-based RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

In the May 1, 2009 IPF PPS notice (74 FR 20362), we expressed our interest in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. We noted that, of the available options, one would be to join the Medicare cost report data from freestanding IPF providers (presently incorporated into the FY 2002-based RPL market basket) with data from hospital-based IPF providers (not currently incorporated in any market basket cost weights). We indicated that an examination of the Medicare cost report data comparing freestanding and hospital-based IPFs revealed considerable differences between the two with respect to cost levels and cost structures. At that time, we were unable to fully understand the differences between these two types of IPF providers. As a result, we felt that further research was required, therefore we solicited public comment for additional information that might help us to better understand the reasons for the variations in costs and cost structures, as indicated by the cost report data, between freestanding and hospital-based IPFs (74 FR 20376).

We summarized the public comments received and our responses in the April 2010 IPF PPS notice (75 FR 23111 through 23113). Despite receiving comments from the public on this issue, we remain unable to understand the observed differences in costs and cost structures between hospital-based and freestanding IPFs. Therefore, we do not believe it is appropriate, at this time, to incorporate data from hospital-based IPFs with those of freestanding IPFs to create a stand-alone IPF market basket.

We continue to explore the viability of creating two separate market baskets from the current RPL, one which may include freestanding IPFs and freestanding IRFs and be used to update payments under both the IPF and IRF payment systems. We also are still considering the possibility of creating a stand-alone IPF market basket. We recently proposed a stand-alone LTCH market basket, in the May 11, 2012 FY 2013 IPPS/LTCH proposed rule (77 FR 27870 at 28019). In the RY 2012 IPF PPS proposed rule (76 FR 5001), we welcomed public comment on the possibility of using a rehabilitation and psychiatric (RP) market basket to update IPF payments in the future. Comments received and our responses are summarized in the RY 2012 final rule (76 FR 26436). We note that comments received were in support of our efforts, and we are continuing to investigate the viability of alternative market baskets. Any possible changes to the market basket used to update IPF payments would appear in a future rulemaking and be subject to public comment.

In the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432), we rebased and revised the RPL market basket to reflect a 2008 base year. We also proposed and finalized the use of the 2008-based RPL market basket to update IPF payments. Therefore, for the FY 2013 IPF PPS update, we are using the percentage increase in the 2008-based RPL market basket to determine the IPF PPS market basket update.

B. FY 2013 Market Basket Update

The FY 2013 update for the IPF PPS using the FY 2008-based RPL market basket and Information Handling Services (IHS) Global Insight's second quarter 2012 forecast for the market basket components is 2.7 percent (prior to the application of any statutory adjustments). This includes increases in both the operating and the capital components for FY 2013 (that is, October 1, 2012 through September 30, 2013). IHS Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

As previously described in section I.B, section 1886(s)(2)(A)(i) of the Affordable Care Act requires the application of the productivity adjustment described in section 1886(b)(3)(B)(xi)(II) of the Act to the IPF PPS for the RY beginning in 2012 and each subsequent RY. The statute defines the productivity adjustment to be equal to the 10-year moving average of changes in annual economy-wide private nonfarm business multifactor productivity (MFP) (as projected by the Secretary for the 10-year period ending with the applicable FY, year, cost reporting period, or other annual period) (the ''MFP adjustment'').

The Bureau of Labor Statistics (BLS) is the agency that publishes the official measure of private non-farm business MFP. We refer readers to the BLS Web site at *http://www.bls.gov/mfp* to obtain the BLS historical published MFP data. The MFP adjustment for FY 2013 applicable to the IPF PPS is derived using a projection of MFP that is currently produced by IHS Global Insight, Inc. For a detailed description of the model currently used by IHS Global Insight, Inc. to project MFP, as well as a description of how the MFP adjustment is calculated, we refer readers to the FY 2012 IPPS/LTCH final rule (76 FR 51690 through 51692). Based on IHS Global Insight, Inc 2012 second quarter forecast, the productivity adjustment for the RY beginning in 2012 (that is FY 2013) is 0.7 percentage point. Section 1886(s)(2)(A)(ii) of the Act requires the application of an ''other adjustment'' that reduces any update to an IPF PPS base rate by percentages specified in section 1886(s)(3) of the Act for rate years beginning in 2010 through the RY beginning in 2019. For the RY beginning in 2012 (that is, FY 2013), the reduction is 0.1 percentage point. We are implementing the productivity adjustment and ''other adjustment'' for FY 2013 in this FY 2013 IPF PPS notice.

C. Labor-Related Share

Due to the variations in costs and geographic wage levels, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index. This wage index would apply to the labor-related portion of the Federal per diem base rate, hereafter referred to as the labor-related share.

The labor-related share is determined by identifying the national average proportion of total costs that are related to, influenced by, or vary with the local labor market. We classify a cost category as labor-related if the costs are labor-intensive and vary with the local labor market. Based on our definition of the labor-related share, we include in the labor-related share the sum of the relative importance of Wages and Salaries, Employee Benefits, Professional Fees: Labor-related, Administrative and Business Support Services, All Other: Labor-related Services, and a portion of the Capital-Related cost weight.

Therefore, to determine the labor-related share for the IPF PPS for FY 2013, we used the FY 2008-based RPL market basket cost weights relative importance to determine the labor-related share for the IPF PPS. This estimate of the FY 2013 labor-related share is based on IHS Global Insight Inc.'s second quarter 2012 forecast, which is the same forecast used to derive the FY 2013 market basket update.

Table 1 below shows the FY 2013 relative importance labor-related share using the FY 2008-based RPL market basket along with the FY 2012 relative importance labor-related share.

TABLE 1—FY 2013 RELATIVE IMPORTANCE LABOR-RELATED SHARE AND THE RY 2012 (15-MONTH) RELATIVE IMPORTANCE LABOR-RELATED SHARE BASED ON THE FY 2008–BASED RPL MARKET BASKET

	RY 2012 Relative importance labor-related share [1]	FY 2013 Relative importance labor-related share [2]
Wages and Salaries	49.049	48.796
Employee Benefits	13.036	13.021
Professional Fees: Labor-Related	2.073	2.070
Administrative and Business Support Services	0.416	0.417
All Other: Labor-Related Services	2.094	2.077
Subtotal	66.668	66.381
Labor-Related Portion of Capital Costs (46%)	3.649	3.600
Total Labor-Related Share	70.317	69.981

[1] Published in the RY 2012 IPF PPS final rule (76 FR 26447) and based on the IHS Global Insight, Inc. first quarter 2011 forecast of the 2008-based RPL market basket. RY 2012 represents a 15-month update, which includes the period July 1, 2011 through September 30, 2012.
[2] Based on IHS Global Insight, Inc. second quarter 2012 forecast of the 2008-based RPL market basket.

The labor-related share for FY 2013 is the sum of the FY 2013 relative importance of each labor-related cost category, and would reflect the different rates of price change for these cost categories between the base year (FY 2008) and FY 2013. The sum of the relative importance for FY 2013 for operating costs (Wages and Salaries, Employee Benefits, Professional Fees: Labor-Related, Administrative and Business Support Services, and All Other: Labor-related Services) is 66.381 percent, as shown in Table 1 above. The portion of Capital-related cost that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage that was applied to the FY 2002-based RPL market basket. Since the relative importance for Capital-Related Costs is 7.825 percent of the FY 2008-based RPL market basket in FY 2013, we take 46 percent of 7.825 percent to determine the labor-related share of Capital-related cost for FY 2013. The result is 3.600 percent, which we add to 66.381 percent for the operating cost amount to determine the total labor-related share for FY 2013. Therefore, the labor-related share for the IPF PPS in FY 2013 is 69.981 percent. This labor-related share is determined using the same methodology as employed in calculating all previous IPF labor-related shares (69 FR 66952). The wage index and the labor-related share are reflected in budget neutrality adjustments.

VI. Updates to the IPF PPS for FY Beginning October 1, 2012

The IPF PPS is based on a standardized Federal per diem base rate calculated from the IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the patient- and facility-level adjustments that are applicable to the IPF stay. A detailed explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA required that we implement the IPF PPS in a budget neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) methodology had the IPF PPS not been implemented.

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Standardization of the Federal Per Diem Base Rate and Electroconvulsive Therapy (ECT) Rate

In the November 2004 IPF PPS final rule, we describe how we standardized the IPF PPS Federal per diem base rate to account for the overall positive effects of the IPF PPS payment adjustment factors. To standardize the IPF PPS payments, we compared the IPF PPS payment amounts calculated from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file to the projected TEFRA payments from the FY 2002 cost report file updated to the midpoint of the IPF PPS implementation period (that is, October 2005). The standardization factor was calculated by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The standardization factor was calculated to be 0.8367.

As described in detail in the May 2006 IPF PPS final rule (71 FR 27045), in reviewing the methodology used to simulate the IPF PPS payments used for the November 2004 IPF PPS final rule, we discovered that due to a computer code error, total IPF PPS payments were underestimated by about 1.36 percent. Since the IPF PPS payment total should have been larger than the estimated figure, the standardization factor should have been smaller (0.8254 vs. 0.8367). In turn, the Federal per diem base rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, in RY 2007, we amended the Federal per diem base rate and the ECT payment rate prospectively. Using the standardization factor of 0.8254, the average cost per day was effectively reduced by 17.46 percent (100 percent minus 82.54 percent = 17.46 percent).

2. Calculation of the Budget Neutrality Adjustment

To compute the budget neutrality adjustment for the IPF PPS, we separately identified each component of the adjustment, that is, the outlier adjustment, stop-loss adjustment, and behavioral offset.

