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# FEDERAL REGISTER

Vol. 77 Wednesday,
No. 206 October 24, 2012

Pages 64889–65096

OFFICE OF THE FEDERAL REGISTER

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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 71

**[Docket FAA No. FAA–2012–1092; Airspace Docket No. 12–AWP–6]**

## Amendment of Class D and Class E Airspace; Hawthorne, CA

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

**ACTION:** Final rule; technical amendment.

**SUMMARY:** This action amends the airspace description for Class D and Class E airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA. The FAA is taking this action in response to a request from the Southern California Terminal Radar Approach Control to clarify the legal description of the controlled airspace. Some exclusionary language was omitted and the Class E extension was recorded as 1.5 nautical miles and should have been .5 nautical miles. This action enhances the safety and management of aircraft operations for the Hawthorne, CA, area.

**DATES:** Effective date, 0901 UTC., November 23, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Richard Roberts, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue SW., Renton, WA 98057; telephone (425) 203–4517.

**SUPPLEMENTARY INFORMATION:**

### History

The FAA received a request from the Southern California Radar Approach Control to clarify the legal description of the existing Class D and E airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA. The current legal description published in the **Federal Register** on February 13, 2012 (77 FR 7525) omitted that portion of the airspace for Torrance Municipal Airport, CA, and established the Class E extension at 1.5-nautical miles instead of .5 nautical miles. This action is in response to that request.

Class D and E airspace designations are published in paragraphs 5000 and 6004, respectively, of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in that Order.

### The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending the legal description of the Class D surface airspace at Jack Northrop Field/Hawthorne Municipal Airport, Hawthorne, CA, to include the exclusion of that portion of the airspace for Torrance, CA. The Class E airspace area designated as an extension to Class D, is corrected from 1.5 miles to .5 miles south of the 096° bearing of Jack Northrop Field/Hawthorne Municipal Airport. The legal description has been clarified to avoid confusion on the part of pilots flying into Jack Northrop Field/Hawthorne Municipal Airport, and coincides with the FAAs aeronautical database. This action is necessary for the safety and management of IFR operations. This is an administrative change and does not affect the altitudes or operating requirements of the airspace, therefore, notice and public procedures under 5 U.S.C.553(b) are unnecessary.

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

### Environmental Review

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

### Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

### Technical Amendment

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

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

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

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

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9W, Airspace Designations and Reporting Points, dated August 8, 2012, and effective September 15, 2012, is amended as follows:

*Paragraph 5000 Class D airspace.*

* * * * *

**AWP CA D Hawthorne, CA [Amended]**

Jack Northrop Field/Hawthorne Municipal Airport, CA
(Lat. 33°55′22″ N., long. 118°20′07″ W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within 2.6-mile radius of the Jack Northrop Field/Hawthorne Municipal Airport, and that airspace 1.5 miles north and 2 miles south of the 229° bearing of the airport extending from the 2.6-mile radius to 3.8 miles southwest, and that airspace 2 miles north and 1.5 miles south of the 096° bearing of the airport extending from the 2.6-mile radius to 3.9 miles east of the airport, excluding the Los Angeles Airport Class D and that portion within the Torrance CA, Class D airspace area. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

*Paragraph 6004 Class E airspace areas designated as an extension to Class D or Class E surface area.*

* * * * *

**AWP CA E4 Hawthorne, CA [Amended]**

Jack Northrop Field/Hawthorne Municipal Airport, CA
(Lat. 33°55′22″ N., long. 118°20′07″ W.)

That airspace extending upward from the surface within 2 miles north and .5 miles south of the 096° bearing of Jack Northrop Field/Hawthorne Municipal Airport, beginning 3.9 miles east of the airport extending to 6.3 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Issued in Seattle, Washington, on October 9, 2012.

**John Warner,**

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

[FR Doc. 2012–25925 Filed 10–23–12; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 35

**[Docket No. RM10–23–002; Order No. 1000–B]**

## Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order on rehearing and clarification.

**SUMMARY:** The Federal Energy Regulatory Commission affirms its basic determinations in Order Nos. 1000 and 1000–A, amending the transmission planning and cost allocation requirements established in Order No. 890 to ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. This order affirms the Order No. 1000 transmission planning reforms that: Require that each public utility transmission provider participate in a regional transmission planning process that produces a regional transmission plan; provide that local and regional transmission planning processes must provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations; improve coordination between neighboring transmission planning regions for new interregional transmission facilities; and remove from Commission-approved tariffs and agreements a federal right of first refusal. This order also affirms the Order No. 1000 requirements that each public utility transmission provider must participate in a regional transmission planning process that has: A regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation and an interregional cost allocation method for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination process required by this Final Rule. Additionally, this order affirms the Order No. 1000 requirement that each cost allocation method must satisfy six cost allocation principles.

**DATES:** Effective November 23, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Melissa Nimit, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE., Washington, DC 20426, (202) 502–6638.

Shiv Mani, Federal Energy Regulatory Commission, Office of Energy Policy and Innovation, 888 First Street NE., Washington, DC 20426, (202) 502–8240.

**SUPPLEMENTARY INFORMATION:**

*Before Commissioners:* Jon Wellinghoff, Chairman; Philip D. Moeller, John R. Norris, and Cheryl A. LaFleur.

Issued October 18, 2012

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Appendix A: Abbreviated Names of Petitioners

## I. Introduction

1. In Order No. 1000,[1] the Commission amended the transmission planning and cost allocation requirements established in Order No. 890[2] to ensure that the rates, terms and conditions of service provided by public utility providers are just and reasonable and not unduly discriminatory or preferential. Order No. 1000's transmission planning reforms require: (1) Each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan; (2) that local and regional transmission planning processes must provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations; (3) improved coordination between neighboring transmission planning regions for new interregional transmission facilities; and (4) the removal from Commission-approved tariffs and agreements of a federal right of first refusal.

2. Order No. 1000 also requires that each public utility transmission provider must participate in a regional transmission planning process that has: (1) A regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation and (2) an interregional cost allocation method for the cost of new transmission facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission coordination process required by this Final Rule. Order No. 1000 also requires that each cost allocation method must satisfy six cost allocation principles.

3. In Order No. 1000–A, the Commission largely affirmed the reforms adopted in Order No. 1000. The Commission concluded that taken together, the reforms adopted in Order No. 1000 will ensure that Commission-jurisdictional services are provided at just and reasonable rates and on a basis that is just and reasonable and not unduly discriminatory or preferential. The Commission therefore rejected requests to eliminate, or substantially modify, the various reforms adopted in Order No. 1000. The Commission did however, make a number of clarifications.

4. Several petitioners have sought further rehearing and clarification of the Commission's determinations in Order No. 1000–A.[3] The Commission largely affirms the determinations reached in Order No. 1000–A, making clarifications to address matters raised by petitioners.

## II. Transmission Planning

### *A. Regional Transmission Planning*

5. Order No. 1000 built on the reforms adopted in Order No. 890 to improve regional transmission planning. First, Order No. 1000 required each public utility transmission provider to participate in a regional transmission planning process that produces a regional transmission plan and complies with existing Order No. 890 transmission planning principles.[4] Second, Order No. 1000 adopted reforms under which transmission needs driven by Public Policy Requirements are considered in local and regional transmission planning processes.[5] The Commission explained that these reforms work together to ensure that public utility transmission providers in every transmission planning region, in consultation with stakeholders, evaluate proposed alternative solutions at the regional level that may resolve the region's needs more efficiently or cost-effectively than solutions identified in the local transmission plans of individual public utility transmission providers.[6] The Commission noted that, as in Order No. 890, the transmission planning requirements in Order No. 1000 do not address or dictate which transmission facilities should be either in the regional transmission plan or actually constructed, and that such decisions are left in the first instance to the judgment of public utility transmission providers, in consultation with stakeholders participating in the regional transmission planning process.[7]

#### 1. Role of Section 217(b)(4) of the Federal Power Act

#### a. Order No. 1000–A

6. In Order No. 1000–A, the Commission affirmed Order No. 1000's conclusion that the Commission has ample legal authority under the Federal Power Act (FPA) to undertake its regional transmission planning reforms. Among other things, Order No. 1000–A rejected arguments that FPA section 217(b)(4)[8] prohibits or otherwise limits the Commission's ability to undertake these reforms.[9] Order No. 1000–A

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 76 FR 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g,* Order No. 1000–A, 139 FERC ¶ 61,132 (2012).

[2] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, 72 FR 12266 (Mar. 15, 2007), FERC Stats. & Regs. ¶ 31,241, *order on reh'g,* Order No. 890–A, 73 FR 2984 (Jan. 16, 2008), FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification,* Order No. 890–B, 73 FR 39092 (July 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 74 FR 12540 (Mar. 25, 2009), 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 74 FR 61511 (Nov. 25 2009), 129 FERC ¶ 61,126 (2009).

[3] A list of petitioners filing requests for rehearing and/or clarification is provided in Appendix A. Southwest Power Pool (SPP) filed a request for clarification and/or reconsideration of Order No. 1000–A. While SPP denominates its pleading as a request for clarification, it is, in fact, a late-filed request for rehearing. Pursuant to section 313(a) of the Federal Power Act (FPA), 16 U.S.C. 825l(a) (2006), an aggrieved party must file a request for rehearing within thirty days after the issuance of the Commission's order. Because the 30-day rehearing deadline is statutory, it cannot be extended, and SPP's request for rehearing must be rejected as untimely. Moreover, the courts have repeatedly recognized that the time period within which a party may file an application for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the FPA and that the Commission has no discretion to extend that deadline. *See, e.g., City of Campbell* v. *FERC,* 770 F.2d 1180, 1183 (D.C. Cir. 1985); *Boston Gas Co.* v. *FERC,* 575 F.2d 975, 977–79 (1st Cir. 1978). Furthermore, we note that the issues raised by SPP are similar to those raised by other petitioners, which are summarized and addressed below in section II.B.2 of this order.

[4] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 68.

[5] *Id.* The Commission explained that Public Policy Requirements are those established by state or federal laws or regulations, meaning enacted statutes (i.e., passed by the legislature and signed by the executive) and regulations promulgated by a relevant jurisdiction, whether within a state or at the federal level. *Id.* P 2. Order No. 1000–A clarified that this included transmission needs driven by local laws or regulations. Order No. 1000–A, 139 FERC ¶ 61,132 at P 319.

[6] *Id.*

[7] *Id.* P 68 n.57.

[8] 16 U.S.C. 824s (2006).

[9] Order No. 1000–A, 139 FERC ¶ 61,132 at PP 168–179.

acknowledged claims by some petitioners that Order No. 681,[10] which requires transmission organizations that are public utilities with organized electricity markets to make available long-term firm transmission rights that satisfy certain guidelines, expressly notes a preference for load-serving entities.[11] Order No. 1000–A found that Order No. 681's priority for load-serving entities in the allocation of long-term firm transmission rights supported by existing transmission capacity is not inconsistent with Order No. 1000, which addresses planning and cost allocation for new transmission.[12] Order No. 1000–A also found that the transmission planning reforms will aid, and not hinder, load-serving entities in meeting their reasonable transmission needs.[13]

b. Request for Rehearing

7. Transmission Access Policy Study Group argues that in Order No. 1000–A, the Commission suggested for the first time that the preference for load-serving entity long-term rights established in Order No. 681 applies only to existing transmission capacity ''but not in the broader context of planning new transmission capacity.'' [14] Transmission Access Policy Study Group contends that the Commission erred in suggesting that Order No. 681 does not apply to new transmission facilities, contending that Order No. 681 extended the preference to be afforded load-serving entities to long-term rights from existing capacity to new capacity by providing that ''[w]hen * * * transmission upgrades [that are rolled into transmission rates] come into service, the transmission rights that result from such investments *will be made available as rights from 'existing capacity.'* '' [15] Transmission Access Policy Study Group states that this provision had one limited exception—where a transmission upgrade is participant-funded.[16] It contends that this exception is inapplicable to the new transmission facilities at issue in this proceeding, as Order No. 1000 specifically ruled that participant funding will not comply with the regional or interregional cost allocation principles adopted by the Final Rule.[17] Transmission Access Policy Study Group urges the Commission to clarify that Order Nos. 1000 and 1000–A do not alter the scope or applicability of Order No. 681.[18] In the alternative, it argues that Order No. 1000 should be reversed to the extent that it modifies the load-serving entity long-term rights preference established by Order No. 681, by limiting that preference to ''existing'' transmission facilities, rather than extending it to new transmission that is not participant-funded.[19]

c. Commission Determination

8. In response to Transmission Access Policy Study Group, we clarify that nothing in either Order No. 1000 or Order No. 1000–A is intended in any way to undermine or alter the guidelines the Commission instituted in Order No. 681. Order No. 1000's transmission planning reforms are distinct from the Commission's rulemaking in Order No. 681, as we explain below.

9. Section 1233(a) of the Energy Policy Act of 2005 enacted FPA section 217(b)(4), in which the Commission is directed to exercise its authority under the FPA in a manner that facilitates the planning and expansion of transmission facilities to meet the reasonable needs of load-serving entities to satisfy the service obligations of the load-serving entities, and enables load-serving entities to secure firm transmission rights (or equivalent tradable or financial rights) on a long-term basis for long-term power supply arrangements made, or planned, to meet such needs.[20]

10. Section 1233(b) of the Energy Policy Act of 2005 further directed the Commission to promulgate a rule on long-term transmission rights in organized markets.[21] The Commission consequently issued Order No. 681, which adopted guidelines that independent system operators (ISOs) and regional transmission organizations (RTOs) are required to follow regarding the availability of long-term firm transmission rights, including a guideline providing that load-serving entities ''must have a priority over non-load serving entities in the allocation of long-term firm transmission rights that are supported by existing capacity.'' [22]

11. As Order No. 1000–A explained, we do not find any inconsistency between Order No. 1000 and section 217(b)(4).[23] Nor do we find any inconsistency between Order No. 1000 and Order No. 681. The requirements adopted by the Commission in Order Nos. 1000 and 1000–A are focused on the planning and cost allocation of new transmission facilities, as defined therein. The Commission did not intend its statements in Order No. 1000–A regarding the planning and cost allocation of certain new transmission facilities to alter the requirement in Order No. 681 that ''when [transmission upgrades that are rolled into transmission rates] * * * come into service, the transmission rights that result from such investments will be made available as rights from 'existing capacity' * * * . Prevailing cost allocation rules will apply.'' [24] Thus, we clarify for Transmission Access Policy Study Group that nothing in Order Nos. 1000 or 1000–A changes the requirements of Order No. 681, including the Order No. 681 established preference for load-serving entities in the allocation of long-term firm transmission rights, and that the Commission did not alter the application of Order No. 681 to new transmission facilities that are subject to the requirements of Order No. 1000.

2. Regional Transmission Planning Requirements

a. Order No. 1000–A

12. Order No. 1000–A affirmed Order No. 1000's conclusion that public utility transmission providers must revise their OATTs to provide for a regional transmission planning process that produces a regional transmission plan and satisfies Order No. 890's transmission planning principles.[25] The Commission explained that Order No. 1000 requires neither the filing of the regional transmission plan resulting from the regional transmission planning process nor the filing of specific applications of cost allocation determinations.[26] With respect to this latter point, Order No. 1000–A stated

[10] *Long-Term Firm Transmission Rights in Organized Electricity Markets,* Order No. 681, FERC Stats. & Regs. ¶ 31,226, *order on reh'g,* Order No. 681–A, 117 FERC ¶ 61,201 (2006), *order on reh'g,* Order No. 681–B, 126 FERC ¶ 61,254 (2009).

[11] Order No. 1000–A, 139 FERC ¶ 61,132 at P 171.

[12] *Id.* P 172.

[13] *Id.*

[14] Transmission Access Policy Study Group at 12 (quoting Order No. 1000–A, 139 FERC ¶ 61,132 at P 171).

[15] *Id.* at 13 (quoting Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 211 (emphasis added)).

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] 16 U.S.C. 824q(b)(4) (2006).

[21] EPAct 2005, Public Law 109–58, section 1233, 119 Stat. 594, 960 (2005); 16 U.S.C. 824q (2006)). Section 1233 provides that within 1 year after the date of enactment of that section and after notice and an opportunity for comment, the Commission shall by rule or order, implement section 217(b)(4) of the Federal Power Act in Transmission Organizations, as defined by that Act with organized electricity markets.

[22] Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 325.

[23] *See* Order No. 1000–A, 139 FERC ¶ 61,132 at PP 168–179 (addressing requests for rehearing and clarification of Order No. 1000 with respect to the role of section 217(b)(4)).

[24] *See* Order No. 681, FERC Stats. & Regs. ¶ 31,226 at P 211.

[25] Order No. 1000–A, 139 FERC ¶ 61,132 at PP 263–301.

[26] *Id.* PP 285–286.

that such a requirement would be unnecessary to comply with Order No. 1000, noting that Order No. 1000 requires that public utility transmission providers have an *ex ante* cost allocation method on file with and approved by the Commission. Order No. 1000–A also noted that this cost allocation method must explain how the costs of new transmission facilities selected in a regional transmission plan for purposes of cost allocation are to be allocated, consistent with the cost allocation principles set forth in Order No. 1000.[27] Consequently, customers, stakeholders, and others will have ''notice'' at the time the compliance filings are made, when the Commission acts on those filings, and as the regional transmission planning process results in the selection of a transmission facility in the regional transmission plan for purposes of cost allocation.[28] However, consistent with the regional flexibility provided in Order No. 1000, Order No. 1000–A also concluded that public utility transmission providers, in consultation with stakeholders, may propose OATT revisions requiring the submission of cost allocations in their Order No. 1000 compliance filings.[29]

13. The Commission further stated in Order No. 1000–A that it will evaluate compliance filings to ensure that they comply with Order No. 1000 and that both stakeholders and the Commission have the right to initiate actions under section 206 of the FPA if they believe that, for example, a Commission-approved regional transmission planning process was not followed or if a cost allocation method was not followed or produced unjust and unreasonable results for a particular new transmission facility or class of new transmission facilities.[30]

b. Request for Rehearing

14. Transmission Access Policy Study Group argues that the Commission should not establish a generic rule that, if transmission providers elect not to propose a section 205 filing of specific applications of their regional cost allocation, the only means to challenge such applications is under section 206.[31] It states that although Order No. 1000–A nowhere uses the term ''formula rate'' to describe the rule's treatment of regional cost allocation methodologies, it is creating a filing regimen where the cost allocation methodologies will function as just that.[32]

15. Therefore, Transmission Access Policy Study Group contends that the Commission should require the section 205 filing of project-specific applications of the regional cost allocation methodology, or leave it to the compliance filing process to determine whether such a filing is required.[33] If cost allocation methods are treated as formula rates, Transmission Access Policy Study Group maintains that the Commission can have no reasonable assurance that cost allocation methodologies will be sufficiently specific, grounded in objective criteria, and otherwise adequately constrain utility discretion.[34] It further asserts that regional cost allocation methodologies, in combination with the process for selecting projects for regional cost allocation, will likely rely on assumptions and other judgments that undermine predictability.[35]

16. Transmission Access Policy Study Group argues that sole reliance on section 206 to challenge specific implementation of a Commission-accepted Order No. 1000 methodology when the transmission provider has not made a section 205 filing is unjustified.[36] It contends that in the non-RTO context, application of the cost allocation methodology leaves ample room for transmission providers to engage in undue discrimination, and the Commission cannot reasonably assume that the cost allocation methodology, by itself, will in all cases provide customers with ''notice'' as to how regional facilities will be selected, and their costs allocated, in the future.[37] It also contends that transmission providers have the enhanced ability to discriminate, particularly where a cost allocation methodology is unlikely to have the specificity and objectivity to cabin the transmission provider's discretion, and where stakeholders only may have the opportunity to provide input that the transmission providers are free to ignore.[38] It argues that, in these cases in particular, treating the cost allocation methodology as a formula rate improperly shifts the burdens imposed by section 205.[39]

17. Transmission Access Policy Study Group argues that, at minimum, the Commission should defer making a generic finding now that section 206 is the only available recourse to challenge specific applications of regional cost allocation methodologies absent transmission providers electing to propose section 205 filings of those specific applications.[40] Instead, it suggests that the Commission should leave for determination on a case-by-case basis the process of evaluating Order No. 1000 compliance filings, in response to requests by transmission providers or other stakeholders or on its own motion, whether in a particular region the filing of specific applications of the regional cost allocations is necessary.[41] It maintains that deferral will enable the Commission to consider the specifics of the proposed regional cost allocation methodology in conjunction with the proposed project selection process and associated governance and other safeguards (if any), as well as the views of public utility transmission providers in that region and other stakeholders.[42]

c. Commission Determination

18. We deny rehearing. Transmission Access Policy Study Group has not persuaded us that the determination not to require the filing of specific applications of the cost allocation method was in error. Order No. 1000's reforms are intended, in part, to establish an open and transparent transmission planning process and require transmission planning regions to adopt a cost allocation method or methods that provide *ex ante* certainty. Both the Order No. 1000 compliance process and the resulting Commission-approved regional transmission planning process and associated cost allocation method(s) are required to have built-in mechanisms to help ensure that the processes and cost allocation methods are in fact transparent and provide the certainty that Transmission Access Policy Study Group seeks.