A complete discussion of how we calculate each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046).

a. Outlier Adjustment

Since the IPF PPS payment amount for each IPF includes applicable outlier amounts, we reduced the standardized Federal per diem base rate to account for aggregate IPF PPS payments estimated to be made as outlier payments. The outlier adjustment was calculated to be 2 percent. As a result, the standardized Federal per diem base rate was reduced by 2 percent to account for projected outlier payments.

b. Stop-Loss Provision Adjustment

As explained in the November 2004 IPF PPS final rule, we provided a stop-loss payment during the transition from cost-based reimbursement to the per diem payment system to ensure that an IPF's total PPS payments were no less than a minimum percentage of their TEFRA payment, had the IPF PPS not been implemented. We reduced the standardized Federal per diem base rate by the percentage of aggregate IPF PPS payments estimated to be made for stop-loss payments. As a result, the standardized Federal per diem base rate was reduced by 0.39 percent to account for stop-loss payments. Since the transition was completed in RY 2009, the stop-loss provision is no longer applicable, and for cost reporting periods beginning on or after January 1, 2008, IPFs were paid 100 percent PPS.

c. Behavioral Offset

As explained in the November 2004 IPF PPS final rule, implementation of the IPF PPS may result in certain changes in IPF practices, especially with respect to coding for comorbid medical conditions. As a result, Medicare may make higher payments than assumed in our calculations. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

Based on accepted actuarial practices and consistent with the assumptions made in other PPSs, we assumed in determining the behavioral offset that IPFs would regain 15 percent of potential ''losses'' and augment payment increases by 5 percent. We applied this actuarial assumption, which is based on our historical experience with new payment systems, to the estimated ''losses'' and ''gains'' among the IPFs. The behavioral offset for the IPF PPS was calculated to be 2.66 percent. As a result, we reduced the standardized Federal per diem base rate by 2.66 percent to account for behavioral changes. As indicated in the November 2004 IPF PPS final rule, we do not plan to change adjustment factors or projections until we analyze IPF PPS data.

If we find that an adjustment is warranted, the percent difference may be applied prospectively to the established PPS rates to ensure the rates accurately reflect the payment level intended by the statute. In conducting this analysis, we will be interested in the extent to which improved coding of patients' principal and other diagnoses, which may not reflect real increases in underlying resource demands, has occurred under the PPS.

B. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

As described in the November 2004 IPF PPS final rule (69 FR 66931), the average per diem cost was updated to the midpoint of the implementation year. This updated average per diem cost of $724.43 was reduced by—(1) 17.46 percent to account for standardization to projected TEFRA payments for the implementation period; (2) 2 percent to account for outlier payments; (3) 0.39 percent to account for stop-loss payments; and (4) 2.66 percent to account for the behavioral offset. The Federal per diem base rate in the implementation year was $575.95. The increase in the per diem base rate for RY 2009 included the 0.39 percent increase due to the removal of the stop-loss provision. We indicated in the November 2004 IPF PPS final rule

(69 FR 66932) that we would remove this 0.39 percent reduction to the Federal per diem base rate after the transition. As discussed in section IV.D.2. of the May 2008 IPF PPS notice, we increased the Federal per diem base rate and the ECT base rate by 0.39 percent in RY 2009. Therefore for RY 2009 and beyond, the stop-loss provision has ended and is no longer a part of budget neutrality.

In accordance with section 1886(s)(2)(A)(ii) of the Act, which requires the application of an ''other adjustment,'' described in section 1886(s)(3) of the Act (specifically, section 1886(s)(3)(B)) for RYs 2013 and 2014 that reduces the update to the IPF PPS base rate for the FY beginning in Calendar Year (CY) 2012, we are adjusting the IPF PPS update by a 0.1 percentage point reduction for FY 2013. In addition, in accordance with section 1886(s)(2)(A)(i) of the Act, which requires the application of the productivity adjustment that reduces the update to the IPF PPS base rate for the FY beginning in CY 2012, we are adjusting the IPF PPS update by a 0.7 percentage point reduction for FY 2013.

For this notice, we are applying the 2008-based RPL market basket increase for FY 2013 of 2.7 percent, as adjusted by the ''other adjustment'' of minus 0.1 percentage point, the productivity adjustment of minus 0.7 percentage point, and the wage index budget neutrality factor of 1.0007 to the RY 2012 Federal per diem base rate of $685.01, yielding a Federal per diem base rate of $698.51 for FY 2013. Similarly, we are applying the market basket increase, as adjusted by the ''other adjustment,'' the productivity adjustment, and the wage index budget neutrality factor to the RY 2012 ECT base rate, yielding an ECT base rate of $300.72 for FY 2013.

VII. Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For this notice, we used the same results of the regression analysis used to implement the November 2004 IPF PPS final rule. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to set the fixed dollar loss threshold amount, we used the same results of this regression analysis to update the IPF PPS for RY 2012 and for FY 2013. Now that we are approximately 7 years into the IPF PPS, we believe that we have enough data to begin looking at the process of refining the IPF PPS as appropriate. We expect that in future rulemaking, we may propose potential refinements to the system.

As we stated previously, we do not plan to update the regression analysis until we are able to analyze IPF PPS claims and cost report data. However, we continue to monitor claims and payment data independently from cost report data to assess issues, to determine whether changes in case-mix or payment shifts have occurred among freestanding governmental, non-profit and private psychiatric hospitals, and psychiatric units of general hospitals, and CAHs and other issues of importance to IPFs.

B. Patient-Level Adjustments

In the May 2011 IPF PPS final rule (76 FR 26440 through 26453), we announced payment adjustments for the following patient-level characteristics: Medicare Severity diagnosis related groups (MS–DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

1. Adjustment for MS–DRG Assignment

The IPF PPS includes payment adjustments for the psychiatric DRG assigned to the claim based on each patient's principal diagnosis. The IPF PPS recognizes the MS–DRGs. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis.

In accordance with § 412.27(a), payment under the IPF PPS is conditioned on IPFs admitting ''only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in Chapter Five (''Mental Disorders'') of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM)'' or in the Fourth Edition, Text Revision of the American Psychiatric Association's Diagnostic and Statistical Manual, (DSM–IV–TR). IPF claims with a principal diagnosis included in Chapter Five of the ICD–9–CM or the DSM–IV–TR are paid the Federal per diem base rate under the IPF PPS and all other applicable adjustments, including any applicable DRG adjustment. Psychiatric principal diagnoses that do not group to one of the designated DRGs will still receive the Federal per diem base rate and all other applicable adjustments, but the payment will not include a DRG adjustment.

The Standards for Electronic Transaction final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312), adopted the ICD–9–CM as the designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health related problems. Therefore, we use the ICD–9–CM as the designated code set for the IPF PPS.

We believe that it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing psychiatric care. Therefore, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set and DRG patient classification system (that is, the CMS DRGs) that were utilized at the time under the hospital inpatient IPPS. Since the inception of the IPF PPS, the DRGs used as the patient classification system under the IPF PPS have corresponded exactly with the CMS DRGs applicable under the IPPS for acute care hospitals.

Every year, changes to the ICD–9–CM coding system are addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD–9–CM coding changes made in the annual IPPS update. We publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. Those ICD–9–CM coding changes are also published in the following IPF PPS FY update, in either the IPF PPS proposed and final rules, or in an IPF PPS update notice.

In the May 2008 IPF PPS notice (73 FR 25709), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS–DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). A crosswalk, to reflect changes that were made to the DRGs under the IPF PPS to the new MS–DRGs was provided (73 FR 25716). We believe by better accounting for patients' severity of illness in Medicare payment rates, the MS–DRGs encourage hospitals to improve their coding and documentation of patient

diagnoses. The MS–DRGs, which are based on the IPPS MS–DRGs, represent a significant increase in the number of DRGs (from 538 to 745, an increase of 207). For a full description of the development and implementation of the MS–DRGs, see the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175).

All of the ICD–9–CM coding changes are reflected in the FY 2013 GROUPER, Version 30.0, effective for IPPS discharges occurring on or after October 1, 2012 through September 30, 2013. The GROUPER Version 30.0 software package assigns each case to an MS–DRG on the basis of the diagnosis and procedure codes and demographic information (that is, age, sex, and discharge status). The Medicare Code Editor (MCE) 30.0 uses the new ICD–9–CM codes to validate coding for IPPS discharges on or after October 1, 2012. For additional information on the GROUPER Version 30.0 and MCE 30.0, see Transmittal 2289 (Change Request 7506), dated August 26, 2011. The IPF PPS has always used the same GROUPER and Code Editor as the IPPS. Therefore, the ICD–9–CM changes, which were reflected in the GROUPER Version 30.0 and MCE 30.0 on October 1, 2012, also became effective for the IPF PPS for discharges occurring on or after October 1, 2012.

The impact of the new MS–DRGs on the IPF PPS was negligible. Mapping to the MS–DRGs resulted in the current 17 MS–DRGs, instead of the original 15, for which the IPF PPS provides an adjustment. Although the code set is updated, the same associated adjustment factors apply now that have been in place since implementation of the IPF PPS, with one exception that is unrelated to the update to the codes. When DRGs 521 and 522 were consolidated into MS–DRG 895, we carried over the adjustment factor of 1.02 from DRG 521 to the newly consolidated MS–DRG. This was done to reflect the higher claims volume under DRG 521, with more than eight times the number of claims than billed under DRG 522. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS–DRG adjustment categories, we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The official version of the ICD–9–CM is available on CD–ROM from the U.S. Government Printing Office. The FY 2012 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, DC 20402–9329, telephone number (202) 512–1800. Questions concerning the ICD–9–CM should be directed to Patricia E. Brooks, Co-Chairperson, ICD–9–CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Mailstop C4–08–06, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The Web site for the CD–ROM which contains the complete official version of the International Classification of Diseases, Ninth Revision, Clinical Modification is located at: *http://www.cms.gov/Medicare/Coding/ICD9ProviderDiagnosticCodes/CDROM.html.*

Further information concerning the official version of the ICD–9–CM can be found on the IPPS Web site at: *http://cms.hhs.gov/medicare/coding/icd9providerdiagnosticcodes/addendum.html.*

The MS–IPF–DRG adjustment factors (as shown in Table 2) will continue to be paid for discharges occurring in FY 2013.

TABLE 2—FY 2013 CURRENT MS–IPF–DRGS APPLICABLE FOR THE PRINCIPAL DIAGNOSIS ADJUSTMENT

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.05
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.88

2. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2011 IPF PPS final rule (76 FR 26451 through 26452), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2012 (76 FR 26451).

Comorbidities are specific patient conditions that are secondary to the patient's principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment within a comorbidity category, but it may receive an adjustment for more than one comorbidity category. Billing instructions require that IPFs must enter

the full ICD–9–CM codes for up to 8 additional diagnoses if they co-exist at the time of admission or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM ''code first'' instructions apply. As we explained in the May 2011 IPF PPS final rule (76 FR 265451), the code first rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, the ICD–9–CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation. Whenever a combination exists, there is a ''use additional code'' note at the etiology code and a code first note at the manifestation code.

As discussed in the MS–DRG section, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care.

For FY 2013, we are applying the seventeen comorbidity categories for which we are providing an adjustment, their respective codes, and their respective adjustment factors in Table 3 below.

TABLE 3—FY 2013 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	Diagnoses codes	Adjustment factor
Developmental Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	51900 through 51909 and V440	1.06
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859,586, V4511, V4512, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21–92.29 or chemotherapy code 99.25	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein Calorie Malnutrition.	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders.	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease.	49121, 4941, 5100, 51883, 51884, V4611, V4612, V4613 and V4614	1.12
Artificial Openings—Digestive and Urinary.	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (that is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with age. The older age groups are more costly than the under 45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

We do not plan to update the regression analysis until we are able to analyze IPF PPS data. Therefore, for FY 2013, we are continuing to use the patient age adjustments currently in effect as shown in Table 4 below.

TABLE 4—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Variable per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section VII.C.5 of this notice.

For FY 2013, we are continuing to use the variable per diem adjustment factors currently in effect as shown in Table 5 below. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

TABLE 5—VARIABLE PER DIEM ADJUSTMENTS

Day-of-stay	Adjustment factor
Day 1—IPF Without a Qualifying ED	1.19
Day 1—IPF With a Qualifying ED	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

C. Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule and in the May 2008 and May 2009 IPF PPS notices, in providing an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C).

b. Wage Index for FY 2013

Since the inception of the IPF PPS, we have used hospital wage data in developing a wage index to be applied to IPFs. We are continuing that practice for FY 2013. We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 69.981 percent. This percentage reflects the labor-related relative importance of the FY 2008-based RPL market basket for FY 2013 (see section V.C. of this notice). The IPF PPS uses the pre-floor, pre-reclassified hospital wage index. Changes to the wage index are made in a budget neutral manner so that updates do not increase expenditures.

For FY 2013, we are applying the most recent hospital wage index (that is, the FY 2012 pre-floor, pre-reclassified hospital wage index because this is the most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from hospital cost reports for the cost reporting period beginning during FY 2008), and applying an adjustment in accordance with our budget neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments in RY 2012 using the applicable wage index value divided by the total estimated IPF PPS payments in FY 2013 using the most recent wage index. The estimated payments are based on FY 2011 IPF claims, inflated to the appropriate FY. This quotient is the wage index budget neutrality factor, and it is applied in the update of the Federal per diem base rate for FY 2013 in addition to the market basket described in section VI.B. of this notice. The wage index budget neutrality factor for FY 2013 is 1.0007.

The wage index applicable for FY 2013 appears in Table 1 and Table 2 in Addendum B of this notice. As explained in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), the IPF PPS applies the hospital wage index without a hold-harmless policy, and without an out-commuting adjustment or out-migration adjustment because the statutory authority for these policies applies only to the IPPS.

Also in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, since the IPF PPS was already in a transition period from TEFRA payments to PPS payments, we did not provide a separate transition for the CBSA-based wage index.

As was the case in RY 2012, for FY 2013, we will continue to use the CBSA-based wage index values as presented in Tables 1 and 2 in Addendum B of this notice. A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

In summary, for FY 2013, we will use the FY 2012 wage index data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2008) to adjust IPF PPS payments beginning October 1, 2012.

c. OMB Bulletins

OMB publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IPF PPS wage index (73 FR 25721). We will continue to do the same for all the OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary. The OMB bulletins may be accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html*.

2. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For FY 2013, we are applying a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). As stated in the November 2004 IPF PPS final rule, we do not intend to update the adjustment factors derived from the regression analysis until we are able to analyze IPF PPS data. A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching hospitals. The teaching adjustment accounts for the higher indirect operating costs experienced by hospitals that participate in graduate medical education (GME) programs. The payment adjustments are made based on the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other

direct teaching costs) to all teaching hospitals including those paid under a PPS, and those paid under the TEFRA rate-of-increase limits. These direct GME payments are made separately from payments for hospital operating costs and are not part of the PPSs. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare does not make separate payments for indirect medical education costs because payments to these hospitals are based on the hospitals' reasonable costs which already include these higher indirect costs that may be associated with teaching programs.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's ''teaching variable,'' which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. The cap limits the number of FTE residents that teaching IPFs may count for the purpose of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a ''base year'' and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant.

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, in this notice, for FY 2013, we are retaining the coefficient value of 0.5150 for the teaching adjustment to the Federal per diem base rate.

A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721).

a. FTE Intern and Resident Cap Adjustment

CMS had been asked to reconsider the original IPF teaching policy and permit a temporary increase in the FTE resident cap when an IPF increases the number of FTE residents it trains due to the acceptance of displaced residents (residents that are training in an IPF or a program before the IPF or program closed) when another IPF closes or closes its medical residency training program.

To help us assess how many IPFs had been, or were expected to be adversely affected by their inability to adjust their caps under § 412.424(d)(1) and under these situations, we specifically requested public comment from IPFs in the May 1, 2009 IPF PPS notice (74 FR 20376 through 20377). A summary of the comments and our response can be reviewed in the April 30, 2010 IPF PPS notice (75 FR 23106, 23117). All of the commenters recommended that CMS modify the IPF PPS teaching adjustment policy, supporting a policy change that would permit the IPF PPS residency cap to be temporarily adjusted when that IPF trains displaced residents due to closure of an IPF or closure of an IPF's medical residency training program(s). The commenters recommended a temporary resident cap adjustment policy similar to the policies applied in similar contexts for acute care hospitals.

We agreed with the commenters that, when a hospital temporarily takes on residents because another hospital closes or discontinues its program, a temporary adjustment to the cap would be appropriate for rotation that occurs in an IPF setting (freestanding or units). In these situations, residents may have partially completed a medical residency training program at the hospital that has closed its training program and may be unable to complete their training at another hospital that is already training residents up to or in excess of its cap. We believe that it is appropriate to allow temporary adjustments to the FTE caps for an IPF that provides residency training to medical residents who have partially completed a residency training program at an IPF that closes or at an IPF that discontinues training residents in a residency training program(s) (also referred to as a ''closed'' program throughout this preamble). For this reason, we adopted the following temporary resident cap adjustment policies, similar to the temporary adjustments to the FTE cap used for acute care hospitals. We proposed and finalized that the cap adjustment would be temporary because it is resident specific and would only apply to the displaced resident(s) until the resident(s) completes training in that specialty. As under the IPPS policy for displaced residents, the IPF PPS temporary cap adjustment would apply only to residents that were still training at the IPF at the time the IPF closed or at the time the IPF ceased training residents in the residency training program(s). Residents who leave the IPF, for whatever reason, before the closure of the IPF hospital or medical residency training program would not be considered displaced residents for purposes of the IPF temporary cap adjustment policy. Similarly, as under the IPPS policy, medical students who match to a program at an IPF but the IPF or medical residency training program closes before the individual begins training at that IPF are also not considered displaced residents for purposes of the IPF temporary cap adjustments. For detailed information on these acute care hospital GME/IME payment policies, we refer the reader to the (66 FR 39899) August 1, 2001 final rule, (64 FR 41522) July 30, 1999 final rule, and (64 FR 24736) May 7, 1999 proposed rule. We note that although we adopted a policy under the IPF PPS that is consistent with the policy applicable under the IPPS, the actual caps under the two payment systems may not be commingled.

b. Temporary Adjustment to the FTE Cap To Reflect Residents Added Due to Hospital Closure

In the May 6, 2011 IPF PPS final rule, we indicated that we would allow an IPF to receive a temporary adjustment to the FTE cap to reflect residents added because of another IPF's closure. This adjustment is intended to account for medical residents who would have partially completed a medical residency training program at the hospital that has closed and may be unable to complete their training at another hospital because that hospital is already training residents up to or in excess of its cap. We made this change because IPFs have indicated a reluctance to accept additional residents from a closed IPF

without a temporary adjustment to their caps. For purposes of this policy on IPF closure, we adopted the IPPS definition of ''closure of a hospital'' in 42 CFR 413.79(h) to mean the IPF terminates its Medicare provider agreement as specified in 42 CFR 489.52. Therefore, we added a new § 412.424(d)(1)(iii)(F)(1) to allow a temporary adjustment to an IPF's FTE cap to reflect residents added because of an IPF's closure on or after July 1, 2011, to be effective for cost reporting periods beginning on or after July 1, 2011. Under this policy, we allow an adjustment to an IPF's FTE cap if the IPF meets the following criteria: (1) The IPF is training displaced residents from an IPF that closed on or after July 1, 2011; and (2) the IPF that is training the displaced residents from the closed IPF submits a request for a temporary adjustment to its FTE cap to its Medicare contractor no later than 60 days after the hospital first begins training the displaced residents, and documents that the IPF is eligible for this temporary adjustment to its FTE cap by identifying the residents who have come from the closed IPF and have caused the IPF to exceed its cap, (or the IPF may already be over its cap), and specifies the length of time that the adjustment is needed. After the displaced residents leave the IPF's training program or complete their residency program, the IPF's cap would revert to its original level. This means that the temporary adjustment to the FTE cap would be available to the IPF only for the period of time necessary for the displaced residents to complete their training. Further, as under the IPPS policy, we also indicated that the total amount of temporary cap adjustment that can be distributed to all receiving hospitals cannot exceed the cap amount of the IPF that closed.

c. Temporary Adjustment to FTE Cap to Reflect Residents Affected by Residency Program Closure

In the May 6, 2011 final rule (76 FR 26455), we indicated that if an IPF that ceases training residents in a residency training program(s) agrees to temporarily reduce its FTE cap, we would allow another IPF to receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program. For purposes of this policy on closed residency programs, we adopted the IPPS definition of ''closure of a hospital residency training program'' to mean that the hospital ceases to offer training for residents in a particular approved medical residency training program as specified in § 413.79(h). The methodology for adjusting the caps for the ''receiving IPF'' and the ''IPF that closed its program'' is described below.

i. Receiving IPF

We proposed and finalized that an IPF(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of another IPF's residency training program for cost reporting periods beginning on or after July 1, 2011 if —

- The IPF is training additional residents from the residency training program of an IPF that closed its program on or after July 1, 2011.
- No later than 60 days after the IPF begins to train the residents, the IPF submits to its Medicare Contractor a request for a temporary adjustment to its FTE cap, documents that the IPF is eligible for this temporary adjustment by identifying the residents who have come from another IPF's closed program and have caused the IPF to exceed its cap, (or the IPF may already be in excess of its cap), specifies the length of time the adjustment is needed, and, submits to its Medicare contractor a copy of the FTE cap reduction statement by the IPF closing the residency training program.