19. First, stakeholders have had the opportunity to participate fully in regional stakeholder meetings to advocate for a cost allocation method that provides the *ex ante* certainty that Order No. 1000 seeks, as well as to advocate that public utility transmission providers include a provision requiring the filing of specific applications of the cost allocation method. We believe that this approach accords with the regional flexibility we provided in Order No. 1000 for public utility transmission

[27] *Id.* P 286.
[28] *Id.*
[29] *Id.*
[30] *Id.* P 287.
[31] Transmission Access Policy Study Group at 3.
[32] *Id.* at 4.
[33] *Id.* at 5.
[34] *Id.* at 6.
[35] *Id.* at 7.
[36] *Id.*
[37] *Id.* at 7–8.
[38] *Id.* at 8.
[39] *Id.*
[40] *Id.* at 9.
[41] *Id.*
[42] *Id.* at 10.

providers and stakeholders in a transmission planning region to develop rules that meet the transmission needs of that region, consistent with the requirements and principles set forth in Order Nos. 1000 and 1000–A.

20. Second, the Commission will carefully consider the Order No. 1000 compliance filings once they are submitted, as well as any protests filed by stakeholders, to ensure that proposals satisfy the requirements that regional transmission planning processes be open and transparent and that the cost allocation method or methods satisfy the Order No. 1000 cost allocation principles. If a filing is deficient, the Commission will require public utility transmission providers to file revisions to address those deficiencies.

21. Third, once the regional transmission planning process is approved by the Commission and becomes effective, the Order No. 890 transmission planning principles, as incorporated into a regional transmission planning process in compliance with Order No. 1000, will help mitigate concerns about the transparency of the process and the application of the cost allocation method. These principles address, among other things, stakeholder participation, information exchange, and dispute resolution.[43] By incorporating these principles into the regional transmission planning process, the Commission's expectation is that there will be increased openness and certainty concerning how beneficiaries of transmission facilities selected in the regional transmission plan for purposes of cost allocation will be determined, as well as internal processes to resolve any questions that might arise as part of this process. And as noted in Order No. 1000–A, in identifying the benefits and beneficiaries for a new transmission facility, the regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation is based, all of which would occur prior to the recovery of such costs through a formula rate.[44]

22. Moreover, as we explained in Order No. 1000–A, stakeholders always have the option of filing a section 206 complaint if they believe that, notwithstanding these protections, there was an incorrect application of the cost allocation method in a particular instance.[45] Finally, if stakeholders believe that the previously approved cost allocation method itself is no longer just and reasonable, they also have the option of filing a section 206 complaint with respect to the cost allocation method.

23. Transmission Access Policy Study Group suggests that application of the *ex ante* cost allocation to, or in, particular instance(s) should require a section 205 filing with the Commission. Order No. 1000 establishes no new requirement with respect to this issue. As we note above, Order No. 1000–A stated that we would consider proposals that would require public utility transmission providers to file specific applications of the cost allocation method. Therefore, Order No. 1000 provides flexibility in this regard and the Commission stated that it will not prejudge any method before the compliance filings are filed, so long as they satisfied the cost allocation principles articulated in Order No. 1000 (with the exception that participant funding may not be the regional or interregional cost allocation method). We will carefully evaluate compliance filings to ensure that they satisfy these principles.

24. Transmission Access Policy Study Group asserts that if the cost allocation method is thought of as a formula rate, it would improperly shift the burdens under section 205 of the FPA, especially where a cost allocation method is unlikely to have specificity or objectivity to cabin transmission providers' discretion and where they can ignore stakeholder input. We disagree with this argument. As we discuss above, Order No. 1000 provides for *ex ante* certainty. In Order No. 1000, the Commission stated that it required the development of regional and interregional cost allocation methods to provide greater certainty as to the cost allocation implications of a potential transmission project.[46] The Commission also stated that under the regional transmission planning and interregional transmission coordination requirements, public utility transmission providers with stakeholders will identify, evaluate, and determine which transmission facilities meet the region's needs, and apply the cost allocation method or methods associated with those transmission facilities.[47] In Order No. 1000–A, the Commission clarified that public utility transmission providers must consult with stakeholders in developing both regional and interregional cost allocation methods.[48] Therefore, the Commission specifically requires public utility transmission providers to provide the opportunity for stakeholder input in the development of the regional and interregional cost allocation methods. If a stakeholder believes that its input is being ignored, it has the right to raise its issues with the cost allocation method or methods when the relevant Order No. 1000 compliance filing is made, or in a separate section 206 filing.

25. We also disagree with Transmission Access Policy Study Group's argument that the use of a cost allocation method could result in burden shifting under section 205. Order No. 1000–A acknowledged that stakeholder participation is an important aspect of the development of compliance filings to meet the requirements of Order No. 1000, and should ensure that the cost allocation method or methods ultimately agreed upon is balanced and does not favor any particular entity.[49] Additionally, the Commission clarified that the Commission's cost allocation requirements do not interfere with section 205 rights or otherwise impose an undue burden on parties to participate in a new and costly process, but rather build on the reforms to the transmission planning process required by Order No. 890, in which all interested parties should already be participating.[50] As noted above, the regional transmission planning process must provide entities who will receive regional or interregional cost allocation an understanding of the identified benefits on which the cost allocation will be based.[51] Compliance proposals submitted by transmission providers will be reviewed by the Commission to ensure they provide the upfront certainty required by Order No. 1000.[52] To the extent that Transmission

[43] Order No. 890 requires transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans. In addition, transmission providers will be required to reduce to writing and make available the basic methodology, criteria, and processes they use to develop their transmission plans, including how they treat retail native loads, in order to ensure that standards are consistently applied. *Preventing Under Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471 (2007).

[44] Order No. 1000–A, 139 FERC ¶ 61,132 at P 746.

[45] *Id.* P 231.

[46] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 559, 579.

[47] *Id.* P 499.

[48] *Id.* PP 559, 579.

[49] Order No. 1000–A, 139 FERC ¶ 61,132 at P 637.

[50] *Id.* P 649.

[51] *Id.* P 746.

[52] As Transmission Access Policy Study Group also recognizes, not all RTOs make section 205 filings for the application of an existing filed cost allocation methodology. *See* Transmission Access Policy Study Group at n.14. Transmission Access

Access Policy Study Group is concerned about cost recovery issues rather than cost allocation, Order No. 1000 explained that such questions are beyond the scope of the generic rulemaking proceeding, and Order No. 1000–A affirmed this, but clarified that public utility transmission providers, in consultation with stakeholders, may choose to address this cost recovery matter in their compliance filings.[53]

26. We do not believe that Transmission Access Policy Study Group has justified at this time its position that public utility transmission providers in non-RTO regions, at least, should be required to file specific applications of the cost allocation method. Again, as discussed above, our expectation is that the open and transparent transmission planning process and principle-based cost allocation method will provide stakeholders with clarity as to why and how costs are being allocated for any specific transmission facility selected in the regional transmission plan for purposes of cost allocation. This is true regardless of whether or not the transmission planning region is an ISO/RTO. As we also discuss above, the Commission will carefully evaluate compliance proposals and any resulting protests to ensure that the proposals meet the requirements of Order No. 1000.

27. Finally, with respect to Transmission Access Policy Study Group's request that we defer a determination on using section 206 as the default mechanism to challenge a cost allocation proposal, references to section 206 in Order No. 1000–A were to remind stakeholders of their right under that provision to file complaints. In any event, as we have previously explained, Order No. 1000–A provides that public utility transmission providers in a transmission planning region, in consultation with stakeholders, could agree to require the filing of specific applications of the cost allocation method. The Commission will review any such requirement during the Order No. 1000 compliance filings process and make a decision based on the record before us.

3. Consideration of Transmission Needs Driven by Public Policy Requirements

a. Order No. 1000–A

28. Order No. 1000–A affirmed Order No. 1000's requirement that public utility transmission providers amend their OATTs to provide for the consideration of transmission needs driven by Public Policy Requirements.[54] In affirming this requirement, Order No. 1000–A provided clarifications regarding the definition of the term ''Public Policy Requirements'' [55] and what it means to ''consider'' transmission needs driven by such requirements.[56] Order No. 1000–A explained that the Commission intends that public utility transmission providers consider transmission needs driven by Public Policy Requirements just as they consider transmission needs driven by reliability or economic concerns.[57] Further, the Commission stated that it does not intend public utility transmission providers to substitute their policy judgments for those of legislatures and regulators.[58] Order No. 1000–A also explained that the Commission does not require that regional transmission plans support multiple likely power supply scenarios, although such a requirement could be proposed in Order No. 1000 compliance filings and the Commission would consider such a proposal.[59]

b. Request for Clarification

29. AEP requests clarification that an appropriate method for a region to consider transmission needs driven by Public Policy Requirements is to expressly include consideration of changes in resources and load driven by public policies as part of its baseline projection of changes in resources and load expected over the planning horizon, and then conduct reliability and congestion analyses to determine what transmission investments are optimal given those expected changes in resources and load.[60] AEP argues that Public Policy Requirements should not be considered solely on a stand-alone basis in the planning process.[61] It contends that generation or load changes driven by public policies should be factored into the scenarios, along with other anticipated resource and load changes, for which reliability and economic benefits analyses are performed.[62]

30. AEP states that it is concerned that some transmission providers may seek to satisfy the Commission's public policy requirement by employing only a stand-alone process or procedures that are specifically designed to evaluate transmission needs driven by Public Policy Requirements.[63] It argues that regional planning processes should consider reliability, economic, and policy-driven transmission needs together.[64] In particular, AEP asserts that a region should consider what changes in generation resources and load it expects over the planning horizon, including consideration of changes driven by public policies (such as renewable portfolio standards, new environmental regulations, and demand side management programs), and then conduct reliability and congestion analyses to determine what transmission investments are optimal given these anticipated changes.[65] It contends that this approach enables transmission providers to build upon existing planning processes for the reliability and economic analyses used to identify baseline reliability and economic projects.[66] AEP argues that integrated consideration of public policy-driven requirements can factor into efficient decisions to accelerate a needed baseline reliability upgrade or increase the capacity of a baseline reliability upgrade or baseline economic upgrade.[67]

c. Commission Determination

31. We grant AEP's request for clarification to the extent discussed below. Order No. 1000 requires public utility transmission providers to revise their OATTs to provide for the consideration of transmission needs driven by Public Policy Requirements.[68] In Order No. 1000, the Commission

Policy Study Group has not justified its position that this will be an issue in non-ISO/RTO regions at this time. Again, the Commission will carefully evaluate compliance filings, as well as protests thereto, to ensure that they satisfy Order No. 1000's requirements, and the Commission will require changes if they fail to do so.

[53] Order No. 1000–A, 139 FERC ¶ 61,132 at P 616.

[54] Order No. 1000–A, 139 FERC ¶ 61,132 at PP 317–339. *See also id.* PP 203–216 (affirming legal basis of requirement to consider transmission needs driven by Public Policy Requirements).

[55] Order No. 1000 defined ''Public Policy Requirements'' as public policy requirements established by state or federal laws and regulations. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 2. Order No. 1000–A clarified that this term included duly enacted laws or regulations passed by a local governmental entity, such as a municipal or county government. Order No. 1000–A, 139 FERC ¶ 61,132 at P 319.

[56] Order No. 1000–A, 139 FERC ¶ 61,132 at PP 320–325.

[57] *Id.* P 205.

[58] *Id.* PP 326–29.

[59] *Id.* P 331.

[60] AEP at 5.

[61] *Id.* at 2.

[62] *Id.*

[63] *Id.* at 4.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.*

[68] The requirement to consider transmission needs driven by Public Policy Requirements is described in more detail in Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 203–222 and Order No. 1000–A, 139 FERC ¶ 61,132 at PP 317–339.

provides for regional flexibility so that public utility transmission providers, in consultation with stakeholders, can design proposals addressing this requirement that they believe best meet the needs of their respective transmission planning regions, so long as those proposals satisfy the essential requirement that public utility transmission providers, in consultation with stakeholders, consider transmission needs driven by Public Policy Requirements as set forth in Order No. 1000 and clarified in Order No. 1000–A.[69] The Commission anticipates that a variety of approaches could satisfy the Commission's requirements and we expect that stakeholders supporting such proposals would have the opportunity to advocate for them in the stakeholder processes leading to the Order No. 1000 compliance filings. The Commission will consider any such approaches in the compliance filings when they are submitted for review.[70]

*B. Nonincumbent Transmission Developers*

32. In Order No. 1000, the Commission addressed the removal from Commission-jurisdictional tariffs and agreements of provisions that contain a federal right of first refusal to construct transmission facilities selected in a regional transmission plan for purposes of cost allocation. The Commission also adopted a framework that requires the development of qualification criteria and protocols to govern the submission and evaluation of proposals for transmission facilities by public utility transmission providers in the regional transmission planning process. The Commission further required that a nonincumbent transmission developer of a transmission facility selected in the regional transmission plan for purposes of cost allocation have an opportunity comparable to that of an incumbent transmission developer to allocate the cost of such transmission facility through a regional cost allocation method or methods.[71]

1. Legal Authority

a. Order No. 1000–A

33. In Order No. 1000–A, the Commission affirmed its conclusion in Order No. 1000 that it has the legal authority under section 206 of the FPA to require the elimination of federal rights of first refusal as practices that have the potential to lead to Commission-jurisdictional rates that are unjust and unreasonable or unduly discriminatory or preferential.[72] The Commission stated that, consistent with its authority under section 206, the Commission acted to remedy an unjust and unreasonable or unduly discriminatory or preferential practice by requiring public utility transmission providers to eliminate a federal right of first refusal from Commission-jurisdictional tariffs and agreements and adopt the nonincumbent reforms. The Commission explained that in Order No. 1000, it had found that a federal right of first refusal applicable to transmission facilities selected in a regional transmission plan for purposes of cost allocation can lead to rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers.[73]

34. Finally, the Commission affirmed its decision in Order No. 1000 to address arguments that an individual contract contains a federal right of first refusal that is protected by a *Mobile-Sierra* provision when it reviews the compliance filings made by public utility transmission providers.[74] Consistent with Order No. 1000, the Commission explained that a public utility transmission provider that considers its contract to be protected by a *Mobile-Sierra* provision may present its arguments as part of its compliance filing. However, the Commission also clarified that any such compliance filing must include the revisions to any Commission-jurisdictional tariffs and agreements necessary to comply with Order No. 1000 as well as the *Mobile-Sierra* provision arguments.[75] The Commission concluded that this approach ensures that public utility transmission providers would not be required to eliminate a federal right of first refusal before the Commission makes a determination regarding whether an agreement is protected by a *Mobile-Sierra* provision and whether the Commission has met the applicable standard of review, while at the same time ensuring that the Order No. 1000 compliance process proceeds expeditiously and efficiently.

b. Requests for Rehearing and Clarification

35. Oklahoma Gas and Electric Company argues that the Commission failed to support its assertion that provisions that designate incumbent utilities to construct new transmission facilities are unduly discriminatory or preferential, or cause rates to be unreasonably high.[76] Oklahoma Gas and Electric Company further argues that the Commission cannot support a finding that the current transmission rules in the Southwest Power Pool result in rates that are unjust or unreasonable.[77]

36. Oklahoma Gas and Electric Company also argues that the Commission ignores that the *Mobile-Sierra* standard is a threshold question and that the Commission cannot shift the burden of proof to the contracting parties to propose an alternative until the Commission has answered.[78] Oklahoma Gas and Electric Company asserts that, under section 206 of the Federal Power Act, the Commission must first prove that the existing rates or practices are unjust, unreasonable, unduly discriminatory or preferential, and that courts have repeatedly held that the Commission has no power to force public utilities to file particular rates unless it first finds the existing filed rates unlawful.[79] Oklahoma Gas and Electric Company asserts that this two-step process is even more vital in the context of applying the *Mobile-Sierra* doctrine because the Commission must presume that the rate set out in a freely negotiated wholesale-energy contract meets the just and reasonable requirement imposed by law.[80] Accordingly, Oklahoma Gas and Electric Company argues that the Commission has no power to require parties to renegotiate and revise existing agreements unless it finds harm to the public interest.[81]

c. Commission Determination

37. We disagree with Oklahoma Gas and Electric Company that the

[69] *See, e.g.,* Order No. 1000–A, 139 FERC ¶ 61,132 at P 331 (''It may well be the case that evaluating different power supply scenarios will be an effective way to identify more efficient or cost-effective transmission solutions; however, we will not prescribe any such requirements here, consistent with our preference for regional flexibility in designing regional transmission planning processes.'').

[70] *See id.*

[71] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 225.

[72] Order No. 1000–A, 139 FERC ¶ 61,132 at P 357.

[73] *Id.* P 360.

[74] *Id.* P 388.

[75] *Id.* P 389.

[76] Oklahoma Gas and Electric Company at 4.

[77] *Id.*

[78] *Id.* at 8.

[79] *Id.* at 8–9 (*citing Atlantic City Elec. Co.* v. *FERC,* 295 F.3d 1, 10 (D.C. Cir. 2002); *Complex Consol. Edison Co. of New York, Inc.* v. *FERC,* 165 F.3d 992, 1001 (D.C. Cir. 1999); *Transmission Access Policy Study Group* v. *FERC,* 225 F.3d 667, 688 (D.C. Cir. 2005)).

[80] *Id.* at 9 (citing *NRG Power Marketing, LLC* v. *Maine Public Utilities Commission,* 130 S. Ct. 693, 700 (2010)).

[81] *Id.* at 9–10.