In general, the temporary adjustment criteria established for closed medical residency training programs at IPFs is similar to the criteria established for closed IPFs. More than one IPF may be eligible to apply for the temporary adjustment because residents from one closed program may complete their training at one IPF, or at several IPFs. Also, an IPF would be eligible for the temporary adjustment only to the extent that the displaced residents would cause the IPF to exceed its FTE cap.

Finally, we proposed and finalized that IPFs meeting the proposed criteria would be eligible to receive temporary adjustments to their FTE caps for cost reporting periods beginning on or after July 1, 2011.

ii. IPF That Closed Its Program

We indicated that an IPF that agrees to train residents who have been displaced by the closure of another IPF's resident teaching program, may receive a temporary FTE cap adjustment only if the IPF that closed a program:

- Temporarily reduces its FTE cap by the number of FTE residents in each program year, training in the program at the time of the program's closure. The yearly reduction would be determined by deducting the number of those residents who would have been training in the program during the year of the closure, had the program not closed.
- No later than 60 days after the residents who were in the closed program begin training at another IPF, submits to its Medicare contractor a statement signed and dated by its representative that specifies that it agrees to the temporary reduction in its FTE cap to allow the IPF training the displaced residents to obtain a temporary adjustment to its cap; identifies the residents who were training at the time of the program's closure; identifies the IPFs to which the residents are transferring once the program closes; and specifies the reduction for the applicable program years.

We proposed and finalized that the cap reduction for the IPF with the closed program would be based on the number of FTE residents in each program year who were in the program at the IPF at the time of the program's closure, and who begin training at another IPF.

In summary, we added § 412.424(d)(1)(iii)(F)(1) and § 412.424(d)(1)(iii)(F)(2) to implement policies related to temporary adjustments to FTE caps to reflect residents added due to closure of an IPF or an IPFs medical residency training program respectfully.

A complete discussion on the Temporary adjustment to the FTE cap to reflect residents added due to hospital closure and by residency program appears in the January 27, 2011 IPF PPS proposed rule (76 FR 5018 through 5020) and the May 6, 2011 IPF PPS final rule (76 FR 26453 through 26456).

4. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) have adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA adjustment for IPFs located in Alaska and Hawaii is made by

multiplying the nonlabor-related portion of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

The COLA factors are published on the Office of Personnel Management (OPM) Web site at (*http://www.opm.gov/oca/cola/rates.asp*).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- Rest of the State of Alaska.

As previously stated in the November 2004 IPF PPS final rule, we update the COLA factors according to updates established by the OPM. Sections 1911 through 1919 of the Nonforeign Area Retirement Equity Assurance Act, as contained in subtitle B of title XIX of the National Defense Authorization Act (NDAA) for Fiscal Year 2010 (Pub. L. 111–84, October 28, 2009), transitions the Alaska and Hawaii COLAs to locality pay. Under section 1914 of Pubic Law 111–84, locality pay is being phased in over a 3-year period beginning in January 2010, with COLA rates frozen as of the date of enactment, October 28, 2009, and then proportionately reduced to reflect the phase-in of locality pay.

When we published the proposed COLA adjustment factors in the January 2011 IPF proposed rule (76 FR 4998), we inadvertently selected the FY 2010 COLA rates. The FY 2010 COLA rates were reduced rates to account for the phase-in of locality pay. We did not intend to propose reduced COLA rates, and we do not believe it is appropriate to finalize the reduced COLAs that we showed in our January 2011 proposed rule. The 2009 COLA rates do not reflect the phase-in of locality pay. Therefore, we finalized the FY 2009 COLA rates, which are the same rates that were in effect for both RY 2010, through RY 2012. We plan to address COLA in the future refinement process in FY 2014. For FY 2013, IPFs located in Alaska and Hawaii will continue to receive the updated COLA factors based on the COLA area in which the IPF is located as shown in Table 6 below.

TABLE 6—COLA FACTORS FOR ALASKA AND HAWAII IPFS

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.18
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

(The above factors are based on data obtained from the U.S. Office of Personnel Management Web site at: *http://www.opm.gov/oca/cola/rates.asp*.).

5. Adjustment for IPFs With a Qualifying Emergency Department (ED)

Currently, the IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute hospital or a CAH for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS) furnished to a beneficiary during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made where a patient is discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit. An ED adjustment is not made in this case because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH. If we provided the ED adjustment in these cases, the hospital would be paid twice for the overhead costs of the ED, as stated in the November 2004 IPF PPS final rule (69 FR 66960).

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF.

For FY 2013, we are retaining the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

For FY 2013, the IPF PPS includes an outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial

risk of IPFs treating unusually costly patients. In this section, we also explain the reason for ending the stop-loss provision that was applicable during the transition period.

1. Outlier Payments

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1 through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of $7,340 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Update to the Outlier Fixed Dollar Loss Threshold Amount

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

We believe it is necessary to update the fixed dollar loss threshold amount because an analysis of the latest available data (that is, FY 2011 IPF claims) and rate increases indicate that adjusting the fixed dollar loss amount is necessary in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments.

In the May 2006 IPF PPS final rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We will continue to use this process for FY 2013. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to determine an outlier fixed dollar loss threshold amount that will result in estimated outlier payments being equal to 2 percent of total estimated payments under the simulation. Based on this process, using the FY 2011 claims data, we estimate that IPF outlier payments as a percentage of total estimated payments are approximately 3.1 percent in RY 2012. Thus, for this notice, we are updating the FY 2013 IPF outlier threshold amount to ensure that estimated FY 2013 outlier payments are approximately 2 percent of total estimated IPF payments. The outlier fixed dollar loss threshold amount of $7,340 for RY 2012 will be changed to $11,600 for FY 2013 to reduce estimated outlier payments and thereby maintain estimated outlier payments at 2 percent of total estimated aggregate IPF payments for FY 2013.

b. Update to IPF Cost-to-Charge Ratio Ceilings

As previously stated, under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In the June 2003 IPPS final rule (68 FR 34494), we implemented changes to the IPPS policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule, because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted an approach to ensure the statistical accuracy of CCRs under the IPF PPS (69 FR 66961). Therefore, we adopted the following procedure in the November 2004 IPF PPS final rule:

- We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs using the most recent CCRs entered in the CY 2012 Provider Specific File.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in FY 2013 is 1.9155 for rural IPFs, and 1.7072 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We apply the national CCRs to the following situations:

++ New IPFs that have not yet submitted their first Medicare cost report.
++ IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).
++ Other IPFs for which the Medicare contractor obtains inaccurate or incomplete data with which to calculate a CCR.

For new IPFs, we are using these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

We are not making any changes to the procedures for updating the CCR ceilings in FY 2013. However, we are updating the FY 2013 national median and ceiling CCRs for urban and rural IPFs based on the CCRs entered in the latest available IPF PPS Provider Specific File. Specifically, for FY 2013, and to be used in each of the three situations listed above, using the most recent CCRs entered in the CY 2012 Provider Specific File we estimate the national median CCR of 0.622 for rural IPFs and the national median CCR of 0.496 for urban IPFs. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Expiration of the Stop-Loss Provision

In the November 2004 IPF PPS final rule, we implemented a stop-loss policy that reduced financial risk to IPFs projected to experience substantial reductions in Medicare payments during the period of transition to the IPF PPS. This stop-loss policy guaranteed that each facility received total IPF PPS payments that were no less than 70 percent of its TEFRA payments had the IPF PPS not been implemented. This policy was applied to the IPF PPS portion of Medicare payments during the 3-year transition.

In the implementation year, the 70 percent of TEFRA payment stop-loss policy required a reduction in the standardized Federal per diem and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral. As described in the May 2008 IPF PPS notice for RY 2009, we increased the Federal per diem base rate and ECT rate by 0.39 percent because these rates were reduced by 0.39 percent in the implementation year to ensure stop-loss payments were budget neutral.

The stop-loss provision ended during RY 2009 (that is for discharges occurring on or after July 1, 2008 through June 30, 2009). The stop-loss policy is no longer applicable under the IPF PPS.

3. Future Refinements

As we have indicated throughout this notice, we have delayed making refinements to the IPF PPS until we have adequate IPF PPS data to base those decisions. Specifically, we explained that we will delay updating the adjustment factors derived from regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Now that we are approximately 7 years into the system, we believe that we have enough data to begin that process. We have begun the necessary analysis to better understand IPF industry practices so that we may refine the IPF PPS as appropriate. Using more recent data, we plan to re-run the regression analyses and recalculate the Federal per diem base rate and the patient- and facility-level adjustments. While we are not making these refinements in this notice, we expect that in the rulemaking for FY 2014 we will be ready to present the results of our analysis.

For RY 2012, we published several areas of concern for future refinement and we invited comments on these issues in our RY 2012 proposed and final rules. For further discussion of these issues and to review public comments, we refer readers to the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432).

VIII. Secretary's Recommendations

Section 1886(e)(4)(A) of the Act requires the Secretary, taking into consideration the recommendations of MedPAC, to recommend update factors for inpatient hospital services (including IPFs) for each FY that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Section 1886(e)(5) of the Act requires the Secretary to publish the recommended and final update factors in the **Federal Register**.

In the past, the Secretary's recommendations and a discussion about the MedPAC recommendations for the IPF PPS were included in the IPPS proposed and final rules. The market basket update for the IPF PPS was also included in the IPPS proposed and final rules, as well as in the IPF PPS annual update.

Beginning FY 2013, however, we will only publish the market basket update for the IPF PPS in the annual IPF PPS FY update and not in the IPPS proposed and final rules. Furthermore, for any years which MedPAC makes recommendations for the IPF PPS, those recommendations will be noted and considered in the IPF PPS update.

MedPAC did not make any recommendations for the IPF PPS for FY 2013. For the update to the IPF PPS standard Federal rate for FY 2013, see section IV B. of this notice.

IX. Waiver of Notice and Comment

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice.

We find it is unnecessary to undertake notice and comment rulemaking for this action because the updates in this notice do not reflect any substantive changes in policy, but merely reflect the application of previously established methodologies. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

X. Collection of Information Requirements

This notice does not impose any new or revised information collection or recordkeeping requirements. Consequently, it does not need Office of Management and Budget review under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

XI. Regulatory Impact Analysis

A. Statement of Need

This notice will update the prospective payment rates for Medicare inpatient hospital services provided by IPF for discharges occurring during the FY beginning October 1, 2012 through September 30, 2013. We are applying the FY 2008-based RPL market basket increase of 2.7 percent, less the 0.1 percentage point required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and less the productivity adjustment of 0.7 percentage point as required by 1886(s)(2)(A)(i) of the Act.

B. Overall Impact

We have examined the impact of this notice as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This notice is not designated as economically ''significant'' under section 3(f)(1) of Executive Order 12866.

We estimate that the total impact of these changes for FY 2013 payments compared to RY 2012 payments would be a net increase of approximately $36 million (this reflects a $86 million increase from the update to the payment rates and a $50 million decrease due to the update to the outlier threshold amount to decrease outlier payments from approximately 3.1 percent in RY 2012 to 2.0 percent in FY 2013).

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small

entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IPFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year (for details, refer to the SBA Small Business Size Standards found at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf*), or being nonprofit organizations that are not dominant in their markets.

Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue that is derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA.

As shown in Table 7, we estimate the revenue impact of this notice on all IPFs is to increase Medicare payments by approximately 0.8 percent, with rural IPFs receiving an increase of 1.2 percent in Medicare payments. As a result, the Secretary has determined that this notice will not have a significant impact on a substantial number of small entities. Medicare fiscal intermediaries, Medicare Administrative Contractors, and Carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis, if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As discussed in detail below, the rates and policies set forth in this notice will not have an adverse impact on the rural hospitals based on the data of the 311 rural units and 71 rural hospitals in our database of 1,627 IPFs for which data were available. Therefore, the Secretary has determined that this notice will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold is approximately $139 million. This notice will not impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of $139 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this notice would not have a substantial effect on State and local governments.

C. Anticipated Effects

As discussed earlier in the preamble, in the RY 2012 IPF PPS proposed rule (76 FR 4998) and final rule (76 FR 26432), we revised the IPF PPS payment rate update period by switching from a RY (that is July 1 through June 30) to a period that coincides with a FY (that is, October 1 through September 30). Beginning with the update period that starts in 2012, that is, FY 2013, we now refer to update periods as FY. This change, in the annual update period, is reflected in the quantitative analysis presented in this Regulatory Impact Analysis section. Furthermore, this change allows us to consolidate Medicare publications by aligning the IPF PPS update with the annual update of the ICD–9–CM codes, which are effective on October 1 of each year. Below, we discuss the historical background of the IPF PPS and the impact of this notice on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

In accordance with § 412.424(c)(3)(ii), we indicated that we will evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal per diem and ECT base rates to account for differences between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will reassess the accuracy of all of the factors impacting budget neutrality. In addition, as discussed in section VII.C.1 of this notice, we are using the wage index and labor-related share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem and ECT base rates. Therefore, the budgetary impact to the Medicare program of this notice will be due to the market basket update for FY 2013 of 2.7 percent (see section V.B. of this notice) less the ''other adjustment'' of 0.1 percentage point according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act, less the productivity adjustment of 0.7 percentage point required by section 1886(s)(2)(A)(i) of the Act, and the update to the outlier fixed dollar loss threshold amount.

We estimate that the FY 2013 impact will be a net increase of $36 million in payments to IPF providers. This reflects an estimated $86 million increase from the update to the payment rates and a $50 million decrease due to the update to the outlier threshold amount to decrease outlier payments from approximately 3.1 percent in RY 2012 to 2.0 percent in FY 2013.

2. Impact on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this notice, it is necessary to compare estimated payments under the IPF PPS rates and factors for FY 2013 versus those under RY 2012. The estimated payments for RY 2012 and FY 2013 will be 100 percent of the IPF PPS payment, since the transition period has ended and stop-loss payments are no longer paid. We determined the percent change of estimated FY 2013 IPF PPS payments to RY 2012 IPF PPS payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the update to the outlier fixed dollar loss threshold amount, the labor-related share and wage index changes for the FY 2013 IPF PPS, and the market basket update for FY 2013, as adjusted by the ''other adjustment'' according to sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and the productivity adjustment according to section 1886(s)(2)(A)(i).

To illustrate the impacts of the FY 2013 changes in this notice, our analysis begins with a RY 2012 baseline

simulation model based on FY 2011 IPF payments inflated to the midpoint of RY 2012 using IHS Global Insight's most recent forecast of the market basket update (see section V.B. of this notice); the estimated outlier payments in RY 2012; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2011 pre-floor, pre-reclassified hospital wage index; the RY 2012 labor-related share; and the RY 2012 percentage amount of the rural adjustment. During the simulation, the total estimated outlier payments are maintained at 2 percent of total IPF PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The update to the outlier fixed dollar loss threshold amount.
- The FY 2012 pre-floor, pre-reclassified hospital wage index and FY 2013 labor-related share.
- The market basket update for FY 2013 of 2.7 percent less the ''other adjustment'' of 0.1 percentage point in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and less the productivity adjustment of 0.7 percentage point reduction in accordance with section 1886(s)(2)(A)(i) of the Act.

Our final comparison illustrates the percent change in payments from RY 2012 (that is, July 1, 2011 to September 30, 2012) to FY 2013 (that is, October 1, 2012 to September 30, 2013) including all the changes in this notice.

TABLE 7—IPF IMPACT TABLE FOR FY 2013

Facility by type	Number of facilities	Projected impacts (% change in columns 3–6): Outlier	CBSA wage index & labor share	Adjusted market basket update [1]	Total percent change [2]
(1)	(2)	(3)	(4)	(5)	(6)
All Facilities	1,627	−1.1	0.0	1.9	0.8
Total Urban	1,245	−1.2	0.0	1.9	0.7
Total Rural	382	−0.7	0.0	1.9	1.2
Urban unit	844	−1.6	0.0	1.9	0.2
Urban hospital	401	−0.4	−0.1	1.9	1.5
Rural unit	311	−0.9	−0.1	1.9	1.0
Rural hospital	71	−0.3	0.2	1.9	1.8
By Type of Ownership:					
Freestanding IPFs:					
Urban Psychiatric Hospitals:					
Government	152	−0.7	0.0	1.9	1.1
Non-Profit	109	−0.2	−0.2	1.9	1.5
For-Profit	136	−0.2	0.0	1.9	1.7
Rural Psychiatric Hospitals:					
Government	40	−0.7	0.3	1.9	1.5
Non-Profit	9	−0.1	0.5	1.9	2.3
For-Profit	21	0.0	0.2	1.9	2.0
IPF Units:					
Urban:					
Government	147	−2.6	0.0	1.9	−0.7
Non-Profit	561	−1.5	0.0	1.9	0.3
For-Profit	133	−1.1	0.1	1.9	0.9
Rural:					
Government	74	−0.8	0.1	1.9	1.2
Non-Profit	177	−0.8	−0.1	1.9	1.0
For-Profit	60	−1.2	−0.1	1.9	0.6
Unknown Ownership Type	8	−2.2	−0.1	1.9	−0.5
By Teaching Status:					
Non-teaching	1,419	−0.9	0.0	1.9	0.9
Less than 10% interns and residents to beds	114	−1.3	0.1	1.9	0.6
10% to 30% interns and residents to beds	69	−2.7	0.2	1.9	−0.7
More than 30% interns and residents to beds	25	−2.5	0.1	1.9	−0.6
By Region:					
New England	112	−1.5	0.1	1.9	0.5
Mid-Atlantic	263	−1.1	0.2	1.9	0.9
South Atlantic	230	−0.7	−0.2	1.9	1.0
East North Central	265	−1.1	−0.4	1.9	0.4
East South Central	168	−1.0	−0.3	1.9	0.5
West North Central	141	−1.2	0.3	1.9	1.0
West South Central	228	−0.7	0.3	1.9	1.5
Mountain	95	−0.9	0.1	1.9	1.0
Pacific	125	−2.1	0.1	1.9	−0.2
By Bed Size:					
Psychiatric Hospitals:					
Beds: 0–24	75	−0.7	0.0	1.9	1.2
Beds: 25–49	69	−0.5	−0.1	1.9	1.3
Beds: 50–75	75	−0.7	−0.4	1.9	0.8
Beds: 76+	253	−0.2	0.1	1.9	1.7
Psychiatric Units:					
Beds: 0–24	690	−1.7	0.0	1.9	0.2
Beds: 25–49	310	−1.2	0.0	1.9	0.6

TABLE 7—IPF IMPACT TABLE FOR FY 2013—Continued

Facility by type	Number of facilities	Outlier	CBSA wage index & labor share	Adjusted market basket update [1]	Total percent change [2]
	Projected impacts (% change in columns 3–6)				
(1)	(2)	(3)	(4)	(5)	(6)
Beds: 50–75	95	−1.3	0.0	1.9	0.6
Beds: 76+	60	−1.8	0.1	1.9	0.1

[1] This column reflects the impact of the market basket update factor for FY 2013 of 1.9 percent, which includes a market basket update of 2.7 percent, a 0.1 percentage point reduction in accordance with sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act, and a 0.7 percentage point reduction for the productivity adjustment as required by section 1886(s)(2)(A)(i) of the Act.

[2] Percent changes in estimated payments from RY 2012 to FY 2013 include all of the changes of this rule. Note, the products of these impacts may be different from the percentage changes shown here due to rounding effects.

3. Results

Table 7 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type
- Location
- Teaching Status Adjustment
- Census Region
- Size

The top row of the table shows the overall impact on the 1,627 IPFs included in this analysis.

In column 3, we present the effects of the update to the outlier fixed dollar loss threshold amount. We estimate that IPF outlier payments as a percentage of total IPF payments are 3.1 percent in RY 2012. Thus, we are adjusting the outlier threshold amount in this notice to set total estimated outlier payments equal to 2 percent of total payments in FY 2013. The estimated change in total IPF payments for FY 2013, therefore, includes an approximate 1.1 percent decrease in payments because the outlier portion of total payments is expected to decrease from approximately 3.1 percent to 2 percent.

The overall impact of this outlier adjustment update (as shown in column 3 of table 7), across all hospital groups, is to decrease total estimated payments to IPFs by 1.1 percent. We do not estimate that any group of IPFs will experience an increase in payments from this update. The largest decrease in payments is estimated to reflect a 2.7 percent decrease in payments for IPFs located in teaching hospitals with an intern and resident ADC ratio greater than or equal to 10 percent and less than or equal to 30 percent. This is due to the high volume of outlier payments made to the IPFs in this category.

In column 4, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated FY 2013 payments under the FY 2012 hospital wage index under CBSA classification and associated labor-related share to the simulated RY 2012 payments under the FY 2011 hospital wage index under CBSA classifications and associated labor-related share. We note that there is no projected change in aggregate payments to IPFs, as indicated in the first row of column 4. However, there will be small distributional effects among different categories of IPFs. For example, we estimate the largest increase in payments to be a 0.5 percent increase for rural, non-profit freestanding psychiatric hospitals and the largest decrease in payments to be a 0.4 percent decrease for IPFs in the East North Central region and freestanding IPFs in the 50 to 75 bed size category.