Commission failed to support its determination that a federal right of first refusal for transmission facilities selected in a regional transmission plan for purposes of cost allocation may lead to Commission-jurisdictional rates that are unjust and unreasonable or unduly discriminatory or preferential. Specifically, the Commission found that a federal right of first refusal has ''the potential to undermine the identification and evaluation of more efficient or cost-effective solutions to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise result in undue discrimination by public utility transmission providers.'' [82] The Commission further explained the direct effect that a federal right of first refusal can have on Commission-jurisdictional rates in Order No. 1000–A, stating that:

> the selection of transmission facilities in a regional transmission plan for purposes of cost allocation is directly related to costs that will be allocated to jurisdictional ratepayers. The ability of an incumbent transmission provider to discourage or preclude participation of new transmission developers through discriminatory rules in a regional transmission planning process, and in particular, the inclusion of a federal right of first refusal, can have the effect of limiting the identification and evaluation of potential solutions to regional transmission needs. This in turn can directly increase the cost of new transmission development that is recovered from jurisdictional customers through rates.[83]

38. The Commission put forth several rationales to support its determination.[84] In particular, the Commission noted that the Federal Trade Commission supported the Commission's conclusion that a federal right of first refusal can create a barrier to entry that discourages nonincumbent transmission developers from proposing alternative solutions for consideration at the regional level.[85] In addition, the Commission stated that it is not in the economic self-interest of incumbent transmission providers to permit new entrants to develop transmission facilities, even if proposals submitted by new entrants would result in a more efficient or cost-effective solution to the region's needs.[86] Thus, the Commission concluded that it has a reasonable expectation that expanding the universe of transmission developers offering potential solutions to regional needs can lead to the identification and evaluation of potential solutions that are more efficient or cost-effective.[87]

39. Furthermore, as the Commission explained in the Need for Reform section of Order No. 1000–A, the Commission is not required to make individual findings concerning the rates of individual public utility transmission providers when proceeding under FPA section 206 by means of a generic rule.[88] Rather, the Commission can proceed by identifying a ''theoretical threat'' that would materialize and cause rates to be unjust and unreasonable, or unduly discriminatory or preferential.[89] As discussed in the preceding paragraph, the Commission found that a federal right of first refusal has the potential to lead to rates for Commission-jurisdictional services that are unjust and unreasonable or otherwise unduly discriminatory.

40. In response to Oklahoma Gas and Electric Company's arguments regarding the *Mobile-Sierra* doctrine, we reiterate that the Commission is not requiring public utility transmission providers to eliminate a federal right of first refusal before the Commission makes a determination regarding whether an agreement is protected by the *Mobile-Sierra* doctrine and whether the Commission has met the applicable standard of review. As the Commission clarified in Order No. 1000–A, the Commission will first decide, based on a more complete record, including viewpoints of other interested parties, whether an agreement is protected by the *Mobile-Sierra* doctrine, and if so, whether the Commission has met the applicable standard of review such that it can require the modification of the particular agreement.[90] If the Commission determines based on the record submitted in the compliance filing that an agreement is protected by the *Mobile-Sierra* doctrine and that it cannot meet the applicable standard of review, then the Commission will not consider whether the revisions to the Commission-jurisdictional tariffs and agreements submitted by a public utility transmission provider that considers its agreement to be protected by the *Mobile-Sierra* doctrine comply with Order No. 1000.[91]

2. Requirement To Remove a Federal Right of First Refusal From Commission-Jurisdictional Tariffs and Agreements, and Limits on the Applicability of That Requirement

a. Order No. 1000–A

41. In Order No. 1000–A, the Commission affirmed its decision in Order No. 1000 to require the elimination of a federal right of first refusal from Commission-jurisdictional tariffs and agreements for transmission facilities selected in a regional transmission plan for purposes of cost allocation.[92] The Commission also clarified certain terms used in Order No. 1000. For instance, the Commission clarified that the term ''selected in a regional transmission plan for purposes of cost allocation'' excludes a new transmission facility if the costs of that facility are borne entirely by the public utility transmission provider in whose retail distribution service territory or footprint that new transmission facility is to be located.[93]

42. The Commission stated that in general, any regional cost allocation of the cost of a new transmission facility outside a single transmission provider's retail distribution service territory or footprint, including an allocation to a ''zone'' consisting of more than one transmission provider, is an application of the regional cost allocation method and that new transmission facility is not a local transmission facility.[94] As an example, the Commission stated that transmission owning members of an RTO may not retain a federal right of first refusal by dividing the RTO into East and West multi-utility zones and allocating costs just within one zone consisting of more than one transmission provider.[95] The Commission also stated that it will address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the specific facts presented. The Commission explained that there may be a continuum of examples that range from (i) one small municipality with a single small transmission facility located within a transmission provider's footprint, to (ii) a ''zone'' consisting of many public utility and nonpublic utility transmission providers. Accordingly, the Commission stated that public utility transmission providers may include specific situations in their compliance filings along with the filed regional cost

[82] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 253.

[83] Order No. 1000–A, 139 FERC ¶ 61,132 at P 358 (citations omitted).

[84] *Id.* P 76.

[85] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 257; *see* Order No. 1000–A, 139 FERC ¶ 61,132 at P 76.

[86] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 256.

[87] Order No. 1000–A, 139 FERC ¶ 61,132 at PP 77, 83.

[88] *Id.* P 56.

[89] *Id.* P 57.

[90] *Id.* P 389.

[91] *Id.*

[92] *Id.* P 415.

[93] *Id.* P 423.

[94] *Id.* P 424.

[95] *Id.*

allocation method or methods.[96] The Commission clarified that if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, there can be no federal right of first refusal associated with such transmission facility, except as provided in Order Nos. 1000 and 1000–A.[97]

b. Requests for Rehearing and Clarification

43. Petitioners seek rehearing of the Commission's determination in Order No. 1000–A that a transmission facility is considered selected in a regional transmission plan for purposes of cost allocation if any of the costs of that facility are allocated outside of the public utility transmission provider's retail distribution service territory or footprint.[98] MISO Transmission Owners Group 2 argues that under a reasonable interpretation of Order No. 1000, a transmission provider may retain its right of first refusal if a transmission facility is not selected in a regional transmission plan for purposes of cost allocation as a more efficient or cost-effective solution to regional needs but instead was selected to primarily address local needs.[99] MISO Transmission Owners Group 2 states that not all projects included in the regional transmission plan for which some costs are allocated outside of an individual utility's footprint are ''a more efficient or cost-effective solution to regional transmission needs,'' such as projects constructed to meet compliance with state service obligations or where the most efficient or cost-effective solution may not be in-service in time to satisfy reliability criteria and the decision to include the project in the plan is made primarily on the basis of reliability.[100]

44. MISO Transmission Owners Group 2 argues, however, that statements in Order No. 1000–A suggest that the decision regarding whether a facility is more efficient or cost-effective is irrelevant to determining whether the requirement to remove federal rights of first refusal would apply.[101] MISO Transmission Owners Group 2 argues that the Commission cites no record evidence or argument in favor of broadening the definition of transmission facilities selected in a regional transmission plan for purposes of cost allocation.[102] Accordingly, MISO Transmission Owners Group 2 asks for the Commission to clarify that, in order for the requirement to eliminate the federal right of first refusal to apply, the costs of a transmission facility must not only be allocated outside of a transmission owner's retail distribution service territory or footprint and the transmission facility must have been selected in the regional transmission plan, but it also must be selected as a more efficient or cost-effective solution to regional transmission needs. The MISO Transmission Owners Group requests that the Commission clarify that utilities may retain a right of first refusal for projects that are selected which may not be the ''more efficient or cost-effective solution to regional transmission needs.'' [103]

45. MISO Transmission Owners Group 2 also argues that eliminating the ability of a transmission-owning member of an RTO to construct and allocate the costs of a local transmission facility encourages free ridership by providing an incentive for transmission providers to keep cost allocation within their retail distribution service territory to retain a right of first refusal for local transmission facilities, even when entities outside of the retail distribution service territory or footprint may receive some benefit from such facilities despite their primarily local nature.[104]

46. Oklahoma Gas and Electric Company argues that a broader definition of what constitutes regional cost allocation prohibits transmission planning regions from adopting approaches they believe would effectively allocate costs and fairly balance stakeholder interests.[105] For instance, Oklahoma Gas and Electric Company states that the Southwest Power Pool allocates costs using a Highway/Byway Plan.[106] Oklahoma Gas and Electric Company asserts that the Commission should ensure that the Southwest Power Pool can retain its Highway/Byway Plan for cost allocation by designating lower voltage facilities as local facilities for purposes of Order No. 1000.[107]

47. Some petitioners request that the Commission clarify that projects with costs allocated to a single zone should be considered local, even if the zone consists of more than one public utility transmission provider, so that the public utility transmission provider may retain a federal right of first refusal.[108] AEP contends that the Commission's proposal to defer evaluation of multi-utility zones until the compliance filing stage does little to inform ongoing RTO stakeholder processes tasked with developing compliance filings.[109] MISO Transmission Owners Group 2 asserts that the Commission failed to identify any record evidence or argument for its conclusion that transmission providers located in multi-transmission provider zones automatically lose their federal rights of first refusal for all transmission facilities.[110]

48. MISO Transmission Owners Group 2 also argues that the Commission's stated concern that such zones might be established to circumvent Order No. 1000 is misplaced.[111] In support, MISO Transmission Owners Group 2 asserts that such zones were established prior to the issuance of Order No. 1000 and based on decades of cooperation and collaboration among transmission owners.[112] In addition, MISO Transmission Owners Group 2 argues that the Commission's distinction between multi-transmission provider zones and zones containing only one transmission provider results in undue discrimination against transmission providers that happen to be located in a multi-transmission provider zone.[113]

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[96] *Id.*

[97] *Id.* P 430. For example, the Commission does not require an incumbent transmission provider to eliminate a federal right of first refusal for upgrades to its own transmission facilities. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 319.

[98] *See, e.g.* MISO Transmission Owners Group 2 and Oklahoma Gas and Electric Company.

[99] MISO Transmission Owners Group 2 at 12–13.

[100] *Id.* at 14–15 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 430).

[101] *Id.* at 13–14 (citing Order No. 1000–A, 139 FERC ¶ 61,132 at P 430 (''if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility.'')).

[102] *Id.* at 18.

[103] *Id.* at 15–19.

[104] *Id.* at 19.

[105] Oklahoma Gas and Electric Company at 6.

[106] *Id.* (citing *Southwest Power Pool, Inc.,* 131 FERC ¶ 61,252 (2010), *reh'g denied,* 137 FERC ¶ 61,075 (2011)). Oklahoma Gas and Electric Company states that the Southwest Power Pool allocates: (1) 100% of the cost of a facility operating at 300 kV or above across the region on a postage stamp basis; (2) one-third of the cost of a facility operating above 100 kV and below 300 kV on a regional postage stamp basis and the remaining two-thirds of the costs to the zone in which the facility is located; and, (3) all the costs of a facility operating at or under 100 kV to the zone in which the facility is located. *Id.*

[107] *Id.*

[108] *See, e.g.,* AEP and MISO Transmission Owners Group 2.

[109] AEP at 10–11. AEP cites as an example SPP's stakeholder process which at the time of AEP's request for clarification, was debating the interpretation of the Commission's intended treatment of zones that have long included a single large, traditional load-serving public utility, as well as several small municipal or cooperative utilities that are dependent on the transmission system of the traditional public utility to serve their respective loads.

[110] MISO Transmission Owners Group 2 at 24.

[111] *Id.* at 22.

[112] *Id.*

[113] *Id.* at 26.

49. Oklahoma Gas and Electric Company contends that the Commission incorrectly claimed in Order No. 1000–A that the scope of Order No. 1000 will be limited. It asserts that, in response to arguments that the requirement to eliminate the right of first refusal is beyond the Commission's authority and will materially alter the business of public utilities, the Commission in Order No. 1000–A emphasized that the requirement did not extend to local transmission facilities.[114] Oklahoma Gas and Electric Company asserts that based on the discussion of zones in Order No. 1000–A, it may not be possible to build a local facility under the Southwest Power Pool tariff, making all new construction subject to Order No. 1000.[115] Similarly, MISO Transmission Owners Group 2 contends that RTO transmission-owning members lack individual mechanisms for cost allocation and recovery, and therefore would have no ability to build and recover the costs of local transmission facilities as they are defined in Order No. 1000.[116]

50. Oklahoma Gas and Electric Company argues that because the requirement to eliminate provisions that designate incumbent utilities to construct new transmission facilities is not limited in scope, and does materially alter the businesses of transmission owning companies, the Commission should find that there is no sound basis to require that public utility transmission providers remove such provisions.[117] In the alternative, Oklahoma Gas and Electric Company asserts that the Commission should allow each region to define the scope of local transmission projects that will not be subject to the new rule.[118]

c. Commission Determination

51. On rehearing of Order No. 1000–A, petitioners have raised two issues related to Order No. 1000's requirement that public utility transmission providers remove federal rights of first refusal from Commission-jurisdictional tariffs and agreements. First, some petitioners seek rehearing of Order No. 1000–A's determination that if any of the costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility. Second, on rehearing some petitioners argue that projects with costs allocated to a single zone should be considered local, even if there is more than one public utility transmission provider located in that zone, so that the public utility transmission provider may retain a federal right of first refusal under those circumstances. We deny rehearing and will discuss each of these issues in turn.

52. As noted above, the first issue we address concerns requests for rehearing of Order No. 1000–A's determination that if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facility, except as provided in Order Nos. 1000 and 1000–A.[119] Order No. 1000 requires that a federal right of first refusal be removed for new transmission facilities selected in a regional transmission plan for purposes of cost allocation. As noted above, the Commission stated in Order No. 1000 that *in general,* if *any* costs of a new transmission facility are allocated regionally or outside a single transmission provider's retail distribution service territory or footprint, that is an application of the regional cost allocation method and that new transmission facility is not a local transmission facility.[120] Therefore, once a new transmission facility is selected in the regional transmission plan for purposes of cost allocation, it is no longer a local transmission facility exempt from the requirements of Order Nos. 1000 and 1000–A regarding the removal of federal rights of first refusal. For this reason, we deny rehearing on this issue.

53. We note that neither Order No. 1000 nor Order No. 1000–A requires elimination of a federal right of first refusal in all circumstances.[121] We also note that the Commission recognized that issuance of Order No. 1000 may have occurred in the middle of a transmission planning cycle for a particular region and, therefore, directed public utility transmission providers to explain in their respective compliance filings how they intend to implement the requirements of the Final Rule.[122] Moreover, public utility transmission providers are required to describe the circumstances and procedures under which public utility transmission providers will reevaluate the regional transmission plan to determine if delays in the development of a transmission facility selected in a regional transmission plan for purposes of cost allocation require evaluation of alternative solutions, including those proposed by the incumbent transmission provider, to ensure the incumbent transmission provider can meet its reliability needs or service obligations.[123] We will evaluate proposals related to these requirements on review of compliance filings.

54. With respect to the second issue raised by petitioners—whether a project whose costs are allocated to a single zone with multiple transmission owners should be considered local and thus permit a public utility transmission provider to retain a federal right of first refusal under these circumstances—the Commission recognized in Order No. 1000–A that special consideration is needed when a small transmission provider is located within the footprint of another transmission provider.[124] The Commission acknowledged that there is a continuum of situations of multi-transmission provider zones, but opted to address such situations on compliance. This acknowledgement provides public utility transmission providers who may have zonal configurations, such as a zone with a small municipality and one transmission provider, or one with many public utility and non-public utility transmission providers, an opportunity to address whether a cost allocation to a multi-transmission provider zone is regional on a case-by-case basis based on the specific facts presented. We consider many of the arguments related to multi-transmission provider zones premature because the Commission did not adopt a generic rule as to whether a cost allocation solely to a multi-transmission provider zone is an application of the regional cost allocation method for which a

[114] Oklahoma Gas and Electric Company at 3–5.

[115] *Id.* at 5–6.

[116] MISO Transmission Owners Group 2 at 23.

[117] Oklahoma Gas and Electric Company at 7.

[118] *Id.*

[119] Order No. 1000–A, 139 FERC ¶ 61,132 at P 430.

[120] *Id.* P 424 (emphasis added).

[121] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 318–319.

[122] *Id.* P 162. *See also id.* P 65 (''Our intent here is that this Final Rule not delay current studies being undertaken pursuant to existing regional transmission planning processes or impede progress on implementing existing transmission plans. We direct public utility transmission providers to explain in their compliance filings how they will determine which facilities evaluated in their local and regional planning processes will be subject to the requirements of this Final Rule.'').

[123] Order No. 1000–A, FERC Stats. & Regs. ¶ 31,132 at P 477. *See also* Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 329 (''[A]n incumbent transmission provider must have the ability to propose solutions that it would implement within its retail distribution service territory or footprint that will enable it to meet its reliability needs or service obligations.'').

[124] Order No. 1000–A, FERC Stats. & Regs. ¶ 31,132 at P 424.

federal right of first refusal must be eliminated. Petitioners have not presented evidence that would support the Commission making a generic finding or providing additional guidance for all multi-transmission provider zones in this rulemaking proceeding. Therefore, on this second issue, we find that the Commission's determination is a reasonable balance of competing considerations that enables the Commission to implement the requirements of Order No. 1000 in a manner that will achieve the goal of improved transmission planning.

55. We therefore agree with petitioners that the Commission's requirements have not entirely eliminated opportunities for free ridership. As evidenced by the multiple comments and petitions the Commission received in the Order No. 1000 proceedings, the Commission balanced many competing interests in determining how to best implement the requirements of Order No. 1000. Some presented their views of the advantages of retaining a federal right of first refusal for all new transmission facilities while others presented their views of the advantages of eliminating a federal right of first refusal for all new transmission facilities. The Commission has considered the arguments raised by petitioners on rehearing with respect to both of the above-mentioned issues and rejects petitioners' requests for rehearing as we find that the approach taken in Order Nos. 1000 and 1000–A provides the best balance of competing considerations.

3. Framework To Evaluate Transmission Projects Submitted for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

a. Evaluation of Proposals for Selection in the Regional Transmission Plan for Purposes of Cost Allocation

i. Order No. 1000–A

56. In Order No. 1000–A, the Commission affirmed its decision in Order No. 1000 to require each public utility transmission provider to amend its OATT to describe a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in a regional transmission plan for purposes of cost allocation.[125] The Commission also reiterated that there are many different approaches to transmission planning and that Order No. 1000 requires only that the transmission planning process adopted by a transmission planning region satisfy the transmission planning principles discussed in Order Nos. 1000 and 1000–A. Accordingly, the Commission declined to rule in the abstract in advance of the compliance filings whether any particular transmission planning process is the only appropriate process for all regions.

57. The Commission also continued to emphasize that any qualification criteria or process for selecting transmission facilities in a regional transmission plan for purposes of cost allocation must be transparent and not unduly discriminatory.[126] Finally, the Commission affirmed its decision that, if a proposed transmission facility is selected in a regional transmission plan for purposes of cost allocation, then Order No. 1000 requires that the transmission developer of that transmission facility (whether incumbent or nonincumbent) must be able to rely on the relevant cost allocation method or methods within the region should it move forward with its transmission project.[127] The Commission also reiterated that it would not require public utility transmission providers in a region to adopt a provision for ongoing sponsorship rights, and pointed out that in Order No. 1000, the Commission concluded that granting transmission developers an ongoing right to build sponsored transmission projects could adversely impact the regional transmission planning process.[128] Accordingly, the Commission in Order No. 1000–A declined to reverse this decision on the selection of transmission developers.[129]

ii. Requests for Rehearing and Clarification

58. AEP maintains that some regions are considering a process in which third parties (e.g., one or more states) select the developer for a transmission project after the regional planning entity has identified needed transmission projects in its regional transmission plan.[130] AEP asserts that leaving the selection of a project developer to an entity other than the regional planning body threatens to lead to suboptimal results.[131] It argues that the decision as to which entity is best suited to build a given transmission project necessarily relies on developer qualifications as assessed by the transmission provider, and on projected benefits, which will vary among developers.[132] It contends that the selection of the best transmission solution for the region cannot be done effectively without information about the qualifications and the benefits offered by the developer for the project.[133] Accordingly, AEP requests that the Commission provide clarification to discourage bifurcation of the planning process.[134]

iii. Commission Determination

59. We decline to clarify in advance of the compliance filings whether any particular approach to the selection of a transmission developer is a just and reasonable and not unduly discriminatory or preferential selection process. Order No. 1000 requires public utility transmission providers in a region to adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan for purposes of cost allocation.[135] It also requires that if a transmission project is selected in a regional transmission plan for purposes of cost allocation, the transmission developer of that transmission facility must be able to rely on the relevant cost allocation method or methods within the region should it move forward with the transmission project.[136] However, the Commission declined to otherwise address the selection of a transmission developer on a generic basis.[137] We continue to believe that it is not appropriate to address in advance of the compliance filings the process for selecting transmission developers in greater detail. Instead, we reaffirm the flexibility that the Commission provided to the public utility transmission providers in each transmission planning region to propose a process for selecting transmission developers in accordance with each transmission planning region's needs.[138]

C. Interregional Transmission Coordination

60. In Order No. 1000, the Commission required each public utility

[125] Order No. 1000–A, 139 FERC ¶ 61,132 at P 452.

[126] *Id.* PP 439, 452.

[127] *Id.* P 456; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 339.

[128] Order No. 1000–A, 139 FERC ¶ 61,132 at P 456; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 339.

[129] Order No. 1000–A, 139 FERC ¶ 61,132 at P 456; Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 339.

[130] AEP at 6.

[131] *Id.* at 2.

[132] *Id.* at 6.

[133] *Id.* at 6–7.

[134] *Id.* at 6.

[135] *E.g.,* Order No. 1000–A, 139 FERC ¶ 31,132 at P 455.

[136] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 332, 339; *see also* Order No. 1000–A, 139 FERC ¶ 61,132 at P 456.

[137] *E.g.,* Order No. 1000–A, 139 FERC ¶ 61,132 at P 455.

[138] *E.g., id.*

transmission provider, through its regional transmission planning process, to establish further procedures with each of its neighboring transmission planning regions for the purpose of: (1) Coordinating and sharing the results of respective regional transmission plans to identify possible interregional transmission facilities that could address transmission needs more efficiently or cost-effectively than separate regional transmission facilities; and (2) jointly evaluating such facilities, as well as jointly evaluating those transmission facilities that are proposed to be located in more than one transmission planning region.[139] The Commission also required each public utility transmission provider, through its regional transmission planning process, to describe the methods by which it will identify and evaluate interregional transmission facilities and to include a description of the type of transmission studies that will be conducted to evaluate conditions on neighboring systems for the purpose of determining whether interregional transmission facilities are more efficient or cost-effective than regional facilities.[140]

1. Implementation of the Interregional Transmission Coordination Requirements

a. Procedure for Joint Evaluation

i. Order No. 1000–A

61. In Order No. 1000–A, the Commission reaffirmed Order No. 1000's requirement that an interregional transmission facility must be selected in each relevant regional transmission plan for purposes of cost allocation to be eligible for cost allocation under the interregional cost allocation method or methods.[141] The Commission explained that Order No. 1000 establishes a closer link between transmission planning and cost allocation. Additionally, the Commission stated that Order No. 1000 provides for stakeholder involvement in the consideration of an interregional transmission facility primarily through the regional transmission planning processes.[142] The Commission concluded that this requirement is necessary to ensure that stakeholders have an opportunity to provide meaningful input with respect to proposed interregional transmission facilities before such facilities are selected in each relevant regional transmission plan for purposes of cost allocation.[143]

62. Additionally, the Commission acknowledged that, under the interregional transmission coordination procedures of Order No. 1000, an interregional transmission facility is unlikely to be selected for interregional cost allocation unless each transmission planning region benefits or the transmission planning region that benefits compensates the region that does not through a separate agreement. The Commission expressed its continued belief that, under the regional transmission planning approach adopted in Order No. 1000, it is appropriate for each transmission planning region to determine for itself whether to select in its regional transmission plan for purposes of cost allocation an interregional transmission facility that extends partly within its regional footprint based on the information gained during the joint evaluation of an interregional transmission project.[144]

ii. Requests for Rehearing and Clarification

63. AEP requests clarification that the inclusion of an interregional project in a regional plan need not be subject to the same benefits tests that would be applied to a single-region project, and that a region may include an interregional project in its plan if the benefits to the region compare favorably to the share of the costs that would be borne by that region (as distinct from the total project costs).[145] Specifically, it states that in determining the costs and benefits of a proposed interregional transmission project for the purposes of the selection process, a regional transmission planning entity should be permitted to evaluate the benefits provided to an affected region and assume that a portion of the costs of the project will be allocated to the affected region.[146] For example, if a $100 million interregional project would have $180 million in benefits split evenly between two adjacent regions, both regions would find the project beneficial and would include it in the regional plan, if they assumed that one-half of the cost would be borne by each region.[147]

iii. Commission Determination

64. Order No. 1000 did not specify whether or how a regional or interregional benefit-cost threshold should be applied when selecting a project in the regional transmission plan for purposes of cost allocation, or which costs should be included when calculating a benefit-cost threshold to use in this selection process. This was to provide the opportunity for each region to develop an appropriate calculation, if it chose to use a threshold at all. Therefore, we decline to clarify in advance of the compliance filings how a benefit-cost threshold should be applied.

**III. Cost Allocation**

65. In Order No. 1000, the Commission required that each public utility transmission provider have in its OATT a method, or set of methods, for allocating the costs of new regional transmission facilities selected in the regional transmission plan for purposes of cost allocation (''regional cost allocation''); and that each public utility transmission provider within two (or more) neighboring transmission planning regions develop a method, or set of methods, for allocating the costs of new interregional transmission facilities that each of the two (or more) neighboring transmission planning regions selected for purposes of cost allocation because such facilities would resolve the individual needs of each region more efficiently or cost-effectively (''interregional cost allocation'').[148] The Commission required that the OATTs of all public utility transmission providers in a region include the same cost allocation method or methods adopted by the region.[149]

66. The Commission also required that regional and interregional cost allocation methods each adhere to six regional and interregional cost allocation principles: (1) Costs must be allocated in a way that is roughly commensurate with benefits; (2) there must be no involuntary allocation of costs to non-beneficiaries; (3) a benefit to cost threshold ratio cannot exceed 1.25; (4) costs must be allocated solely within the transmission planning region

[139] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 493.

[140] *Id.*

[141] Order No. 1000–A, 139 FERC ¶ 61,132 at P 509 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 436).

[142] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 465; *see also id.* P 443.

[143] Order No. 1000–A, 139 FERC ¶ 61,132 at P 509.

[144] *Id.* P 512.

[145] AEP at 2, 7.

[146] *Id.* at 8.

[147] *Id.*

[148] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 482. For purposes of Order No. 1000, a regional transmission facility is a transmission facility located entirely in one region. An interregional transmission facility is one that is located in two or more transmission planning regions. A transmission facility that is located solely in one transmission planning region is not an interregional transmission facility. *Id.* P 482 n.374.

[149] Order No. 1000–A, 139 FERC ¶ 61,132 at P 523.

or pair of regions unless those outside the region or pair of regions voluntarily assume costs; (5) there must be a transparent method for determining benefits and identifying beneficiaries; and (6) there may be different methods for different types of transmission facilities.[150] The Commission directed that, subject to these general cost allocation principles, public utility transmission providers in consultation with stakeholders would have the opportunity to agree on the appropriate cost allocation methods for their new regional and interregional transmission facilities, subject to Commission approval.[151] The Commission also found that if public utility transmission providers in a region or pair of regions could not agree, the Commission would use the record in the relevant compliance filing proceeding(s) as a basis to develop a cost allocation method or methods that meets the Commission's requirements.[152] Finally, the Commission emphasized that its cost allocation requirements are designed to work in tandem with its transmission planning requirements to identify more appropriately the benefits and the beneficiaries of new transmission facilities so that transmission developers, planners and stakeholders can take into account in the transmission planning process who would bear the costs of transmission facilities, if constructed.[153]

1. Cost Allocation Principle 2—No Involuntary Allocation of Costs to Non-Beneficiaries

a. Order Nos. 1000 and 1000–A

67. In Order No. 1000, the Commission adopted the following Cost Allocation Principle 2 for both regional and interregional cost allocation:

> Regional Cost Allocation Principle 2: Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.

and

> Interregional Cost Allocation Principle 2: A transmission planning region that receives no benefit from an interregional transmission facility that is located in that region, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of that transmission facility.[154]

68. The Commission also required that every cost allocation method or methods provide for allocation of the entire prudently incurred cost of a transmission project to prevent stranded costs.[155]

69. On rehearing, the Commission affirmed Order No. 1000's adoption of Regional and Interregional Cost Allocation Principle 2. The Commission explained that scenario analysis is a common feature of electric power system planning, and that it believed that public utility transmission providers are in the best position to apply it in a way that achieves appropriate results in their respective transmission planning regions.[156] The Commission also found that the use of ''likely future scenarios'' would not expand the class of customers who would be identified as beneficiaries because it is limited to scenarios in which a beneficiary is identified as such on the basis of the cost causation principle.

70. The Commission clarified that public utility transmission providers may rely on scenario analyses in the preparation of a regional transmission plan and the selection of new transmission facilities for cost allocation purposes. If a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods, Principle 2 would be satisfied.

b. Requests for Rehearing or Clarification

71. Organization of MISO States argues that the Commission erred in paragraph 690 of Order No. 1000–A when it concluded that if a project or group of projects is shown to have benefits in any one of the transmission planning scenarios studied by a public utility transmission provider in its planning process, then the conditions for satisfaction of Cost Allocation Principle 2 will be determined to have been met. It contends that, in response to ITC Companies' request for clarification, the Commission stated that a ''likely future scenario'' that would justify an allocation of costs for new transmission facilities includes the transmission planning scenarios being used by a transmission provider to prepare a regional transmission plan.[157] Organization of MISO States is concerned that the Commission's clarification reads out of Principle 2 the concept of the likelihood of a future scenario by suggesting that Principle 2 would be satisfied if benefits are shown under any scenario studied by the transmission provider in its planning process.[158] Accordingly, Organization of MISO States requests that the Commission clarify that its discussion in paragraph 690 of Order No. 1000–A only applies to likely future scenarios as required by Principle 2.

c. Commission Determination

72. We clarify that in finding that Cost Allocation Principle 2 would be satisfied if a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods, we did not intend to remove the ''likely future scenarios'' concept from transmission planning. We believe the evaluation of likely future scenarios can be an important factor in public utility transmission providers' consideration of transmission projects and in the identification of beneficiaries consistent with the cost causation principle.

## IV. Information Collection Statement

73. The Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by an agency.[159] The revisions in Order Nos. 1000 and 1000–A to the information collection requirements were approved under OMB Control No. 1902–0233. While this order provides clarification, it does not modify any information collection requirements. Accordingly, a copy of this order will be sent to OMB for informational purposes only.

## V. Document Availability

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

75. From the Commission's Home Page on the Internet, this information is

[150] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 622–693.

[151] *Id.* P 588.

[152] *Id.* P 482.

[153] *Id.* P 483.

[154] *Id.* P 637.

[155] *Id.* P 640.

[156] *Id.*

[157] Organization of MISO States at 2 (quoting Order No. 1000–A, 139 FERC ¶ 61,132 at P 690 (''If a project or group of projects is shown to have benefits in one or more of the transmission planning scenarios identified by public utility transmission providers in their Commission-approved Order No. 1000-compliant cost allocation methods, Principle 2 would be satisfied.'')).

[158] *Id.*

[159] 5 CFR 1320.11.

available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

## VI. Effective Date

77. Changes to Order Nos. 1000 and 1000–A made in this order on rehearing and clarification will be effective on November 23, 2012.

By the Commission. Commissioner LaFleur is dissenting in part with a separate statement. Commissioner Clark is not participating.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

**Note:** The following appendices will not be published in the *Code of Federal Regulations.*

## APPENDIX A: ABBREVIATED NAMES OF PETITIONERS

| Abbreviation | Petitioner names |
|---|---|
| AEP | American Electric Power Service Corporation. |
| MISO Transmission Owners Group 2. | The Midwest ISO Transmission Owners for this filing consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; and Wolverine Power Supply Cooperative, Inc. |
| Oklahoma Gas and Electric Company. | Oklahoma Gas and Electric Company. |
| Organization of MISO States | Illinois Commerce Commission; Indiana Utility Regulatory Commission; Iowa Utilities Board; Kentucky Public Service Commission; Michigan Public Service Commission; Minnesota Public Utilities Commission; Missouri Public Service Commission; Wisconsin Public Service Commission; and Montana Public Service Commission. |
| Transmission Access Policy Study Group. | Transmission Access Policy Study Group. |

LaFLEUR, Commissioner, *dissenting in part:*

As part of today's order, the Commission affirms its holding in Order No. 1000–A that an incumbent transmission provider may not retain a federal right of first refusal (ROFR) for a new transmission project—even a local reliability project—if that project receives *any* amount of regional funding.[1] After further consideration, I believe this decision is premature and denies transmission-planning regions the flexibility to define local projects. I am now persuaded that the Commission should have deferred judgment on this issue until compliance, where it could have evaluated—on a case-by case-basis—proposals to define local projects in light of the principles underlying elimination of the ROFR and the requirement that costs must be allocated in a manner that is at least roughly commensurate with benefits. Because I would grant rehearing on this point, and defer the issue to compliance, I respectfully dissent in part from today's order.

In Order No. 1000, the Commission eliminated the ROFR for projects ''selected in a regional transmission plan for purposes of cost allocation'' but allowed it to continue for local projects.[2] In response, certain petitioners requested guidance as to whether the requirement to remove the ROFR for projects ''selected in a regional transmission plan for purposes of cost allocation'' required eliminating it in two specific situations: First, when costs are allocated only to multiple transmission providers within a single, local zone; and second, when local reliability projects receive some amount of regional funding as part of a cost allocation methodology.[3] In essence, petitioners requested clarification as to whether these specific cost allocation mechanisms converted otherwise local reliability projects to regional projects for purposes of eliminating the ROFR.

With respect to the question about zones, in Order No. 1000–A the Commission acknowledged that ''there may be a continuum of examples'' that require fact specific determinations.[4] Rather than lay down a categorical rule, the Commission opted for flexibility and invited parties to raise their specific situations on compliance.[5] Today's order affirms this approach.

In contrast, in Order 1000–A the Commission did reach a definitive conclusion with respect to whether any amount of regional funding converts an otherwise local reliability project in to a regional project for purposes of the ROFR. The Commission clarified, without explanation,[6] that the ROFR must be eliminated if a project receives *any* amount of regional funding.[7] As a result, a local reliability project that receives any amount of regional funding, no matter how small, is no longer local for purposes of the ROFR. Today's order summarily affirms this decision.

After further consideration, I believe the Commission acted prematurely in concluding that *any* amount of regional funding converts an otherwise local reliability project to a regional project for purposes of the ROFR. By reaching this conclusion in the abstract, without the benefit of considering stakeholder-vetted proposals to define local projects in light of the principles underlying elimination of the ROFR and the requirement that costs must be allocated in a manner that is at least roughly commensurate with

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 76 FR 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g,* Order No. 1000–A, 77 FR 32184 (May 31, 2012), 139 FERC ¶ 61,132 at P 430 (2012).

[2] Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 313, 318; *see also* P 63 (defining local projects).

[3] Order No. 1000–A, 139 FERC ¶ 61,132 at PP 409–410; *see also* n. 495 (examples of cost allocation methodologies reflecting distinctions between regional and local projects that were previously approved by the Commission.).

[4] *Id.* P 424.

[5] *Id.*

[6] For example, the Commission did not explain, in light of its distinction in Order No, 1000 between projects in a regional plan and projects ''selected in a regional transmission plan for purposes of cost allocation,'' why eliminating the ROFR for projects ''selected in a regional transmission plan for purposes of cost allocation'' requires eliminating it for local projects that are primarily locally funded.

[7] *Id.* P 430.

benefits, the Commission has denied transmission planning regions the flexibility it wisely acknowledged to be necessary with respect to the zone issue. I agree with SPP and OGE that we should provide that flexibility.[8]

In Order No. 1000, the Commission balanced many competing policy considerations in an effort to adopt the reforms necessary to assure just and reasonable rates.[9] This balance may be most pronounced in the Commission's efforts to ensure that the regional planning process is broad, inclusive, and fair, while at the same time, mindful of the obligations and attributes of incumbent transmission providers. The Commission also went to great lengths to provide transmission-planning regions with the flexibility to negotiate cost allocation methodologies that allocate costs in a manner that they believe is at least roughly commensurate with benefits. Where the mutual achievement of these objectives raises complex questions, as it does with respect to whether any amount of regional funding converts an otherwise local reliability project in to a regional project for purposes of the ROFR, the Commission should decide the issue on compliance, with a record, rather than by establishing categorical rules that may undermine the planning and cost allocation goals Order No. 1000 was intended to achieve.[10]

Accordingly, I respectfully dissent in part.

Cheryl A. LaFleur,

*Commissioner.*

[FR Doc. 2012–26111 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

[8] In its request for clarification of Order 1000–A, SPP seeks guidance on how to reconcile the definitions and principles underlying Order No. 1000 with the Commission's summary determination in Order No. 1000–A that any amount of regional funding for local reliability projects requires elimination of the ROFR. *See* SPP Request for Clarification at 7–16. Unlike my colleagues, I believe that SPP's filing may properly be characterized as a request for clarification, and therefore, should be addressed in this order. However, I would not reach the merits of SPP's arguments. Instead, I would grant rehearing on the grounds that the Commission should have deferred deciding the issue until compliance and invite SPP to make its arguments on compliance.

[9] Order 1000–B at P 55.

[10] *See e.g.* OGE Request for Rehearing at 6 (''[T]he broad definition of what constitutes regional cost allocation would prohibit regional entities such as SPP from adopting approaches they believe would effectively allocate costs and fairly balance stakeholder interests.'').

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[Docket Number USCG–2012–0741]**

**RIN 1625–AA00**

## Safety Zone, Atlantic Intracoastal Waterway; Carolina Beach, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Carolina Beach, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance on the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina. The safety zone will temporarily restrict vessel movement within the designated area starting on December 20, 2012, through October 31, 2013.

**DATES:** This rule is effective from December 20, 2012, until October 31, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG–2012–0741]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Table of Acronyms

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

### A. Regulatory History and Information

On August 21, 2012, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) (33 FR 50444). We received no comments on the proposed rule. No public meeting was requested, and none was held.