Column 5 shows the estimated effect of the update to the IPF PPS payment rates, which includes a 2.7 percent market basket update less the 0.1 percentage point in accordance with section 1886(s)(2)(A)(ii) and 1886(s)(3)(B) and less the 0.7 percentage point in accordance with section 1886(s)(2)(A)(i).

Column 6 compares our estimates of the changes reflected in this notice for FY 2013, to our payments for RY 2012 (without these changes). This column reflects all FY 2013 changes relative to RY 2012. The average estimated increase for all IPFs is approximately 0.8 percent. This estimated net increase includes the effects of the 2.7 percent market basket update adjusted by the ''other adjustment'' of minus 0.1 percentage point, as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act and the productivity adjustment of minus 0.7 percentage point, as required by section 1886(s)(2)(A)(i) of the Act. It also includes the overall estimated 1.1 percent decrease in estimated IPF outlier payments from the update to the outlier fixed dollar loss threshold amount. Since we are making the updates to the IPF labor-related share and wage index in a budget-neutral manner, they will not affect total estimated IPF payments in the aggregate. However, they will affect the estimated distribution of payments among providers.

Overall, the estimated payments to IPFs in FY 2013 are projected to increase by 0.8 percent, compared with the payments in RY 2012. IPF payments are estimated to increase 0.7 percent in urban areas and 1.2 percent in rural areas, compared with RY 2012 payments. The largest payment increase is estimated at 2.3 percent for rural, non-profit freestanding psychiatric hospitals and the largest payment decrease is estimated at 0.7 percent for urban government IPF units and IPFs located in teaching hospitals with an intern and resident ADC ratio greater than or equal to 10 percent and less than or equal to 30 percent.

4. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other PPSs, we estimate that Medicare spending (total Medicare program payments) for IPF services over the next 5 years would be as shown in Table 8 below.

TABLE 8—ESTIMATED PAYMENTS

Fiscal year	Dollars in millions
2013	4,960
2014	5,380
2015	5,860
2016	6,390
2017	6,900

These estimates are based on the current forecast of the increases in the RPL market basket, including an

adjustment for productivity, for the RY beginning in 2012 and each subsequent RY, as required by section 1886(s)(2)(A)(i) of the Act, as follows:

- 2.0 percent for FY 2013.
- 2.3 percent for FY 2014.
- 2.7 percent for FY 2015.
- 2.8 percent for FY 2016.
- 2.6 percent for FY 2017.

The estimates in Table 8 also include the application of the ''other adjustment,'' as required by sections 1886(s)(2)(A)(ii) and 1886(s)(3)(B) of the Act, as follows:

- −0.1 percentage point for rate years beginning in 2012.
- −0.1 percentage point for rate years beginning in 2013.
- −0.3 percentage point for rate years beginning in 2014.
- −0.2 percentage point for rate years beginning in 2015.
- −0.2 percentage point for rate years beginning in 2016.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- 3.8 percent in FY 2013.
- 5.7 percent in FY 2014.
- 6.8 percent in FY 2015.
- 7.0 percent in FY 2016.
- 5.1 percent in FY 2017.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the FY 2013 IPF PPS. In fact, we believe that access to IPF services will be enhanced due to the patient- and facility-level adjustment factors, all which are intended to adequately reimburse IPFs for expensive cases. Finally, the outlier policy is intended to assist IPFs that experience high-cost cases.

D. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule. Lastly, no alternative policy options were considered in this notice, since this notice does not initiate policy changes with regard to the IPF PPS. This notice simply provides an update to the rates for FY 2013.

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

Dated: June 28, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: August 1, 2012.

Kathleen Sebelius,

Secretary.

Addendum A—Rate and Adjustment Factors

Per Diem Rate

Federal Per Diem Base Rate	$698.51
Labor Share (0.69981)	488.82
Non-Labor Share (0.30019)	209.69

Fixed Dollar Loss Threshold Amount: $11,600.

Wage Index Budget Neutrality Factor: 1.0007.

Facility Adjustments

Rural Adjustment Factor.	1.17.
Teaching Adjustment Factor.	0.5150.
Wage Index	Pre-reclass Hospital Wage Index (FY 2012).

Cost of Living Adjustments (COLAs)

Area	Cost of living adjustment factor
Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.23
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.23
City of Juneau and 80-kilometer (50-mile) radius by road	1.23
Rest of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.18
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

Patient Adjustments

ECT—Per Treatment	$300.72

Variable per Diem Adjustments

	Adjustment factor
Day 1—Facility Without a Qualifying Emergency Department	1.19
Day 1—Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99

VARIABLE PER DIEM ADJUSTMENTS—Continued

	Adjustment factor
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

AGE ADJUSTMENTS

Age (in years)	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

DRG ADJUSTMENTS

MS–DRG	MS–DRG Descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	

COMORBIDITY ADJUSTMENTS

Comorbidity	Adjustment factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings—Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B—FY 2013 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this notice. The tables presented below are as follows:

Table 1—FY 2013 Wage Index For Urban Areas Based On CBSA Labor Market Areas.

Table 2—FY 2013 Wage Index Based On CBSA Labor Market Areas For Rural Areas.

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA Code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8444
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3611
	Aguada Municipio, PR.	
	Aguadilla Municipio, PR.	
	Añasco Municipio, PR.	
	Isabela Municipio, PR.	
	Lares Municipio, PR.	
	Moca Municipio, PR.	
	Rincón Municipio, PR.	
	San Sebastián Municipio, PR.	
10420	Akron, OH	0.8814
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8687
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8680
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9550
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8026
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9260
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8917
	Blair County, PA.	
11100	Amarillo, TX	0.8714
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	1.0009
	Story County, IA.	
11260	Anchorage, AK	1.2133
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.9266
	Madison County, IN.	
11340	Anderson, SC	0.8524
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0128
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7979
	Calhoun County, AL.	
11540	Appleton, WI	0.9226
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.8918
	Buncombe County, NC.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
12020	Athens-Clarke County, GA	0.9642
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9575
	Barrow County, GA.	
	Bartow County, GA.	
	Butts County, GA.	
	Carroll County, GA.	
	Cherokee County, GA.	
	Clayton County, GA.	
	Cobb County, GA.	
	Coweta County, GA.	
	Dawson County, GA.	
	DeKalb County, GA.	
	Douglas County, GA.	
	Fayette County, GA.	
	Forsyth County, GA.	
	Fulton County, GA.	
	Gwinnett County, GA.	
	Haralson County, GA.	
	Heard County, GA.	
	Henry County, GA.	
	Jasper County, GA.	
	Lamar County, GA.	
	Meriwether County, GA.	
	Newton County, GA.	
	Paulding County, GA.	
	Pickens County, GA.	
	Pike County, GA.	
	Rockdale County, GA.	
	Spalding County, GA.	
	Walton County, GA.	
12100	Atlantic City-Hammonton, NJ	1.1033
	Atlantic County, NJ.	
12220	Auburn-Opelika, AL	0.7877
	Lee County, AL.	
12260	Augusta-Richmond County, GA-SC	0.9529
	Burke County, GA.	
	Columbia County, GA.	
	McDuffie County, GA.	
	Richmond County, GA.	
	Aiken County, SC.	
	Edgefield County, SC.	
12420	Austin-Round Rock-San Marcos, TX	0.9535
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield-Delano, CA	1.1817
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0151
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9979
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2838
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8523
	Ascension Parish, LA.	
	East Baton Rouge Parish, LA.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	East Feliciana Parish, LA.	
	Iberville Parish, LA.	
	Livingston Parish, LA.	
	Pointe Coupee Parish, LA.	
	St. Helena Parish, LA.	
	West Baton Rouge Parish, LA.	
	West Feliciana Parish, LA.	
12980	Battle Creek, MI	0.9935
	Calhoun County, MI.	
13020	Bay City, MI	0.8927
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8723
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1748
	Whatcom County, WA.	
13460	Bend, OR	1.1395
	Deschutes County, OR.	
13644	Bethesda-Rockville-Frederick, MD	1.0305
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8576
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8731
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8436
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7232
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8281
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8725
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9477
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9279
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.2283
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0086
	Boulder County, CO.	
14540	Bowling Green, KY	0.8599
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.1288
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2914
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.9183
	Cameron County, TX.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
15260	Brunswick, GA	0.9068
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9750
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8665
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	1.0021
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.1210
	Middlesex County, MA.	
15804	Camden, NJ	1.0202
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.8939
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9341
	Lee County, FL.	
16020	Cape Girardeau-Jackson, MO-IL	0.8672
	Alexander County, IL.	
	Bollinger County, MO.	
	Cape Girardeau County, MO.	
16180	Carson City, NV	1.0597
	Carson City, NV.	
16220	Casper, WY	1.0117
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8831
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9890
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8144
	Boone County, WV.	
	Clay County, WV.	
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston-Summerville, SC	0.9063
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Rock Hill, NC-SC	0.9321
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	0.9188
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN-GA	0.8740
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9844