### B. Basis and Purpose

North Carolina Department of Transportation has awarded a contract to American Bridge Company of Virginia Beach, Virginia to perform bridge maintenance on the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina. The contract provides for cleaning, painting, and steel repair to commence on December 20, 2012 with a completion date of October 31, 2013. The contractor will utilize a 40 foot by 60 foot sectional barge as a work platform and for equipment staging. This safety zone will provide a safety buffer to transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction horizontal clearance. During this period the Coast Guard will require a one hour notification to the work supervisor for passage through the U.S. 421 Fixed Bridge along the Atlantic Intracoastal Waterway, mile 295.6, Carolina Beach, North Carolina. The bridge notification requirement will apply during the maintenance period for vessels requiring a horizontal clearance of greater than 60 feet.

### C. Discussion of Comments, Changes and the Final Rule

We received no comments on the proposed rule. No public meeting was requested, and none was held.

The temporary safety zone will encompass the waters directly under the U.S. 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina (34°03′21″ N, 077°53′58″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 60 feet will be required to make a one hour advanced notification to the work supervisor while the safety zone is in effect. This zone will be in effect from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013.

### D. Regulatory Analyses

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does not restrict traffic from transiting the designated portion of the Atlantic Intracoastal Waterway, it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 60 feet.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule affects the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification to the work supervisor. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

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

establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

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

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

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

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

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

■ 2. Add § 165.T05–0741 to read as follows:

**§ 165.T05–0741 Safety Zone, Atlantic Intracoastal Waterway; Carolina Beach, NC.**

(a) *Regulated area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the US 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina (34°03′21″ N, 077°53′58″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0741. In addition the following regulations apply:

(1) All vessels requiring greater than 60 feet horizontal clearance to safely transit through the US 421 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 295.6, at Carolina Beach, North Carolina must contact the work supervisor tender on VHF–FM marine band radio channels 13 and 16 or at (410) 320–9877 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.* (1) *Captain of the Port North Carolina* means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) *Work Supervisor* means the contractor's on site representative.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 a.m. December 20, 2012 through 8 p.m. October 31, 2013 unless cancelled earlier by the Captain of the Port.

Dated: October 4, 2012.

**A. Popiel,**

*Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.*

[FR Doc. 2012–26155 Filed 10–23–12; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2012–0812]**

**RIN 1625–AA00**

## Safety Zone, Atlantic Intracoastal Waterway; Emerald Isle, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is extending the timeframe for a temporary safety zone on the waters of the Atlantic Intracoastal Waterway at Emerald Isle, North Carolina. The safety zone is necessary to provide for the safety of mariners on navigable waters during maintenance of the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina. The safety zone extension will temporarily restrict vessel movement within the designated area starting on December 12, 2012 through February 14, 2013.

**DATES:** This rule is effective from December 12, 2012, through February 14, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket USCG–2012–0812. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email CWO4 Joseph M. Edge, U.S. Coast Guard Sector North Carolina; telephone 252–247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

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

**A. Regulatory History and Information**

On September 17, 2012 the Coast Guard published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (33 FR 57063) for this rulemaking. We received no comments in response to the NPRM. No public meeting was requested, and none was held.

**B. Basis and Purpose**

North Carolina Department of Transportation has contracted Marine Contracting Corporation of Virginia Beach, Virginia to perform bridge maintenance on the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina. The contract provides for replacement of the fender system to commence on September 12, 2012 with a completion date of December 12, 2012. The contractor has been granted an extension by North Carolina Department of Transportation until February 14, 2013 to complete the bridge maintenance. The contractor will utilize

a 140 foot deck barge with a 40 foot beam as a work platform and for equipment staging. A safety zone is needed to provide a safety buffer for transiting vessels as bridge repairs present potential hazards to mariners and property due to reduction of horizontal clearance.

**C. Discussion of Comments, Changes and the Final Rule**

We received no comments on the proposed rule. No public meeting was requested, and none was held.

The temporary safety zone will encompass the waters directly under the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina (34°40′28″ N, 077°03′56″ W). All vessels transiting this section of the waterway requiring a horizontal clearance of greater than 50 feet will be required to make a one hour advanced notification to the work supervisor at the NC 58 Fixed Bridge while the safety zone is in effect. This initial zone (published in the **Federal Register** on June 15, 2012, at 77 FR 35093, under docket number USCG–2012–0432) is in effect from 8 a.m. September 12, 2012 through 8 p.m. December 12, 2012. This extension will be in effect from 8 p.m. December 12, 2012 through 8 p.m. February 14, 2013.

**D. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule does restrict traffic from transiting a portion of the Atlantic Intracoastal Waterway; it imposes a one hour notification to ensure the waterway is clear of impediment to allow passage to vessels requiring a horizontal clearance of greater than 50 feet.

*2. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of commercial tug and barge companies, recreational and commercial fishing vessels intending to transit the specified portion of Atlantic Intracoastal Waterway from 8 p.m. December 12, 2012 through 8 p.m. February 14, 2013.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to this section of the Atlantic Intracoastal Waterway, vessel traffic will be able to request passage by providing a one hour advanced notification. Before the effective period, the Coast Guard will issue maritime advisories widely available to the users of the waterway.

*3. Assistance for Small Entities*

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

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

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

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

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

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

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

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

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

■ 2. Add § 165.T05–0812 to read as follows:

**§ 165.T05–0812 Safety Zone, Atlantic Intracoastal Waterway; Emerald Isle, NC.**

(a) *Regulated area.* The following area is a safety zone: This zone includes the waters directly under and 100 yards either side of the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina (latitude 34°40′28″ N, longitude 077°03′56″ W).

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section, § 165.T05–0812. In addition the following regulations apply:

(1) All vessels requiring greater than 50 feet horizontal clearance to safely transit through the NC 58 Fixed Bridge crossing the Atlantic Intracoastal Waterway, mile 226, at Emerald Isle, North Carolina must contact the work supervisor on VHF–FM marine band radio channels 13 and 16 one hour in advance of intended transit.

(2) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(3) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions.* (1) *Captain of the Port North Carolina* means the Commander, Coast Guard Sector North Carolina or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to assist in enforcing the safety zone described in paragraph (a) of this section.

(3) *Work Supervisor* means the contractors on site representative.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 8 p.m. December 12, 2012 through 8 p.m. February 14, 2013 unless cancelled earlier by the Captain of the Port.

Dated: October 4, 2012.

**A. Popiel,**

*Captain, U.S. Coast Guard, Captain of the Port, U.S. Coast Guard Sector North Carolina.*

[FR Doc. 2012–26154 Filed 10–23–12; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R06–OAR–2010–0846; FRL–9743–8]**

## Extension of Administrative Stay; Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination

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

**ACTION:** Final rule.

**SUMMARY:** The EPA is extending for an additional 45 days the existing administrative stay of the final rule titled ''Approval and Promulgation of Implementation Plans; New Mexico; Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology Determination'' under the authority of the Administrative Procedure Act (APA). EPA previously stayed this rule for 90 days, from July 16, 2012 until October 15, 2012. This action extends the existing administrative stay by an additional 45 days to allow for additional time for further discussions of alternatives to EPA's Federal Implementation Plan (FIP). Today's action reflects this stay in the Code of Federal Regulations.

**DATES:** 40 CFR 52.1628 is stayed from October 15, 2012 until November 29, 2012.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2010–0846. All documents in the docket are listed in the Federal eRulemaking portal index at *http://www.regulations.gov* and are available either electronically at *http://*

*www.regulations.gov* or in hard copy at EPA Region 6, 1445 Ross Ave., Dallas, TX, 75202–2733. To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section. A reasonable fee may be charged for copies.

**FOR FURTHER INFORMATION CONTACT:** Agustin Carbo-Lugo, EPA Region 6, (214) 665–8037, *Carbo-Lugo.Agustin@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever ''we,'' ''us,'' ''our,'' or ''the Agency'' is used, we mean the EPA. Unless otherwise specified, when we say the ''San Juan Generating Station,'' or ''SJGS,'' we mean units 1, 2, 3, and 4, inclusive.

## I. Background

On August 22, 2011, the EPA published a final rule disapproving a portion of the State Implementation Plan (SIP) revision received from the State of New Mexico on September 17, 2007, for the purpose of addressing the ''good neighbor'' requirements of section 110(a)(2)(D)(i) of the CAA for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS or standards) and the 1997 fine particulate matter ($PM_{2.5}$) NAAQS (the ''NM FIP Rule''). 76 FR 52388. In that action, EPA disapproved the New Mexico Interstate Transport SIP provisions that address the requirement of section 110(a)(2)(D)(i)(II) that emissions from New Mexico sources do not interfere with measures required in the SIP of any other state under part C of the CAA to protect visibility. We found that New Mexico sources, except the San Juan Generating Station (SJGS), were sufficiently controlled to eliminate interference from those sources with the visibility programs of other states. EPA promulgated a Federal Implementation Plan (FIP) requiring the implementation of nitrogen oxides ($NO_X$) and sulfur dioxide ($SO_2$) emission limits necessary at the San Juan Generating Station to prevent such interference. This FIP also addresses the Regional Haze (RH) Best Available Retrofit Technology (BART) requirement for $NO_X$ for SJGS. In addition, EPA implemented sulfuric acid ($H_2SO_4$) hourly emission limits at the SJGS, to minimize the contribution of this compound to visibility impairment. Finally, we found that compliance with the $NO_X$, $SO_2$, and $H_2SO_4$ emission limits must be within 5 years of the effective date of our final rule consistent with the requirements of the regional haze regulations.

Petitions for judicial review of the final rule were subsequently filed in the United States Court of Appeals for the Tenth Circuit. The petitioners bringing those challenges are WildEarth Guardians, Public Service of New Mexico (PNM), and New Mexico Governor Susana Martinez with the New Mexico Environment Department.

By a letter to the EPA Administrator, dated April 26, 2012, the Governor of New Mexico requested ''a short term (90-day) stay'' of the federal implementation plan to evaluate the potential for alternatives to the rule requirements. She presents a stay as being necessary for ''meaningful, productive negotiations'' that may lead to an avoidance of litigation. By a letter to the acting Regional Administrator of EPA Region 6, dated May 8, 2012, PNM also requested ''an opportunity to engage in productive discussions as proposed by Governor Martinez.'' In response to these requests, EPA stayed the effectiveness of its rule for 90 days. 77 FR 41697 (July 16, 2012). This temporary stay is set to expire on October 15, 2012.

We now believe that additional time is warranted so that the State of New Mexico can provide additional information required for EPA to consider the state's alternative and for further discussions among the stakeholders. The extension of time will allow EPA, the State of New Mexico and stakeholders to discuss New Mexico's new plan proposal, or additional ideas that could prove beneficial in creating a state plan that would ultimately satisfy the requirements of the CAA.

## II. Today's Final Rule

### *A. Issuance of a Stay and Delay of the Effectiveness of the NM FIP Rule*

Pursuant to section 705 of the APA, the EPA hereby extends the existing administrative stay of the effectiveness of the NM FIP Rule for a period of an additional 45 days beyond the current expiration date of October 15, 2012. By this action, we are extending the administrative stay of the effectiveness of the rule published in the **Federal Register** on August 22, 2011 (76 FR 52388). This stay of effectiveness will remain in place for an additional 45 days, which will expire on November 29, 2012. This action adds a note to 40 CFR 52.1628 that there is a 135 day stay of the effectiveness of the NM FIP Rule, but, in its substance, it does not alter any future compliance requirements. There are no compliance obligations under the terms of the NM FIP that arise during the 135 day period.

Under section 705 of the APA, ''an agency * * * may postpone the effective date of [an] action taken by it pending judicial review.'' This source of authority requires an Agency finding that ''justice requires'' a temporary stay of rule requirements. Accordingly, as groundwork for the mentioned discussions among the Agency, the State of New Mexico, and other stakeholders, EPA now finds that justice requires an additional 45-day stay of the rule's effectiveness. Our extension of the temporary stay of the effectiveness of the NM FIP Rule applies only to any requirements established in 40 CFR 52.1628 during the duration of the stay, as described previously in the initial 90-day stay.

### *B. Basis for Making This Action Effective October 15, 2012*

The EPA also believes that there is good cause to make today's action effective immediately, rather than effective within 30 days, within the meaning of 5 U.S.C. 553(d)(3). One purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final action takes effect. Whereas here, this action extends the stay that is already in effect, and any delay in its effectiveness will result in unnecessary delays for productive negotiations. Therefore, balancing the necessity for immediate implementation against principles of fundamental fairness, which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of this action, EPA has determined that it is unnecessary, impracticable and contrary to the public interest to delay this action. Additionally, since this action does not ''implement, interpret, or prescribe law or policy,'' within the meaning of 5 U.S.C. 551(4), nor makes changes to substantive requirements, EPA concludes that it does not constitute a substantive rulemaking. Therefore, it is not subject to notice and comment requirements.

## III. Statutory and Executive Order Reviews

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

This action will extend the current administrative stay of the NM FIP for an additional 45 days and imposes no additional requirements. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

*B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Under the Paperwork Reduction Act, a ''collection of information'' is defined as a requirement for ''answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *.'' 44 U.S.C. 3502(3)(A). Because the temporary stay is for the effectiveness of a rule that applies to a single facility, (SJGS), the Paperwork Reduction Act does not apply. See 5 CFR part 1320(c).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations in 40 CFR are listed in 40 CFR Part 9.

*C. Regulatory Flexibility Act*

This action is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This action is not subject to notice and comment requirements under the APA or any other statute because, although subject to the APA, this action does not ''implement, interpret, or prescribe law or policy,'' within the meaning of APA § 551(4).

*D. Unfunded Mandates Reform Act (UMRA)*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. EPA has determined that this temporary stay does not contain a Federal mandate that may result in expenditures that exceed the inflation-adjusted UMRA threshold of $100 million by State, local, or Tribal governments or the private sector in any 1-year. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action will extend the current administrative stay of the NM FIP for an additional 45 days and imposes no additional requirements.

*E. Executive Order 13132: Federalism*

This temporary stay does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely is an extension to stay the effectiveness of a final rule. Thus, Executive Order 13132 does not apply to this action.

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

EPA will consult and coordinate with Tribes regarding BART alternatives during the stay, however, this temporary stay does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. Furthermore, this action does not ''implement, interpret, or prescribe law or policy,'' within the meaning of 5 U.S.C. 551(4), and therefore, it does not constitute a substantive rulemaking. As such, this action only grants a 90-day stay of the effectiveness of the NM FIP Rule without altering any future established compliance requirements. Therefore, the requirements of section 5(b) and 5(c) of the Executive Order do not apply to this action.

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

This extension of a temporary stay is not subject to Executive Order 13045 because it is not a rule of general applicability, it is not economically significant as defined under Executive Order 12866, and does not have a disproportionate effect on children.

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

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

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

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

This extension of a temporary stay is not subject to Executive Order 12898. Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of 40 CFR 52.1628.

*K. Congressional Review Act*

This action is not subject to the Congressional Review Act (''CRA''). The CRA, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The Section 804 (3) of the CRA defines ''rule'' as having the same meaning given to such term in section 551 of the APA. *See* 5 U.S.C. 551(4). Since this action is not designed to implement, interpret, or prescribe law or policy, within the meaning of APA, this action is exempted from the reporting requirements of the CRA.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Visibility, Interstate transport of pollution, Regional haze, Best available control technology.

Dated: October 12, 2012.

**Lisa P. Jackson,**

*Administrator.*

[FR Doc. 2012–26089 Filed 10–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2009–0677; FRL–9365–7]**

## Fluoxastrobin; Pesticide Tolerances

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of fluoxastrobin and its Z-isomer in or on poultry, liver; hog, fat; hog, meat byproducts; and rice, grain. Arysta LifeScience, North America, LLC, requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective October 24, 2012. Objections and requests for hearings must be received on or before December 24, 2012, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2009–0677, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Heather Garvie, Registration Division (7504P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

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

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

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

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0677 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before December 24, 2012. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2009–0677, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

## II. Summary of Petitioned-For Tolerance

In the **Federal Register** issue of October 5, 2011 (76 FR 61647) (FRL–8890–5), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7897) by Arysta LifeScience, North America, LLC, 15401 Weston Pkwy., Suite 150, Cary, NC 27513. The petition requested that 40 CFR 180.609 be amended by establishing tolerances for combined residues of the fungicide fluoxastrobin, (1*E*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, and its *Z*-isomer, (1*Z*)-[2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimydinyl]oxy]phenyl](5,6-dihydro-1,4,2-dioxazin-3-yl)methanone *O*-methyloxime, in or on rice, grain at 6.0 parts per million (ppm). That document referenced a summary of the petition prepared by Arysta LifeScience, North America LLC, the registrant, which is available in the docket, *http://www.regulations.gov.* A comment was received on the notice of filing. EPA's response to this comment is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance on rice, grain to 4.0 ppm and established additional tolerances for hog, fat; hog, meat byproducts; and poultry, liver. The reason for these changes are explained in Unit IV.D.

## III. Aggregate Risk Assessment and Determination of Safety

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

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

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The most recent human health risk assessment for fluoxastrobin was conducted for use on the squash/cucumber crop subgroup 9B. Since that time, an adequate functional immunotoxicity study has been submitted and reviewed. In accordance with 40 CFR part 158—Data Requirements for Pesticides, a subchronic inhalation study is also required for fluoxastrobin. However, the Agency has waived the inhalation toxicity study data requirement at this time. The hazard characterization and toxicity endpoints for risk assessment remain unchanged.

Fluoxastrobin and its major metabolites were evaluated in a battery of genotoxicity tests and results were negative. The carcinogenic potential of fluoxastrobin was adequately tested in rats and mice of both sexes. The results demonstrated a lack of treatment-related increase in tumor incidence in rats or mice. There was no mutagenicity concern and no structure activity relationship alert. It was concluded that there was no incidence of carcinogenicity for fluoxastrobin. Specific information on the studies received and the nature of the adverse effects caused by fluoxastrobin as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are discussed in the final rule that established a tolerance for residues of fluoxastrobin in or on squash/cucumber subgroup 9B. That rule was published in the **Federal Register** issue of August 17, 2011 (76 FR 50893) (FRL–8884–4).

### *B. Toxicological Points of Departure/Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty factors (UFs)/safety factors (SFs) are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for fluoxastrobin used for human risk assessment is shown in Table 1 of the final rule published in the **Federal Register** issue of August 17, 2011, p. 50895.

### *C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to fluoxastrobin, EPA considered exposure under the petitioned-for tolerances as well as all existing fluoxastrobin tolerances in 40 CFR 180.609. EPA assessed dietary exposures from fluoxastrobin in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. No such effects were

identified in the toxicological studies for fluoxastrobin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted a conservative dietary exposure assessment for fluoxastrobin. The assumptions of this dietary assessment included tolerance level residues and 100 percent crop treated (PCT). The Dietary Exposure Evaluation Model (DEEM) software version 7.81 default processing factors were assumed except for where tolerances were established for processed commodities or when processing studies showed no concentration. Based on processing studies, the processing factors for dried potato (granules/flakes), potato chips, potato flour, and tomato puree were reduced to 1. Separate tolerances were set for peanut oil, tomato paste, and wheat bran; therefore, the processing factors for these commodities were set at 1.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that fluoxastrobin does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for fluoxastrobin. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* Based on laboratory studies, fluoxastrobin persists in soils for several months to several years and is slightly to moderately mobile in soil. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for fluoxastrobin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of fluoxastrobin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of fluoxastrobin for chronic exposures for non-cancer assessments are estimated to be 93 parts per billion (ppb) for surface water and 0.038 ppb for ground water. Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration value of 93 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Fluoxastrobin is currently registered for the following uses that could result in residential exposures: Spot treatment and/or broadcast control of diseases on turf, including lawns and golf courses. EPA assessed residential exposure using the following assumptions: Residential handler exposure for adults is expected to be short-term only. Intermediate-term and chronic exposures are not likely because of the intermittent nature of applications by homeowners. Since there are no toxicity findings for the short-term dermal route of exposure up to the limit dose, the residential handler assessment only includes the inhalation route of exposure.

There is also potential for homeowners and their families (of varying ages) to be exposed as a result of entering areas that have previously been treated with fluoxastrobin. Exposure might occur on areas such as lawns used by children or recreational areas such as golf courses used by adults and youths. Potential routes of exposure include dermal (adults and children) and incidental oral ingestion (children). Since no acute hazard has been identified, an assessment of episodic granular ingestion was not conducted. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at: *http://www.epa.gov/pesticides/science/residential-exposure-sop.html.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found fluoxastrobin to share a common mechanism of toxicity with any other substances, and fluoxastrobin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that fluoxastrobin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

*D. Safety Factor for Infants and Children*

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA (Food Quality Protection Act) SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The available studies used to evaluate pre- and postnatal exposure susceptibility do not indicate increased susceptibility of rats or rabbits to fluoxastrobin. These studies include the following:

i. Developmental toxicity studies in rats.

ii. Developmental toxicity studies in rabbits.

iii. A 2-generation reproduction study in rats.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for fluoxastrobin is complete.

ii. There is no indication that fluoxastrobin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that fluoxastrobin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. The exposure databases are estimated based on data that reasonably account for potential exposures. The

chronic dietary food exposure assessment was conservatively based on 100 PCT assumptions, tolerance-level residues, and conservative ground and surface drinking water modeling estimates. New 2012 Residential Standard Operating Procedures (SOPs) were used to assess post-application exposure to children including incidental oral exposure. The residential post-application assessment assumes maximum application rates and conservative day zero hand-to-mouth activities. All of the exposure estimates for fluoxastrobin are based on conservative high-end assumptions and are not likely to result in underestimated risk.

*E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. No adverse effect resulting from a single oral exposure was identified and no acute dietary endpoint was selected. Therefore, fluoxastrobin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to fluoxastrobin from food and water will utilize 36% of the cPAD for the general population, and 75% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of fluoxastrobin is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Fluoxastrobin is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to fluoxastrobin. Because all short- and intermediate-term quantitative hazard assessments (via the dermal and incidental oral routes) for fluoxastrobin are based on the same endpoint, a screening-level, conservative aggregate risk assessment was conducted that combined the short-term incidental oral and intermediate-term exposure estimates (i.e., the highest exposure estimates) in the risk assessments for adults. The Agency believes that most residential exposure will be short-term, based on the use pattern.

There is potential short- and intermediate-term exposure to fluoxastrobin via the dietary (which is considered background exposure) and residential (which is considered primary) pathways. For adults, these pathways lead to exposure via the oral (background), and dermal and inhalation (primary) routes. For children, these pathways lead to exposure via the oral (background), and incidental oral and dermal (primary) routes.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 920 for adults and 220 for children (1–2 years old). Because EPA's level of concern for fluoxastrobin is a MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, fluoxastrobin is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to fluoxastrobin residues.

## IV. Other Considerations

*A. Analytical Enforcement Methodology*

Adequate enforcement methodology (liquid chromatography/mass spectrometry/mass spectrometry) is available to enforce the tolerance expression. Method No. 00604 is available for plant commodities and Method No. 00691 is available for animal commodities. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

*B. International Residue Limits*

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level. There are currently no established Mexican, Canadian, or Codex MRLs or tolerances for fluoxastrobin.

*C. Response to Comment*

One comment was received to the docket from the City of Sacramento, CA. The comment was a request that the EPA thoroughly review the request to register fluoxastrobin for use on rice with regard to its potential to affect drinking water quality. The Agency has determined that dietary risks for fluoxastrobin are below the Agency's concern for dietary exposure and risk.

*D. Revisions to Petitioned-For Tolerances*

The petitioner requested a tolerance level of 6.0 ppm for rice, grain in the notice of filing. The Agency has revised the tolerance level from 6.0 ppm to 4.0 ppm for rice, grain based on the data used to support the risk assessment. The petitioner has subsequently submitted a revised notice of filing to the Agency requesting a tolerance level of 4.0 ppm for rice, grain.

The use of fluoxastrobin on rice, grain will result in a slight increase in the dietary burden to ruminants; however secondary residues in rumiant commodities are not expected to exceed the established tolerances for milk and ruminant tissues. The increased dietary burden to swine and poultry results in the need for tolerances for hog, fat at 0.03 ppm; hog meat, byproducts at 0.06 ppm; and poultry, liver at 0.06 ppm.

## V. Conclusion

Therefore, tolerances are established for combined residues of fluoxastrobin and its *Z*-isomer, in or on rice, grain at 4.0 ppm; hog, fat at 0.03 ppm; hog, meat

byproducts at 0.06 ppm; and poultry, liver at 0.06 ppm.

### VI. Statutory and Executive Order Reviews

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

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

### VII. Congressional Review Act

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

### List of Subjects in 40 CFR Part 180

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

Dated: October 15, 2012.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

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

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

■ 2. In § 180.609:

■ i. Add alphabetically the commodity ''Rice, grain'' to the table in paragraph (a)(1).

■ ii. Add alphabetically the following commodities to the table in paragraph (a)(2). The additions read as follows:

**§ 180.609 Fluoxastrobin; tolerances for residues.**

(a) * * *

(1) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Rice, grain | 4.0 |
| * * * * * | |

(2) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Hog, fat | 0.03 |
| Hog, meat byproducts | 0.06 |
| * * * * * | |
| Poultry, liver | 0.06 |
| * * * * * | |

* * * * *

[FR Doc. 2012–26086 Filed 10–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 120330235–2014–01]**

**RIN 0648–BC04**

## Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Emergency Rule Extension, Closure of the Delmarva Access Area

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

**ACTION:** Temporary final rule; emergency action extension.

**SUMMARY:** NMFS extends the emergency closure of the Delmarva Access Area (DMV) published on May 14, 2012, which is scheduled to expire on November 10, 2012. Specifically, this temporary rule extends the 180-day closure of the DMV in fishing year (FY) 2012 for an additional 186 days, through May 13, 2013.

**DATES:** This rule is effective from November 10, 2012, through May 14, 2013. The expiration date of the temporary rule published May 14, 2012 (77 FR 28311), is extended to May 14, 2013, unless superseded by another action which will publish in the **Federal Register**.

**ADDRESSES:** The Environmental Assessment (EA) is available by request from: John K. Bullard, Regional Administrator, National Marine Fisheries Service, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2276, or via the Internet at *http://www.nero.noaa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Christopher Biegel, Fishery Management Specialist, 978–281–9112; fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:**

**Background**

This temporary final rule extends the emergency measures implemented on June 13, 2012 (77 FR 28311, May 14, 2012), as authorized by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), closing the DMV. The May 14, 2012, emergency rule included detailed information on purpose and need to close the DMV for FY 2012, as well as an announcement that NMFS intended to extend this emergency rule for an additional six months. The closure of the DMV area for FY 2012 was supported by the scallop industry, and the emergency action was recommended by the Council at its January 2012 meeting. There were no comments received on the original emergency rule.

This extension adds additional measure that could not be included in the initial emergency rule because it would not have become effective until after the statutory required expiration of the initial rule on November 10, 2012. Framework Adjustment 22 to the Scallop Fishery Management Plan (FMP) (FW 22) (76 FR 43774; July 21, 2011) set measures extending into FY 2013 as though the DMV would be opened. In particular, it allowed scallop research set-aside (RSA) pounds to be harvested in the DMV. The original emergency rule to close the DMV adjusted the regulations to eliminate the DMV from this set-aside in FY 2012. However, these changes could not be extended into FY 2013 because the original emergency rule was statutorily required to expire on November 10, 2012. Since this action will extend the DMV closure into the FY 2013, this rule adjusts the regulations by removing the DMV from the RSA language. Framework Adjustment 24 to the Scallop FMP is expected maintain the DMV closure and is expected to be in place prior to the expiration of this rule.

The emergency rule closed the DVM because fishing in the area in FY 2012 could result in localized overfishing of the area. In addition, there would be no protection for small scallops in the DMV if it remains open for FY 2012. This could have negative impacts on recruitment in the short and medium term, and could reduce the long-term biomass and yield from the DMV and the Mid-Atlantic overall. The success of the entire scallop rotational management program depends on timely openings and closing of access areas in order to protect scallop recruitment and optimize yield. NMFS must extend the emergency measures because the closure must remain in place for the full FY to prevent these negative impacts.

Framework 22 to the Scallop FMP (Framework 22) used 2010 survey results to set the allocations for FYs 2011 and 2012. Based on this information, Framework 22 allocated 156 full-time (FT) vessels 1 trip each into DMV, which equated to 2.8 M lb (1,270 mt) of scallops from this area in FY 2012. However, catch rates in the DMV declined from about 2,000 lb (907 kg) per day in the start of FY 2011 to less than 1,000 lb (434 kg) per day later in the FY. Based on these 2011 catch rates, NMFS expected catch rates in DMV in 2012 to be approximately 1,000 lb (434 kg) per day, compared to about 2,200 lb (998 kg) per day or higher in CAI. With lower catch rates, vessels must fish longer to catch the allowed possession limit. This increases the amount of time and area that the scallop fishing gear is in contact with the sea floor (i.e., increased area swept), resulting in negative impacts on the scallop resource due to increased discarding of small and otherwise unprofitable scallops.

The 2011 surveys in CAI estimated scallop biomass levels that are higher than Framework 22's 2011 projections based on the 2010 survey results, and that would support additional effort. When the emergency rule reallocated FT vessel DMV trips, the total number of CAI trips increased to 313. The increase in CAI trips results in an FY 2012 CAI allocation of 5.6 M lb (2,540 mt) of scallops, which is not expected to result in excessive fishing in CAI for FY 2012.

NMFS policy guidelines for the use of emergency rules (62 FR 44421; August 21, 1997) specify the following three criteria that define what an emergency situation is, and justification for final rulemaking: (1) The emergency results from recent, unforeseen events or recently discovered circumstances; (2) the emergency presents serious conservation or management problems in the fishery; and (3) the emergency can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. NMFS policy guidelines further provide that emergency action is justified for certain situations where emergency action would prevent significant direct economic loss, or to preserve a significant economic opportunity that otherwise might be foregone. As noted in the May 14, 2012, emergency rule, NMFS determined that it was necessary to close the DMV, consistent with new scientific advice, in a timely manner in order avoid localized overfishing of the area and negative impacts on recruitment in the short and medium term.

**Comments**

No comments were received in response to a request for comments on the original emergency action.

**Classification**

NMFS has determined that this rule is consistent with the Magnuson-Stevens Act and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under section 553(b)(B) of the Administrative Procedure Act (APA) that it is unnecessary, impracticable, and contrary to the public interest to provide for any additional prior notice and opportunity for the public to comment. As more fully explained above, the reasons justifying promulgation of this rule on an emergency basis, coupled with the fact that the public has had the opportunity to comment on NMFS' intent to extend this emergency, make solicitation of public comment unnecessary, impractical, and contrary to the public interest. This action provides the benefit of allowing the Atlantic sea scallop fleet to avoid localized overfishing of the DMV and the associated negative impacts on recruitment in the short and medium term.

In the interest of receiving public input on this action, the EA analyzing this action was made available to the public and the original temporary final rule solicited public comment.

Pursuant to 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the full 30-day delay in effectiveness for this rule. This rule primarily extends the rule currently in place for an additional 6 months. The need for this extension was fully anticipated and announced to the public in the initial emergency rule which published on May 14, 2012. The additional measure will not become effective until after March 1, 2012. Accordingly, the entities affected by this rule and the public have no need to be made aware of or adjust to this rule by delaying its effectiveness for 30 days. The primary reason for delaying the effectiveness of federal regulations is not present, and, therefore, such a delay would serve no public purpose. On the other hand, it would be contrary to the public interest if this rule does not become effective on November 10, 2012, because the previously established trip allocations for the DMV would become

effective, with the result that overfishing could occur and the small scallops in the area would be put at risk. These measures are inconsistent with the Magnuson-Stevens Act, the stated intent of the scallop area rotation program, and the FMP. Moreover, failing to have the rule effective on November 10, 2012, may lead to confusion in the fishing community as to what regulations govern the harvest of scallops in the DMV. For these reasons, there is good cause to waive the requirement for delayed effectiveness.

For the reason above, the Assistant Administrator for Fisheries also finds good cause under section 553(d) of the APA to waive the 30-day delay in effectiveness.

NMFS has consulted with the Office of Information and Regulatory Affairs (OIRA) and due to the circumstances described above this action is exempt from review under Executive Order 12866.

This rule is exempt from the procedures of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment.

The EA prepared for the initial emergency rule analyzed the impacts of the emergency specifications for the duration of a year (Environmental Assessment Emergency Action to the Atlantic Sea Scallop FMP: Closure of the Delmarva Scallop Access Area for 2012; March 2011). Therefore, the impacts of this emergency action extension have been analyzed, and are within the scope of the Finding of No Significant Impact.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 19, 2012.

**Alan D. Risenhoover,**

*Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.60, paragraph (e)(1)(iii) is suspended and paragraph (e)(1)(v) is added to read as follows:

**§ 648.60 Sea scallop access area program requirements.**

* * * * *

(e) * * *

(1) * * *

(v) *2013:* Hudson Canyon Access Area, Nantucket Lightship Access Area, and Closed Area II Access Area.

* * * * *

[FR Doc. 2012–26240 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 111207737–2141–02]**

**RIN 0624–XC301**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

**ACTION:** Temporary rule; modification of a closure.

**SUMMARY:** NMFS is opening directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) for 96 hours. This action is necessary to fully use the 2012 total allowable catch of pollock in Statistical Area 610 of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 19, 2012, through 1200 hrs, A.l.t., October 23, 2012. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 5, 2012.

**ADDRESSES:** You may submit comments, identified by NOAA–NMFS–2012–0204, by any one of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0204 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on that line.

• *Mail:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

• *Fax:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.

• *Hand delivery to the Federal Building:* Address written comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *http://www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will 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). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for pollock in Statistical Area 610 of the GOA under § 679.20(d)(1)(iii) on October 15, 2012 (77 FR 64240, October 19, 2012).

As of October 17, 2012, NMFS has determined that approximately 1,500 metric tons of pollock remain in the directed fishing allowance for pollock in Statistical Area 610 of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully utilize the 2012 TAC of pollock in Statistical Area 610 of the GOA, NMFS is terminating the previous closure and is reopening

directed fishing pollock in Statistical Area 610 of the GOA, effective 1200 hrs, A.l.t., October 19, 2012.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 96 hours. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA, effective 1200 hrs, A.l.t., October 23, 2012. The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this decision: (1) The current catch of pollock in Statistical Area 610 of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the directed pollock fishery in Statistical Area 610 of the GOA. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 17, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow pollock fishery in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 5, 2012.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 19, 2012.

**Emily H. Menashes,**

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

[FR Doc. 2012–26203 Filed 10–19–12; 4:15 pm]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 111213751–2102–02]**

**RIN 0648–XC312**

## Fisheries of the Exclusive Economic Zone Off Alaska; ''Other Rockfish'' in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting retention of ''other rockfish'' in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2012 total allowable catch of ''other rockfish'' in the Aleutian Islands subarea of the BSAI has been reached.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), October 19, 2012, through 2400 hrs, A.l.t., December 31, 2012.

**FOR FURTHER INFORMATION CONTACT:** Obren Davis, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2012 total allowable catch (TAC) of ''other rockfish'' Aleutian Islands subarea of the BSAI is 485 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish of the BSAI (77 FR 10669, February 23, 2012).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2012 TAC of ''other rockfish'' in the BSAI has been reached. Therefore, NMFS is requiring that ''other rockfish'' in the BSAI be treated as prohibited species in accordance with § 679.21(b).

**Classification**

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay prohibiting the retention of ''other rockfish'' in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 18, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: October 19, 2012.

**Emily H. Menashes,**

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

[FR Doc. 2012–26205 Filed 10–19–12; 4:15 pm]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 77, No. 206
Wednesday, October 24, 2012

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2011–1444; Airspace Docket No. 11–ASO–46]**

## Proposed Establishment of Class E Airspace; Princeton, KY

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to establish Class E Airspace at Princeton, KY to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures serving the Princeton-Caldwell County Airport. This action would enhance the safety and airspace management of Instrument Flight Rules (IFR) operations within the National Airspace System.

**DATES:** Comments must be received on or before December 10, 2012.

**ADDRESSES:** Send comments on this rule to: U. S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2011–1444; Airspace Docket No. 11–ASO–46, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to comment on this rule by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2011–1444; Airspace Docket No. 11–ASO–46) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Persons wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2011–1444; Airspace Docket No. 11–ASO–46. The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

An electronic copy of this document may be downloaded from and comments submitted through *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal Holidays. An informal docket may also be examined during normal business hours at the office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace at Princeton, KY providing the controlled airspace required to support the new RNAV GPS standard instrument approach procedures for Princeton-Caldwell County Airport. Controlled airspace extending upward from 700 feet above the surface is required for the safety and management of IFR operations.

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

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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. This proposed rulemaking is promulgated under the

authority described in Subtitle VII, Part, A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority as it would establish Class E airspace at Princeton-Caldwell County Airport, Princeton, KY.

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

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

* * * * *

**ASO KY E5 Princeton, KY [New]**

Princeton-Caldwell County Airport
(Lat. 37°6′54″ N., long. 87°51′10′25″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Princeton-Caldwell County Airport.

Issued in College Park, Georgia, on October 11, 2012.

**Barry A. Knight,**

*Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2012–26045 Filed 10–23–12; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 40

**[Docket No. RM12–4–000]**

## Revisions to Reliability Standard for Transmission Vegetation Management

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Pursuant to section 215 of the Federal Power Act, the Commission proposes to approve Reliability Standard FAC–003–2 (Transmission Vegetation Management), submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization. The proposed Reliability Standard would expand the applicability of the standard to include overhead transmission lines that are operated below 200 kV, if they are either an element of an Interconnection Reliability Operating Limit or an element of a Major WECC Transfer Path. In addition, the proposed Reliability Standard incorporates a new minimum annual vegetation inspection requirement, and incorporates new minimum vegetation clearance distances into the text of the standard.

The Commission also proposes to approve the three definitions, the implementation plan and the Violation Severity Levels associated with the proposed Reliability Standard. Finally, the Commission proposes to direct that NERC revise the Violation Risk Factor for Requirement R2, and approve the remainder of the Violation Risk Factors.

**DATES:** Comments are due December 24, 2012.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**
Tom Bradish (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 1800 Dual Highway, Suite 201, Hagerstown, MD 21740, Telephone: (301) 665–1391.
David O'Connor (Technical Information), Office of Electric Reliability, Division of Logistics & Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6695.
Julie Greenisen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–6362.