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Laramie County, WY.	
16974	Chicago-Joilet-Naperville, IL	1.0600
	Cook County, IL.	
	DeKalb County, IL.	
	DuPage County, IL.	
	Grundy County, IL.	
	Kane County, IL.	
	Kendall County, IL.	
	McHenry County, IL.	
	Will County, IL.	
17020	Chico, CA	1.1094
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9430
	Dearborn County, IN.	
	Franklin County, IN.	
	Ohio County, IN.	
	Boone County, KY.	
	Bracken County, KY.	
	Campbell County, KY.	
	Gallatin County, KY.	
	Grant County, KY.	
	Kenton County, KY.	
	Pendleton County, KY.	
	Brown County, OH.	
	Butler County, OH.	
	Clermont County, OH.	
	Hamilton County, OH.	
	Warren County, OH.	
17300	Clarksville, TN-KY	0.8193
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.7674
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.8941
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	
17660	Coeur d'Alene, ID	0.9367
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9690
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9846
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8105
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8758
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.9040
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9723
	Bartholomew County, IN.	
18140	Columbus, OH	0.9994
	Delaware County, OH.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Fairfield County, OH.	
	Franklin County, OH.	
	Licking County, OH.	
	Madison County, OH.	
	Morrow County, OH.	
	Pickaway County, OH.	
	Union County, OH.	
18580	Corpus Christi, TX	0.8677
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.0898
	Benton County, OR.	
18880	Crestview-Fort Walton Beach-Destin, FL	0.8961
	Okaloosa County, FL.	
19060	Cumberland, MD-WV	0.7825
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-Plano-Irving, TX	0.9844
	Collin County, TX.	
	Dallas County, TX.	
	Delta County, TX.	
	Denton County, TX.	
	Ellis County, TX.	
	Hunt County, TX.	
	Kaufman County, TX.	
	Rockwall County, TX.	
19140	Dalton, GA	0.8374
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9832
	Vermilion County, IL.	
19260	Danville, VA	0.7896
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.9056
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9281
	Greene County, OH.	
	Miami County, OH.	
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.7334
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8008
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8865
	Volusia County, FL.	
19740	Denver-Aurora-Broomfield, CO	1.0647
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines-West Des Moines, IA	0.9801
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	0.9511
	Wayne County, MI.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
20020	Dothan, AL	0.7390
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9909
	Kent County, DE.	
20220	Dubuque, IA	0.8698
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0335
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham-Chapel Hill, NC	0.9699
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9597
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison-New Brunswick, NJ	1.0868
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.9601
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8719
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9405
	Elkhart County, IN.	
21300	Elmira, NY	0.8522
	Chemung County, NY.	
21340	El Paso, TX	0.8515
	El Paso County, TX.	
21500	Erie, PA	0.8147
	Erie County, PA.	
21660	Eugene-Springfield, OR	1.1587
	Lane County, OR.	
21780	Evansville, IN-KY	0.8679
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1322
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.3823
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8136
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.9795
	San Juan County, NM.	
22180	Fayetteville, NC	0.9213
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.9263
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.2427
	Coconino County, AZ.	
22420	Flint, MI	1.1137
	Genesee County, MI.	
22500	Florence, SC	0.8217

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL County, AL	0.7738
	Colbert County, AL.	
	Lauderdale.	
22540	Fond du Lac, WI	0.9291
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9876
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield, FL	1.0160
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7620
	Crawford County, AR.	
	Franklin County, AR.	
	Sebastian County, AR.	
	Le Flore County, OK.	
	Sequoyah County, OK.	
23060	Fort Wayne, IN	0.9368
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9525
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.1281
	Fresno County, CA.	
23460	Gadsden, AL	0.7934
	Etowah County, AL.	
23540	Gainesville, FL	0.9375
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.9010
	Hall County, GA.	
23844	Gary, IN	0.9193
	Jasper County, IN.	
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8504
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.8690
	Wayne County, NC.	
24220	Grand Forks, ND-MN	0.7573
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9394
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9145
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8462
	Cascade County, MT.	
24540	Greeley, CO	0.9553
	Weld County, CO.	
24580	Green Bay, WI	0.9824
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.8798
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9637
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville-Mauldin-Easley, SC	0.9620

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3730
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8505
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.9168
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0700
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9400
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.8773
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.0700
	Hartford County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7940
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.8859
	Alexander County, NC.	
	Burke County, NC.	
	Caldwell County, NC.	
	Catawba County, NC.	
25980	Hinesville-Fort Stewart, GA§[1]	0.8926
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.8523
	Ottawa County, MI.	
26180	Honolulu, HI	1.1698
	Honolulu County, HI.	
26300	Hot Springs, AR	0.9076
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7841
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Sugar Land-Baytown, TX	0.9945
	Austin County, TX.	
	Brazoria County, TX.	
	Chambers County, TX.	
	Fort Bend County, TX.	
	Galveston County, TX.	
	Harris County, TX.	
	Liberty County, TX.	
	Montgomery County, TX.	
	San Jacinto County, TX.	
	Waller County, TX.	
26580	Huntington-Ashland, WV-KY-OH	0.8893
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.8996
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9336
	Bonneville County, ID.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Jefferson County, ID.	
26900	Indianapolis-Carmel, IN	0.9662
	Boone County, IN.	
	Brown County, IN.	
	Hamilton County, IN.	
	Hancock County, IN.	
	Hendricks County, IN.	
	Johnson County, IN.	
	Marion County, IN.	
	Morgan County, IN.	
	Putnam County, IN.	
	Shelby County, IN.	
26980	Iowa City, IA	1.0070
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.8819
	Tompkins County, NY.	
27100	Jackson, MI	0.8938
	Jackson County, MI.	
27140	Jackson, MS	0.8172
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8149
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.8882
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	
27340	Jacksonville, NC	0.8074
	Onslow County, NC.	
27500	Janesville, WI	0.9234
	Rock County, WI.	
27620	Jefferson City, MO	0.8222
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
27740	Johnson City, TN	0.7796
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8715
	Cambria County, PA.	
27860	Jonesboro, AR	0.7718
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8227
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	0.9939
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	0.9807
	Kankakee County, IL.	
28140	Kansas City, MO-KS	0.9637
	Franklin County, KS.	
	Johnson County, KS.	
	Leavenworth County, KS.	
	Linn County, KS.	
	Miami County, KS.	
	Wyandotte County, KS.	
	Bates County, MO.	
	Caldwell County, MO.	
	Cass County, MO.	
	Clay County, MO.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Clinton County, MO.	
	Jackson County, MO.	
	Lafayette County, MO.	
	Platte County, MO.	
	Ray County, MO.	
28420	Kennewick-Pasco-Richland, WA	0.9582
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-Temple-Fort Hood, TX	0.9501
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7399
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9170
	Ulster County, NY.	
28940	Knoxville, TN	0.7838
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9186
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WI-MN	0.9685
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.9507
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8319
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7998
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0311
	Lake County, IL.	
	Kenosha County, WI.	
29420	Lake Havasu City-Kingman, AZ	0.9967
	Mohave County, AZ.	
29460	Lakeland-Winter Haven, FL	0.8432
	Polk County, FL.	
29540	Lancaster, PA	0.9439
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	1.0477
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.7730
	Webb County, TX.	
29740	Las Cruces, NM	0.9106
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.2050
	Clark County, NV.	
29940	Lawrence, KS	0.8853
	Douglas County, KS.	
30020	Lawton, OK	0.8545
	Comanche County, OK.	
30140	Lebanon, PA	0.8042
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9067
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	Lewiston-Auburn, ME	0.9038

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.8833
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9371
	Allen County, OH.	
30700	Lincoln, NE	0.9612
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock-Conway, AR	0.8558
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.8592
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8530
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	0.9989
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Santa Ana, CA	1.2287
	Los Angeles County, CA.	
31140	Louisville-Jefferson County, KY-IN	0.8900
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8794
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8768
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9122
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera-Chowchilla, CA	0.8114
	Madera County, CA.	
31540	Madison, WI	1.1234
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0083
	Hillsborough County, NH.	
31740	Manhattan, KS	0.7912
	Geary County, KS.	
	Pottawatomie County, KS.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Riley County, KS.	
31860	Mankato-North Mankato, MN	0.9346
	Blue Earth County, MN.	
	Nicollet County, MN.	
31900	Mansfield, OH	0.9215
	Richland County, OH.	
32420	Mayagüez, PR	0.3676
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Mission, TX	0.8878
	Hidalgo County, TX.	
32780	Medford, OR	1.0318
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9275
	Crittenden County, AR.	
	DeSoto County, MS.	
	Marshall County, MS.	
	Tate County, MS.	
	Tunica County, MS.	
	Fayette County, TN.	
	Shelby County, TN.	
	Tipton County, TN.	
32900	Merced, CA	1.2424
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	1.0085
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9358
	LaPorte County, IN.	
33260	Midland, TX	1.0514
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	0.9961
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1105
	Anoka County, MN.	
	Carver County, MN.	
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.9154
	Missoula County, MT.	
33660	Mobile, AL	0.8002
	Mobile County, AL.	
33700	Modesto, CA	1.2670
	Stanislaus County, CA.	
33740	Monroe, LA	0.7964
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.8727
	Monroe County, MI.	
33860	Montgomery, AL	0.8103
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8197
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7031
	Grainger County, TN.	
	Hamblen County, TN.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0235
	Skagit County, WA.	
34620	Muncie, IN	0.7817
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9967
	Muskegon County, MI.	
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	0.8653
	Horry County, SC.	
34900	Napa, CA.	
	Napa County, CA	1.4511
	Horry County, SC.	
34940	Naples-Marco Island, FL	0.9740
	Collier County, FL.	
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	0.9340
	Cannon County, TN.	
	Cheatham County, TN.	
	Davidson County, TN.	
	Dickson County, TN.	
	Hickman County, TN.	
	Macon County, TN.	
	Robertson County, TN.	
	Rutherford County, TN.	
	Smith County, TN.	
	Sumner County, TN.	
	Trousdale County, TN.	
	Williamson County, TN.	
	Wilson County, TN.	
35004	Nassau-Suffolk, NY	1.2416
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1322
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	
35300	New Haven-Milford, CT	1.1556
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.9026
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-White Plains-Wayne, NY-NJ	1.3052
	Bergen County, NJ.	
	Hudson County, NJ.	
	Passaic County, NJ.	
	Bronx County, NY.	
	Kings County, NY.	
	New York County, NY.	
	Putnam County, NY.	
	Queens County, NY.	
	Richmond County, NY.	
	Rockland County, NY.	
	Westchester County, NY.	
35660	Niles-Benton Harbor, MI	0.8653
	Berrien County, MI.	
35840	North Port-Bradenton-Sarasota, FL	0.9435
	Manatee County, FL.	
	Sarasota County, FL.	
35980	Norwich-New London, CT	1.1227
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.6080
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8449