**SUPPLEMENTARY INFORMATION:**

### Notice of Proposed Rulemaking

*Issued October 18, 2012.*

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to approve Reliability Standard FAC–003–2 (Transmission Vegetation Management), submitted by the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO). Proposed Reliability Standard FAC–003–2 modifies the currently effective standard, FAC–003–1 (the ''Version 1'' standard). The proposed modifications, in part, respond to certain Commission directives in Order No. 693, in which the Commission approved currently-effective Reliability Standard FAC–003–1.[2]

2. Proposed Reliability Standard FAC–003–2 has a number of features that make it an improvement over the Version 1 standard. For example, like Version 1, the proposed Reliability Standard would apply to all overhead transmission lines operated at or above 200 kV, but unlike Version 1, it would explicitly apply to any lower voltage overhead transmission line that is either an element of an Interconnection Reliability Operating Limit (IROL) or an element of a Major WECC Transfer Path.[3] This is a new class of

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

[2] *See Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[3] NERC defines ''IROL'' as ''[a] System Operating Limit that, if violated, could lead to instability, uncontrolled separation, or Cascading outages that adversely impact the reliability of the Bulk Electric System.'' NERC defines ''System Operating Limit'' as ''[t]he value (such as MW, MVar, Amperes, Frequency or Volts) that satisfies the most limiting of the prescribed operating criteria for a specified

transmission lines not previously required to comply with the Standard. The proposed Reliability Standard would also make explicit a transmission owner's obligation to prevent an encroachment into the minimum vegetation clearance distance (MVCD) for a line subject to the standard, regardless of whether that encroachment results in a sustained outage or fault.[4] Also, for the first time, the proposed Reliability Standard would require transmission owners to annually inspect all transmission lines subject to the standard and to complete 100 percent of their annual vegetation work plan. The proposed Reliability Standard also incorporates the MVCDs into the text of the standard, and does not rely on clearance distances from an outside reference, as is the case with the currently-effective Version 1 standard. We believe these beneficial provisions, and others discussed below, support our proposal to approve FAC–003–2.

3. A recurring cause in many blackouts has been vegetation-related outages. In fact one of the initiating causes of the 2003 Northeast blackout was inadequate vegetation management practices that led to tree contact.[5] Further, NERC has identified a focus on preventing non-random equipment outages such as those caused by vegetation as a top priority that will most likely have a positive impact on Bulk-Power System reliability.[6] We also note that industry has made important strides in reducing the instances of vegetation contact.[7] We believe that the revised FAC–003 standard we propose to approve in this rulemaking, together with a continued focus by industry on best practices for vegetation management, will serve to enhance the reliability of the Bulk-Power System. While we propose to approve NERC's use of the Gallet equation to determine the minimum vegetation clearing distances, we believe it is important that NERC develop empirical evidence that either confirms the MVCD values or gives reason to revisit the Reliability Standard. Accordingly, consistent with the activity that NERC has already initiated, the Commission proposes to direct that NERC conduct or commission testing to obtain empirical data and submit a report to the Commission providing the results of the testing.

4. We also propose to approve the three new or revised definitions associated with the proposed Reliability Standard for inclusion in NERC's Glossary. Specifically, we propose to approve the changes in the definition of ''Right-of-Way (ROW)'' and ''Vegetation Inspection,'' as well as the addition of the term ''Minimum Vegetation Clearance Distance (MVCD)'' as defined in NERC's petition. We also propose to approve NERC's implementation plan for FAC–003–2.

5. While we believe that the proposed Reliability Standard will enhance reliability by requiring sub-200 kV transmission lines that are elements of an IROL or Major WECC Transfer Path to comply with its requirements, we seek comment on how NERC will ensure that IROLs are properly designated, as discussed in detail below. In addition, while we agree that a number of the proposed modifications clarify and make more explicit the transmission owner's obligations, we seek comment with regard to the enforceability of certain provisions.

6. We do not believe, however, that NERC has adequately supported the assignment of a ''medium'' Violation Risk Factor to Requirement R2, which pertains to preventing vegetation encroachments into the MVCD of transmission lines operated at 200 kV and above, but which are *not* part of an IROL or a Major WECC Transfer Path. As discussed later, system events have originated from non-IROL facilities. Accordingly, as discussed below, we propose to direct that NERC submit a modification, within 60 days of the effective date of the Final Rule, assigning a ''high'' Violation Risk Factor for violations of Requirement R2.

## I. Background

### *A. Section 215 of the FPA*

7. Section 215 of the FPA requires the Commission-certified ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or by the Commission independently.[8] Pursuant to the requirements of FPA section 215, the Commission established a process to select and certify an ERO[9] and, subsequently, certified NERC as the ERO.[10]

### *B. Reliability Standard FAC–003–1*

8. Currently-effective Reliability Standard FAC–003–1 is applicable to transmission owners. The requirements of the Version 1 standard apply to (1) all transmission lines operated at 200 kV or above, and (2) lower-voltage lines designated as ''critical to the reliability of the electric system'' by a Regional Entity.

9. Currently-effective FAC–003–1 contains four requirements. Requirement R1 requires each transmission owner to prepare, and keep current, a transmission vegetation management program (TVMP) that includes, *inter alia,* a Clearance 1 distance to be achieved at the time of vegetation management work, and a Clearance 2 distance to be maintained at all times. The Clearance 2 distance is set by each transmission owner at a level necessary to prevent flashover, but must be no less than the clearance distances established in the Institute of Electric and Electronics Engineers (IEEE) Standard 516–2003 (Guide for Maintenance Methods on Energized Power Lines). The Clearance 1 distances are established by each transmission owner, and the only numerical criterion under the current standard is that the ''Clearance 1 distances shall be greater than those defined by Clearance 2.''[11] Further, Requirement R1.3 requires that ''[a]ll personnel directly involved in the design and implementation of the TVMP shall hold appropriate

system configuration to ensure operation within acceptable reliability criteria.'' *See* NERC Glossary of Terms Used in Reliability Standards (NERC Glossary) at 26, 48. The Western Electric Coordinating Council maintains a listing of Major WECC Transfer Paths, *available at http://www.wecc.biz/Standards/Development/WECC-0091/Shared Documents/WECC-0091 Table Major Paths 4–28–08.doc.*

[4] *See* Reliability Standard FAC–003–2, Requirements R1 and R2; *see also* Petition of the North American Electric Reliability Corporation for Approval of Proposed Reliability Standard FAC–003–2—Transmission Vegetation Management at 4, 6 (NERC Petition). NERC proposes to define MVCD as ''the calculated minimum distance stated in feet (meters) to prevent flash-over between conductors and vegetation, for various altitudes and operating voltages.'' *Id.* at 2.

[5] *See* U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations at 18, 57–64 (April 2004) (2003 Blackout Report).

[6] *See* Gerry Cauley written remarks for November 29, 2011 Reliability Technical Conference at 1, 4 and 5 (Docket No. AD12–1–000).

[7] *See, e.g.,* NERC's Second Quarter 2012 Vegetation-Related Transmission Outage Report at 6–7, available at *http://www.nerc.com/fileUploads/File/Compliance/2Q2012_Vegetation%20Report_FINAL%20DRAFT.pdf.*

[8] *See* 16 U.S.C. 824o(e)(3).

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

[10] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062, *order on reh'g and compliance,* 117 FERC ¶ 61,126 (2006) (certifying NERC as the ERO responsible for the development and enforcement of mandatory Reliability Standards), *aff'd sub nom. Alcoa Inc.* v. *FERC,* 564 F.3d 1342 (DC Cir. 2009).

[11] FAC–003–1, R1.2.1.

qualifications and training, as defined by the Transmission Owner, to perform their duties.''

10. Requirement R2 of the Version 1 standard requires that each transmission owner develop and implement an ''annual plan for vegetation management work,'' allowing flexibility to adjust to ''changing conditions.'' Pursuant to Requirement R3, transmission owners must report quarterly to the relevant Regional Entity ''sustained transmission line outages * * * caused by vegetation.'' Requirement R4 requires the Regional Entity to report the outage information to NERC.

*C. Order No. 693 Discussion Regarding Vegetation Management*

11. On March 16, 2007, in Order No. 693, the Commission approved 83 of 107 proposed Reliability Standards pursuant to FPA section 215(d), including currently-effective FAC–003–1.[12] In addition, pursuant to section 215(d)(5) of the FPA, the Commission directed NERC to develop modifications to FAC–003–1 to address certain issues identified by the Commission, discussed below.

12. In the Notice of Proposed Rulemaking (NOPR) that preceded Order No. 693, the Commission proposed two directives requiring modification of NERC's proposed standard pursuant to section 215(d)(5) of the FPA.[13] The first would have directed NERC to develop a minimum vegetation inspection cycle, and the second would have required NERC to remove the standard's general limitation on applicability to transmission lines operated at 200 kV and above.[14] In Order No. 693, the Commission decided not to require either modification at that time, but continued to express its concern about the standard's limited applicability and the lack of a minimum vegetation inspection requirement.

13. The Commission instead required NERC to address a modification to the applicability of the standard through its Standards development process, directing NERC to ''modify [FAC–003–1] to apply to Bulk-Power System transmission lines that have an impact on reliability as determined by the ERO.'' [15] In doing so, the Commission stated that it supported the ''suggestions by [certain commenters] to limit applicability to lower voltage lines associated with IROL'' and noted that ''these suggestions should be part of the input to the Reliability Standards development process.'' [16] Finally, in response to concerns raised about the cost of compliance with the standard, the Commission explained that the ERO must ''develop an acceptable definition that covers facilities that impact reliability but balances extending the applicability of this standard against unreasonably increasing the burden on transmission owners.'' [17]

14. Similarly, while the Commission decided not to require NERC to submit a modification to FAC–003–1 to incorporate a minimum vegetation inspection cycle as part of Order No. 693, the Commission noted that it ''continues to be concerned with leaving complete discretion to the transmission owners in determining inspection cycles.[18] The Commission also rejected the notion that incorporating such a minimum requirement would lead to a ''lowest common denominator'' and thereby potentially reduce the frequency of inspections for transmission owners with aggressive inspection cycles.[19] Although the Commission did not require a minimum inspection requirement as part of the standard, it directed NERC ''to develop compliance audit procedures to identify appropriate inspection cycles based on local factors.'' [20]

15. With respect to minimum vegetation clearances distances, the Commission approved FAC–003–1's general approach and ''reaffirm[ed] its interpretation that FAC–003–1 requires sufficient clearances to prevent outages due to vegetation management practices under all applicable conditions.'' [21] However, the Commission directed NERC to ''develop a Reliability Standard that defines the minimum clearance needed to avoid sustained vegetation-related outages that would apply to transmission lines crossing both federal and non-federal land'' [22] and ''decline[d] to endorse the use of IEEE 516 as the only minimum clearance.'' [23]

16. Finally, the Commission directed NERC to address certain commenters' suggestion that, for purposes of the FAC–003 Reliability Standard, rights-of-way should be defined to encompass the required clearance area, and not the entire legal right-of-way, particularly where the legal right-of-way may greatly exceed the area needed for effective vegetation management.[24]

## II. NERC Petition and Proposed Reliability Standard FAC–003–2

*A. NERC Petition*

17. In its petition, NERC maintains that proposed Reliability Standard FAC–003–2 is just and reasonable, as the proposal meets or exceeds each of the criteria the Commission has identified for evaluating a proposed Reliability Standard.[25] NERC asserts that the proposed Reliability Standard ''achieves the specific reliability goal of maintaining a reliable electric transmission system by using a defense-in-depth strategy to manage vegetation located on transmission ROW and minimize encroachments from vegetation located adjacent to the ROW, thus preventing the risk of those vegetation-related outages that could lead to Cascading.'' [26] Moreover, NERC maintains that the proposed Reliability Standard contains a technically sound method to achieve that goal, as it requires transmission owners to prevent vegetation from encroaching into the flashover distances, requires consideration of conductor movement and growth rates (among other things), requires annual inspections, and requires completion of annual work needed to prevent encroachments. NERC asserts that FAC–003–2 is clear and unambiguous as to the requirements and penalties, and contains clear and objective measures for compliance.[27]

18. Further, NERC maintains that proposed Reliability Standard FAC–003–2 represents an improvement over the currently-effective standard, as FAC–003–2 enhances reliability, facilitates enforceability, and preserves necessary flexibility for transmission owners to address local vegetation conditions.[28] NERC asserts that the proposed Reliability Standard was developed with the shortcomings of the currently-effective standard, as identified in Order No. 693, in mind, including the directive to develop a standard that defines the minimum clearance needed to avoid sustained vegetation-related outages without relying on IEEE–516 to set these

[12] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 735.

[13] *Mandatory Reliability Standards for the Bulk Power System,* Notice of Proposed Rulemaking, 71 FR 64,770 (Nov. 3, 2006), FERC Stats. & Regs., Proposed Regulations 2004–2007 ¶ 32,608, at P 387 (2006).

[14] *Id.*

[15] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 706.

[16] *Id.*

[17] *Id.* P 708.

[18] *Id.* P 721.

[19] *Id.* P 720.

[20] *Id.* P 735.

[21] *Id.* P 729.

[22] *Id.* P 732.

[23] *Id.* P 731.

[24] *Id.* P 734.

[25] *See* NERC Petition at 44.

[26] *Id.* at 45.

[27] *Id.* at 46–48; *see also id.* at 33–40.

[28] *Id.* at 3, 44–52.

clearances.[29] NERC states that the Standard Drafting Team (SDT) considered four potential methods for deriving flashover distances for various voltages and altitudes, and of those, selected the ''Gallet equation'' because the ''information to support the development of the standard was readily available in an industry recognized reference.'' [30] NERC asserts that the ''distances derived using the Gallet Equation result in the probability of flashover in the range of $10^{-6}$'' (one in a million).[31]

19. NERC states that proposed FAC–003–2 continues to give transmission owners the necessary discretion to determine how to achieve the required clearances,[32] but is more stringent than the currently effective standard because it ''explicitly treat[s] any encroachment into the MVCD (without contact, with a flashover, with a momentary outage, or with a sustained outage) as a violation of the standard.'' [33] According to NERC, the proposed Reliability Standard incorporates a new requirement to perform an annual inspection of all applicable lines and is ''much more explicit regarding what actions must be taken to support vegetation management and reliability.'' [34]

20. NERC states that proposed FAC–003–2 was designed to address directives from Order No. 693, including the directives requiring that NERC address proposed modifications to expand the applicability of FAC–003–1, evaluate and consider specific proposals made by parties commenting on FAC–003–1, develop compliance audit procedures to identify appropriate inspection cycles, define the minimum clearances needed to avoid sustained vegetation-related outages applicable to transmission lines crossing both federal and non-federal land, and address suggestions that rights-of-way should be defined to encompass required clearance areas only. NERC also explains that proposed FAC–003–2 is one of the first Reliability Standards developed using NERC's ''results-based'' approach and, therefore, includes some restructuring of the standard to focus on completing objectives and achieving goals, as well as to ensure that enforcement is undertaken in a consistent and non-preferential manner.[35]

21. NERC proposes an implementation plan for FAC–003–2.[36] For individual transmission lines that become subject to the vegetation management standard for the first time following designation as an element of an IROL or Major WECC Transfer Path, NERC asks that the requirements become effective the latter of (1) twelve months after the date of such designation, or (2) January 1 of the planning year when the line is forecast to become an element of an IROL or Major WECC Transfer Path.[37]

22. Accordingly, NERC requests that the Commission approve proposed FAC–003–2 and the associated Violation Risk Factors and Violation Severity Levels. NERC requests as an effective date for the Reliability Standard, ''the first day of the first calendar quarter that is twelve months following the effective date of a Final Rule in this docket.'' [38] NERC further requests: (1) retirement of the Version 1 standard concurrent with the effective date of FAC–003–2; (2) approval of three definitions for inclusion in the NERC Glossary; and (3) approval of the implementation plan for proposed FAC–003–2.

### *B. Proposed Reliability Standard FAC–003–2 and NERC Explanation of Provisions*

23. The proposed Reliability Standard includes seven requirements.

24. *Requirements R1 and R2:* Pursuant to Requirements R1 and R2, transmission owners must ''manage vegetation to prevent encroachments into the MVCD of its applicable line(s),'' and any encroachment is considered a violation of these requirements regardless of whether it results in a sustained outage.[39] NERC characterizes this as a ''zero tolerance'' approach to vegetation management.[40] Further, NERC maintains that these requirements represent an improvement over the currently effective Version 1 Standard because the proposed standard makes the requirement to prevent encroachments explicit, and because it incorporates specific clearance distances into the standard itself based on ''an established method for calculating the flashover distance for various voltages, altitudes, and atmospheric conditions.'' [41]

25. NERC has bifurcated the basic requirement to prevent encroachment into the MVCDs. Requirement R1 applies to IROL elements and Major WECC Transfer Path elements and is assigned a high Violation Risk Factor. Requirement R2 sets forth the same substantive requirements but pertains to non-IROL and non-Major WECC Transfer Path elements and is assigned a medium Violation Risk Factor. NERC explains that it bifurcated the requirement to ''eliminate commingling of higher risk reliability objectives and lesser risk reliability objectives.'' [42]

26. In addition, NERC has included a footnote describing certain conditions or scenarios, outside the transmission owner's control, where an encroachment would be exempt from Requirements R1 and R2, including natural disasters and certain human or animal activity.[43] As NERC explains, the footnote ''does not exempt the Transmission Owner from responsibility for encroachments caused by activities performed by their own employees or contractors, but it does exempt them from responsibility when other human activities, animal activities, or other environmental conditions outside their control lead to an encroachment that otherwise would not have occurred.'' [44]

27. *Requirement R3:* Requirement R3 requires a transmission owner to have ''documented maintenance strategies or procedures or processes or

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[29] *See id.* at 5 (citing Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 731–732).

[30] *Id., see also* Ex. I, Appx. 1.

[31] NERC Petition at 6. As NERC explained in its response to Question 1 of the Commission's Data Requests:

The probability of a flashover, given a drop in voltage to 85% of the 'Critical Flashover Voltage (CFO),' is roughly .135% (or approximately $10^{-3}$). This value represents the probability of a flashover, assuming the specified CFO is achieved or exceeded.

However, this is not the only event being considered when attempting to model the probability of a vegetation flashover. The probability of achieving a maximum switching overvoltage (''Peak Voltage'') in excess of the CFO must also be considered. This is shown on page 40 in equation 6 of the Technical Reference Document, and is specified there as roughly 0.135% (also approximately $10^{-3}$).

In other words, the conditional probability of flashover given that the 85% CFO has been exceeded is approximately $10^{-3}$. However, the probability of the CFO being exceeded is *also* $10^{-3}$. As these can be treated as two independent events, the probability is statistically ''joint'' (the probability of exceeding the CFO and the probability of a flashover given the exceeding of the CFO are independent events). Accordingly, the two probabilities are to be multiplied, yielding a probability on the order of magnitude of approximately $10^{-6}$.

[32] NERC Petition at 6, 19–22.

[33] *Id.* at 6.

[34] *Id.*

[35] *Id.* at 7.

[36] *Id.* at Ex. B.

[37] In considering this aspect of the proposed implementation plan, we assume that NERC asks that the proposed standard become effective on the ''later'' of alternative (1) or (2), rather than the ''latter.''

[38] *Id.* at 68.

[39] *See* Reliability Standard FAC–003–2, Requirements R1 and R2, subsection 1 (transmission owners must manage vegetation to prevent, *inter alia,* ''an encroachment into the MVCD, as shown in FAC–003-Table 2, observed in Real-Time, absent a Sustained Outage'').

[40] NERC Petition at 6.

[41] *Id.* at 22.