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Marion County, FL.	
36140	Ocean City, NJ	1.0641
	Cape May County, NJ.	
36220	Odessa, TX	0.9809
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.9220
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8934
	Canadian County, OK.	
	Cleveland County, OK.	
	Grady County, OK.	
	Lincoln County, OK.	
	Logan County, OK.	
	McClain County, OK.	
	Oklahoma County, OK.	
36500	Olympia, WA	1.1339
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9864
	Harrison County, IA.	
	Mills County, IA.	
	Pottawattamie County, IA.	
	Cass County, NE.	
	Douglas County, NE.	
	Sarpy County, NE.	
	Saunders County, NE.	
	Washington County, NE.	
36740	Orlando-Kissimmee-Sanford, FL	0.9128
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9319
	Winnebago County, WI.	
36980	Owensboro, KY	0.8202
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.2830
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9042
	Brevard County, FL.	
37380	Palm Coast, FL	0.9373
	Flagler County, FL.	
37460	Panama City-Lynn Haven-Panama City Beach, FL	0.8388
	Bay County, FL.	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7647
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.7885
	George County, MS.	
	Jackson County, MS.	
37764	Peabody, MA	1.0698
	Essex County, MA.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8013
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8830
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0760
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Glendale, AZ	1.0566
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.7700
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8669
	Allegheny County, PA.	
	Armstrong County, PA.	
	Beaver County, PA.	
	Butler County, PA.	
	Fayette County, PA.	
	Washington County, PA.	
	Westmoreland County, PA.	
38340	Pittsfield, MA	1.0616
	Berkshire County, MA.	
38540	Pocatello, ID	0.9426
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4185
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	0.9661
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Hillsboro, OR-WA	1.1454
	Clackamas County, OR.	
	Columbia County, OR.	
	Multnomah County, OR.	
	Washington County, OR.	
	Yamhill County, OR.	
	Clark County, WA.	
	Skamania County, WA.	
38940	Port St. Lucie, FL	0.9784
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1339
	Dutchess County, NY.	
	Orange County, NY.	
39140	Prescott, AZ	1.2261
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0639
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9404
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8668
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.8801
	Charlotte County, FL.	
39540	Racine, WI	0.8630
	Racine County, WI.	
39580	Raleigh-Cary, NC	0.9648
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	1.0203
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9212
	Berks County, PA.	
39820	Redding, CA	1.5584

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.0596
	Storey County, NVWashoe County, NV.	
40060	Richmond, VA	0.9791
	Amelia County, VA.	
	Caroline County, VA.	
	Charles City County, VA.	
	Chesterfield County, VA.	
	Cumberland County, VA.	
	Dinwiddie County, VA.	
	Goochland County, VA.	
	Hanover County, VA.	
	Henrico County, VA.	
	King and Queen County, VA.	
	King William County, VA.	
	Louisa County, VA.	
	New Kent County, VA.	
	Powhatan County, VA.	
	Prince George County, VA.	
	Sussex County, VA.	
	Colonial Heights City, VA.	
	Hopewell City, VA.	
	Petersburg City, VA.	
	Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.1463
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.9166
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.0802
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8602
	Livingston County, NY.	
	Monroe County, NY.	
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9938
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0185
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.9018
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.8838
	Floyd County, GA.	
40900	Sacramento-Arden-Arcade-Roseville, CA	1.3777
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8512
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0724
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.9070
	Washington County, UT.	
41140	St. Joseph, MO-KS	1.0255
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9165
	Bond County, IL.	
	Calhoun County, IL.	
	Clinton County, IL.	
	Jersey County, IL.	
	Macoupin County, IL.	
	Madison County, IL.	
	Monroe County, IL.	
	St. Clair County, IL.	
	Crawford County, MO.	
	Franklin County, MO.	
	Jefferson County, MO.	
	Lincoln County, MO.	
	St. Charles County, MO.	
	St. Louis County, MO.	
	Warren County, MO.	
	Washington County, MO.	
	St. Louis City, MO.	
41420	Salem, OR	1.1224
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.5604
	Monterey County, CA.	
41540	Salisbury, MD	0.9227
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9415
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8273
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio-New Braunfels, TX	0.9006
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1950
	San Diego County, CA.	
41780	Sandusky, OH	0.8167
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5904
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4612
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.6878
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4340
	Aguas Buenas Municipio, PR.	
	Aibonito Municipio, PR.	
	Arecibo Municipio, PR.	
	Barceloneta Municipio, PR.	
	Barranquitas Municipio, PR.	
	Bayamón Municipio, PR.	
	Caguas Municipio, PR.	
	Camuy Municipio, PR.	
	Canóvanas Municipio, PR.	
	Carolina Municipio, PR.	
	Cataño Municipio, PR.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Cayey Municipio, PR.	
	Ciales Municipio, PR.	
	Cidra Municipio, PR.	
	Comerío Municipio, PR.	
	Corozal Municipio, PR.	
	Dorado Municipio, PR.	
	Florida Municipio, PR.	
	Guaynabo Municipio, PR.	
	Gurabo Municipio, PR.	
	Hatillo Municipio, PR.	
	Humacao Municipio, PR.	
	Juncos Municipio, PR.	
	Las Piedras Municipio, PR.	
	Loíza Municipio, PR.	
	Manatí Municipio, PR.	
	Maunabo Municipio, PR.	
	Morovis Municipio, PR.	
	Naguabo Municipio, PR.	
	Naranjito Municipio, PR.	
	Orocovis Municipio, PR.	
	Quebradillas Municipio, PR.	
	Río Grande Municipio, PR.	
	San Juan Municipio, PR.	
	San Lorenzo Municipio, PR.	
	Toa Alta Municipio, PR.	
	Toa Baja Municipio, PR.	
	Trujillo Alto Municipio, PR.	
	Vega Alta Municipio, PR.	
	Vega Baja Municipio, PR.	
	Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA	1.3072
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.2042
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.2246
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.7111
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0660
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.6102
	Sonoma County, CA.	
42340	Savannah, GA	0.9095
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton–Wilkes-Barre, PA	0.8328
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1541
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.9032
	Indian River County, FL.	
43100	Sheboygan, WI	0.9303
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8011
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8505
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.9538
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9153
	Lincoln County, SD.	
	McCook County, SD.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN-MI	0.9426
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9325
	Spartanburg County, SC.	
44060	Spokane, WA	1.0504
	Spokane County, WA.	
44100	Springfield, IL	0.8958
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0247
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8680
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8981
	Clark County, OH.	
44300	State College, PA	0.9251
	Centre County, PA.	
44600	Steubenville-Weirton, OH-WV	0.7054
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
44700	Stockton, CA	1.3052
	San Joaquin County, CA.	
44940	Sumter, SC	0.7551
	Sumter County, SC.	
45060	Syracuse, NY	0.9776
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.1384
	Pierce County, WA.	
45220	Tallahassee, FL	0.8593
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9072
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.9209
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.7937
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9148
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8818
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0062
	Mercer County, NJ.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
46060	Tucson, AZ	0.9318
	Pima County, AZ.	
46140	Tulsa, OK	0.8362
	Creek County, OK.	
	Okmulgee County, OK.	
	Osage County, OK.	
	Pawnee County, OK.	
	Rogers County, OK.	
	Tulsa County, OK.	
	Wagoner County, OK.	
46220	Tuscaloosa, AL	0.8664
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.8335
	Smith County, TX.	
46540	Utica-Rome, NY	0.8441
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.7997
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.4636
	Solano County, CA.	
47020	Victoria, TX	0.8434
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	1.0222
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.9001
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	
	York County, VA.	
	Chesapeake City, VA.	
	Hampton City, VA.	
	Newport News City, VA.	
	Norfolk City, VA.	
	Poquoson City, VA.	
	Portsmouth City, VA.	
	Suffolk City, VA.	
	Virginia Beach City, VA.	
	Williamsburg City, VA.	
47300	Visalia-Porterville, CA	1.0343
	Tulare County, CA.	
47380	Waco, TX	0.8559
	McLennan County, TX.	
47580	Warner Robins, GA	0.8245
	Houston County, GA.	
47644	Warren-Troy-Farmington Hills, MI	0.9625
	Lapeer County, MI.	
	Livingston County, MI.	
	Macomb County, MI.	
	Oakland County, MI.	
	St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0807
	District of Columbia, DC.	
	Calvert County, MD.	
	Charles County, MD.	
	Prince George's County, MD.	
	Arlington County, VA.	
	Clarke County, VA.	
	Fairfax County, VA.	
	Fauquier County, VA.	
	Loudoun County, VA.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
	Prince William County, VA.	
	Spotsylvania County, VA.	
	Stafford County, VA.	
	Warren County, VA.	
	Alexandria City, VA.	
	Fairfax City, VA.	
	Falls Church City, VA.	
	Fredericksburg City, VA.	
	Manassas City, VA.	
	Manassas Park City, VA.	
	Jefferson County, WV.	
47940	Waterloo-Cedar Falls, IA	0.8372
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.8962
	Marathon County, WI.	
48300	Wenatchee-East Wenatchee, WA	1.0168
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9823
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.6735
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.8696
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	1.0097
	Archer County, TX.	
	Clay County, TX.	
	Wichita County, TX.	
48700	Williamsport, PA	0.8084
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.0662
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9107
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	0.9106
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.8343
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.1076
	Worcester County, MA.	
49420	Yakima, WA	1.0433
	Yakima County, WA.	
49500	Yauco, PR	0.3757
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9675
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8328
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.1808
	Sutter County, CA.	

TABLE 1—FY 2013 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA Code	Urban area (constituent counties)	Wage index
49740	Yuba County, CA. Yuma, AZ Yuma County, AZ.	0.9350

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 2—FY 2013 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State code	Nonurban area	Wage index
1	Alabama	0.7260
2	Alaska	1.2846
3	Arizona	0.8826
4	Arkansas	0.7194
5	California	1.2194
6	Colorado	1.0126
7	Connecticut	1.1287
8	Delaware	1.0008
10	Florida	0.8361
11	Georgia	0.7547
12	Hawaii	1.1200
13	Idaho	0.7531
14	Illinois	0.8426
15	Indiana	0.8551
16	Iowa	0.8618
17	Kansas	0.8041
18	Kentucky	0.7825
19	Louisiana	0.7749
20	Maine	0.8581
21	Maryland	0.9291
22	Massachusetts [1]	1.3962
23	Michigan	0.8295
24	Minnesota	0.9107
25	Mississippi	0.7539
26	Missouri	0.7673
27	Montana	0.8615
28	Nebraska	0.8872
29	Nevada	0.9637
30	New Hampshire	1.0441
31	New Jersey [1]	.....
32	New Mexico	0.8878
33	New York	0.8152
34	North Carolina	0.8288
35	North Dakota	0.7295
36	Ohio	0.8455
37	Oklahoma	0.7848
38	Oregon	1.0337
39	Pennsylvania	0.8450
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	.....
42	South Carolina	0.8277
43	South Dakota	0.8300
44	Tennessee	0.7734
45	Texas	0.7934
46	Utah	0.8719
47	Vermont	0.9709
48	Virgin Islands	0.7505
49	Virginia	0.7817
50	Washington	1.0231
51	West Virginia	0.7371
52	Wisconsin	0.8977
53	Wyoming	0.9433
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Puerto Rico. Puerto Rico has areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2013. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2012.

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