[42] *Id.* at 22–23.

[43] *See* proposed Reliability Standard FAC–003–2, n.2.

[44] NERC Petition at 23.

specifications it uses to prevent the encroachment of vegetation into the MVCD of its applicable lines.'' Requirement R3 requires that these strategies take into account movement of conductors (sag and sway), and the inter-relationship between vegetation growth rates, vegetation control methods, and inspection frequency. While NERC acknowledges that this requirement does not include the currently effective standard's requirement to establish a Clearance 1 as part of the required TVMP, NERC notes that Clearance 1 levels are currently left largely to the discretion of the transmission owner and that the only numerical criterion for Clearance 1 is that it ''must be some undefined amount larger than the minimum flashover distance [Clearance 2].'' [45] NERC maintains that the proposed standard's requirement to avoid encroachments after taking into account conductor movement, vegetation growth rates, etc., ''still retains the same obligations defined by 'Clearance 1.''' [46]

28. *Requirement R4:* Requirement R4 requires a transmission owner that has observed a vegetation condition likely to produce a fault to notify, ''without any intentional time delay,'' the appropriate control center with switching authority for that transmission line. NERC states that the proposed requirement is an improvement over the Version 1 standard, in that it makes explicit the obligation to communicate imminent threats, rather than merely establish and document a process for doing so, as is currently required.[47] In addition, NERC explains that the currently-effective Reliability Standard's requirement that the process allow for ''immediate'' notification was ''impractical at best,'' and was therefore replaced with the phrase ''without any intentional time delay,'' which still requires timely notification.

29. *Requirement R5:* Requirement R5 requires a transmission owner constrained from performing vegetation management work needed to prevent a vegetation encroachment into the MVCD prior to implementation of the next annual work plan to take corrective action to prevent such encroachments. NERC contends that this proposed requirement represents an improvement over the currently-effective provision, Requirement R1.4, which merely requires the transmission owner to develop mitigation measures to address such circumstances, but does not affirmatively require the transmission owner to take corrective action. The proposed measures for determining compliance associated with proposed Requirement R5 provide examples of the kinds of corrective actions expected, including increased monitoring, line de-ratings, and revised work orders.[48]

30. *Requirement R6:* Pursuant to Requirement R6, each transmission owner shall inspect 100 percent of its applicable lines at least once per year and with no more than 18 months between inspections on the same Right-of-Way. NERC maintains that the new requirement is ''an improvement to the standard that reduces risks,'' and notes that the currently effective standard allows the transmission owner to develop its own schedule for inspections (with no standard minimum time) and contains no explicit requirement that the transmission owner meet its established schedule.[49]

31. *Requirement R7:* Pursuant to Requirement R7, the transmission owner must complete 100 percent of its annual vegetation work plan, allowing for documented changes to the work plan as long as those modifications do not allow encroachment into the MVCD. NERC argues that this requirement represents an improvement over the currently effective standard because the current Requirement (R2) ''does not mandate that entities plan to prevent encroachments into the MVCD, but simply that they implement whatever is included in the plan.'' [50]

32. NERC explains in its petition that certain requirements in the currently-effective Reliability Standard have not been translated into a requirement in the proposed standard. In particular, NERC notes that the Version 1 standard's reporting requirements, R3 and R4, have been moved into the compliance section of proposed standard FAC–003–2.[51] NERC maintains that the reporting requirement remains enforceable under NERC's Rules of Procedure, which gives NERC authority, *inter alia,* to require entities to provide ''such information as is necessary to monitor compliance with the reliability standards.'' [52] NERC further notes that it can take action against any entity that fails to comply with such a reporting requirement (which would amount to a failure to comply with a NERC Rule of Procedure) pursuant to NERC Rule of Procedure Section 100, and that it is obligated to notify the applicable governmental authorities of the entity's failure to comply.[53]

33. In addition, NERC acknowledges that the proposed standard no longer contains a requirement that personnel involved in the design and implementation of a vegetation management program have appropriate qualifications and training (currently set out in sub-requirement R1.3).[54] According to NERC, this provision of the Version 1 standard is ''effectively meaningless,'' since ''appropriate'' qualifications and training are undefined and left entirely to the discretion of the transmission owner. Thus, NERC maintains that elimination of this sub-requirement does not impact reliability.

34. NERC is also seeking to revise the definitions of Right-of-Way (ROW) and Vegetation Inspection, and to add a new definition for MVCD.[55] NERC proposes that Right-of-Way be defined as the ''corridor of land under a transmission line(s) needed to operate the line(s),'' which may not exceed the Transmission Owner's legal rights but may be smaller. NERC proposes to modify ''Vegetation Inspection'' to allow both maintenance inspections and vegetation inspections to be performed concurrently. Finally, NERC proposes a new definition, ''MVCD,'' to be ''[t]he calculated minimum distance stated in feet (meters) to prevent flash-over between conductors and vegetation, for various altitudes and operating voltages.''

35. NERC explains in its petition how it will approach enforcement of each Requirement under FAC–003–2, noting that each Requirement has an associated compliance measure that identifies what is required and how the Requirement will be enforced. NERC explains, *inter alia,* that the measures for Requirements R1 and R2 require each transmission owner to have ''evidence that it managed vegetation to prevent encroachment into the MVCD,'' and to be able to produce records ''indicating the requirements were not violated.'' [56] In order to show compliance with Requirement R3, NERC explains that a transmission owner will be ''obligated to show documentation, and that documentation must be sufficient to satisfy the auditor that the information contained in that documentation is sufficient that the Transmission Owner can use it to prevent encroachment into the MVCD.'' [57] Similarly, NERC explains

[45] *Id.* at 20.

[46] *Id.*

[47] *See id.* at 25–26 (referencing Requirement R1.5 of FAC–003–1).

[48] *See id.* at 24–25.

[49] *Id.* at 17–18.

[50] *Id.* at 28.

[51] *Id.* at 29–31.

[52] *Id.* at 31 (quoting NERC Rule of Procedure Section 400.3). This provision actually is located at Section 401.3.

[53] *See id.* at 31–32.

[54] *Id.* at 23–24.

[55] *See* NERC Petition, Ex. C.

[56] NERC Petition at 34.

[57] *Id.* at 35.

that ''entities will not be able to comply with [Requirement R7] without having a documented plan.'' [58]

36. NERC asserts that it has addressed seven directives in Order No. 693 regarding NERC's vegetation management standard.[59] First, NERC asserts that it has addressed the concerns in applying the vegetation management standard only to transmission lines that are 200 kV or above.[60] NERC notes that it has addressed that concern (and related directives) by extending the applicability of the proposed standard to overhead transmission lines that are either 200 kV and above, or less than 200 kV if the line is an element of an IROL or a Major WECC Transfer Path. In addition, NERC explains that it has developed an appropriate implementation plan for any new lines covered by the standard, thereby satisfying the Commission's directive to consider a delayed implementation date if lower-voltage facilities are included.[61] NERC further maintains that it has addressed the Commission's concern about allowing transmission owners full discretion to set inspection schedules by requiring inspections at least once per year, has satisfied the Commission's directive to define minimum clearances for both federal and non-federal lands by adopting MVCDs that apply to lines on both federal and non-federal lands, and has satisfied the Commission's directive to consider whether modifications to the definition of Right-of-Way were necessary through the proposed revision to that definition.[62]

## III. PNNL Report and Comments

### *A. PNNL Report*

37. As NERC explains in its petition, the Standard Drafting Team applied the ''Gallet equation'' to derive the MVCDs set forth in FAC–003–2. NERC describes the Gallet equation as a ''well-known method of computing the required strike distance for proper insulation coordination.'' [63]

38. The Commission's Office of Electric Reliability retained the Pacific Northwest National Laboratory (PNNL) to undertake an ''analysis of the mathematics and documentation of the technical justification behind the application of the Gallet equation and the assumptions used in the technical reference paper [Exh. A of NERC's petition].'' [64]

39. PNNL's final *Report on the Applicability of the ''Gallet Equation'' to the Vegetation Clearances of NERC Reliability Standard FAC–003–2* (PNNL Report) was posted as part of the record in this docket on April 23, 2012, along with a notice inviting comment on the PNNL Report within 30 days.

40. While the PNNL Report points out benefits of the use of the Gallet equation, it raises questions about potential inconsistencies in NERC's filing.[65] The PNNL Report raises concerns about NERC's use of an assumed gap factor of 1.3, asserting that that figure has not been adequately supported for use with vegetation and that there is no evidence that statistics relating to tower design are usable with vegetation.[66] Instead, the PNNL Report suggests that a ''rod-plane gap and tree branch might have about the same gap factor (i.e., k=1),'' [67] but does not provide any other indication of an appropriate gap factor for use with vegetation.

41. The PNNL Report further asserts that without NERC's assumption ''that the gap between a power line and growing vegetation is stronger (by 30%) than the reference gap used in developing the Gallet equation,'' the minimum distances calculated would be about 50% larger.[68]

42. The PNNL Report also asserts that ''[t]hough there is no obvious way to relate tower clearance to vegetation clearance,'' the proposed MVCDs in FAC–003–2 are small when compared to transmission tower design clearances:

> The values for tower clearance for a line at 500 kV in the Transmission Line Reference Book range from 8.3 ft. to over 17 ft. The NERC filing requires a gap less than 6 ft for the same voltage, even at high altitude. There is no reason to suppose that a tree could safely be allowed so much closer to a line (less than 6 ft) than a tower.[69]

### *B. Comments in Response to PNNL Report*

43. Nine sets of comments were filed in response to the PNNL Report, with timely submissions made by NERC, the Canadian Electricity Association, American Electric Power (AEP), Duke Energy Corporation (Duke), Oncor Electric Delivery Company LLC (Oncor), Kansas City Power & Light and KCP&L Greater Missouri Operations Company (KCP&L), Arizona Public Service Company (APS), and Salt River Project Agricultural Improvement and Power District (Salt River), as well as a joint submission by the Edison Electric Institute, the American Public Power Association, the National Rural Electric Cooperative Association and the Electric Power Supply Association (collectively, the Trade Associations).

44. In its comments, NERC asserts that the PNNL Report ''(a) improperly juxtaposes data included in the FAC–003–2 Reliability Standard; (b) disregards NERC's justification regarding the selection of transient overvoltage calculations; (c) fails to consider joint probability of independent events when analyzing flashover probability; and (d) disagrees with the choice of gap factor for vegetation without providing any empirical evidence, scientific reasoning or expert consensus on what an appropriate gap factor should be.'' [70]

45. With regard to the assertion in the PNNL Report that there is no evidence that statistics relating to tower design are usable with vegetation, NERC explains the rationale for its use of the Gallet equation in some detail (discussed further in PP 47–48 below), and notes that the PNNL Report ''disagrees with [NERC's] choice of gap factor for vegetation without providing any empirical evidence, scientific reasoning, or expert consensus on what an appropriate gap factor should be.'' [71] NERC explains that the Standard Drafting Team ''relied on the scientific body of available knowledge and the opinions of experts (applied conservatively) currently working in the industry'' to support a gap factor of 1.3.[72] By contrast, NERC asserts that ''there is no justification for the suggestion that the gap factors for vegetation could be less than unity,'' and considers the PNNL Report's suggestion of a gap factor of 1.0 to be based ''purely on speculation.'' [73]

46. With regard to PNNL's assertion that ''inconsistencies are found in NERC's filing'', NERC states that the ''inconsistencies'' identified by the PNNL Report in NERC's Technical Reference Document result from PNNL erroneously comparing two separate sets

[58] *Id.* at 39.

[59] *See id.* at 40–44.

[60] *Id.* at 40–42.

[61] *Id.* at 42–43.

[62] *Id.* at 43–44.

[63] NERC Petition, Ex. I (Technical Reference Document) at 39.

[64] *See* April 23, 2012 Notice Inviting Comments on Report.

[65] PNNL Report at iv–v (''The equation [the Gallet equation] is a good and simple-to-use way to solve a problem made difficult by the nonlinear interactions of the variables. However, in spite of the evident usefulness of the equation, inconsistencies are found in the NERC filing * * * .'').

[66] *See id.* at 11–13, 19.

[67] PNNL Report at 13.

[68] *Id.* at v.

[69] *Id.* at 19.

[70] NERC Comments on PNNL Report at 1–2 (NERC Comments).

[71] *Id.* at 2.

[72] *Id.,* Att. A at 8.

[73] *Id.*

of data developed for different purposes. According to NERC, one set of data was developed to demonstrate the consistency between the clearance values set out in the IEEE–516 standard and the values generated using the Gallet equation when using similar assumptions as those used in the IEEE–516 standard. The second set of data was designed to generate appropriate clearance values using the Gallet equation and ''a set of assumptions determined by the [SDT] to be consistent with the purposes of the standard.'' [74] NERC responds that PNNL's comparison of the two sets of data is therefore ''misleading.'' [75]

47. With respect to the gap factor, NERC maintains that it relied on a widely known and regarded source for determining the appropriate gap factor, which indicates that an appropriate gap factor for a conductor-to-lateral structure configuration is in the range of 1.25 to 1.40.[76] Specifically, NERC explains that the Standard Drafting Team (SDT) relied on the ''widely regarded'' *Insulation Coordination for Power Systems,* by Andrew Hileman, to develop the proposed gap factor of 1.3.[77] NERC indicated that there is a range of gap factors that could be used in the Gallet equation, each factor designed to represent the difference in voltage withstand capability [78] between a given object, i.e., the transmission wire or conductor, and a reference case, i.e., the object for which the distance from the wire must be established. The gap factor varies based on the nature of the ''gap configuration'' of the reference case. In its response to the PNNL Report, NERC provided the following table showing the range of gap factors (shown as kg in the table below) based on the gap configuration:

TYPICAL VALUE OF GAP FACTORS $K_g$ FOR PHASE-GROUND INSULATIONS

| Gap configuration | Range of $k_g$ | Typical value of $k_g$ |
|---|---|---|
| Rod-plane | 1.00 | 1.00 |
| Rod-rod (vertical) | 1.25–1.35 | 1.30 |
| Rod-rod (horizontal) | 1.25–1.45 | 1.35 |
| Conductor-lateral structure | 1.25–1.40 | 1.30 |
| Conductor-lower rod | 1.40–1.60 | 1.50 |

48. NERC then states that use of a gap factor of 1.3 is conservative:

> It is worth noting that the gap factors for many shapes that could approximate vegetation are even higher than the 1.3 used in FAC–003–2, with ranges that include values as high as 1.6. Hileman notes that in regards to the substation environment (which includes many objects, conducting and non-conducting, with varying shapes and configurations): ''Practically, the lowest gap factor in the substations is 1.3, which normally is conservative.''
>
> * * * * *
>
> [T]he [SDT] did not rely on any specific properties inherent in trees, rather, the [SDT] conservatively assumed that vegetation had the same properties as metal. The [SDT] elected to use the ''typical'' value for ''conductor to lateral structure.'' Unlike the other examples given, which specify a ''typical'' value that is equivalent to the midpoint of the range, this value (1.3) is within the conservative third of the range (1.25–1.4).[79]

49. In response to the assertion in the PNNL Report that ''[t]here is no reason to suppose that a tree could safely be allowed so much closer to a line * * * than a tower'' (see P 42, *supra*), NERC explains in its comments why NERC's proposed MVCDs may not be directly comparable to distances based on tower design:

> [C]are must be taken when making an interpretation of the tabular data, as the original survey participants may have answered the questions in a general context involving multiple structure designs. The final structure design parameters provided in the Red Book include the CFO gap plus other factors (such as insulator geometry, personnel safety and extreme lightning events). Accordingly, they should not be considered the final word with regard to Vegetation Management, as those distances were established to address a number of other issues. FAC–003–2 is not intended to mandate the parameters for all future line designs; it is focused solely on the distances necessary to mitigate the risk of vegetation related outages.

50. In addition to providing a response to the technical issues raised by the PNNL Report, NERC argues that the Commission is obligated under FPA section 215(d)(2) to give due weight to NERC's technical expertise with respect to the content of proposed standards.

51. Trade Associations, Duke, Oncor and other commenters support NERC's technical analysis. AEP and Oncor agree with NERC that the PNNL report contains inappropriate comparisons of data NERC presented in its petition and supporting materials, and that if NERC's Gallet-generated numbers are compared to the distances calculated under IEEE–516, the ''clearances determined by the two calculations are in fact closely aligned.'' [80] AEP and Oncor further maintain that the PNNL Report does not offer a ''better alternative'' to the use of the Gallet equation, and that it does not dispute the Standard Drafting Team's rationale for its selection of transmission overvoltages.[81] AEP and Oncor note that the PNNL Report acknowledges ''that the Gallet Equation is 'a fair representation of the performance of an air gap of a few meters, a simple-to-use way to solve a problem made difficult by the nonlinear interactions of the variables' and that NERC has used the complete method that includes all the factors that go into the estimate of peak voltage.'' [82] AEP and Oncor also assert that proposed FAC–003–2, taken as a whole, will serve to improve the reliability of the system. AEP notes that the MVCDs included in Table 2 of the proposed Reliability Standard are merely the first piece of an overall strategy the transmission owner must develop to manage vegetation, and that the transmission owner must have documented strategies to prevent encroachments within all rated operating conditions, after taking into account sag, sway, and vegetative growth.

52. KCP&L comments that the PNNL Report should have ''included discussion regarding a correction factor

[74] *Id.,* Att. A at 2.

[75] *Id.*

[76] *Id.,* Att. A at 6–7.

[77] *Id.* (citing Andrew Hileman, *Insulation Coordination for Power Systems* 167 (Marcel Dekker, New York, NY 1999)).

[78] The PNNL Report defines ''withstand'' in this context as ''[t]he capability of an insulation system to function as an insulator when a high voltage is applied.'' PNNL Report at 1.

[79] *Id.* at 7.

[80] AEP Comments and Oncor Comments at 2.

[81] *Id.*

[82] *Id.* at 3 (citing PNNL Report at 19).

in the clearance calculation using the Gallet Equation due to the difference in the conductive properties of the metal rod compared to vegetation.'' [83] KCP&L supports use of the Gallet equation as an ''improvement over the industry's current means of determining clearance distances.'' [84]

53. APS questions whether either the Gallet equation or the IEEE standard incorporated in currently-effective FAC–003–1 ''provides a demonstrable indicator of the flash-over distance between conductors and ground vegetation * * *,'' [85] and accordingly suggests that the Commission ask the Department of Energy to experimentally verify the distances derived from the IEEE and Gallet methodologies. APS takes the position that, until such data are developed, the Gallet methodology ''seems more reasonable'' than the IEEE standard as a basis for developing a clearance requirement.[86]

54. Salt River supports the PNNL Report's analysis, noting that it has questioned the applicability of the Gallet equation for vegetation clearances throughout the development of FAC–003–2. Salt River further agrees that there is insufficient evidence to suggest that a tree could safely be allowed much closer to a line than a tower. Finally, Salt River supports the experimental verification of any proposed guidelines regarding required vegetation clearances.

### *C. NERC Response to Data Request*

55. On May 4, 2012, Commission staff issued data requests to NERC. NERC submitted a timely response to the data requests on May 25, 2012, addressing matters such as the correct understanding and enforceability of certain provisions of the proposed Reliability Standard. Relevant elements of NERC's response to the data requests are discussed further below.

## IV. Discussion

56. Pursuant to section 215(d) of the FPA, we propose to approve Reliability Standard FAC–003–2, including the associated new and revised definitions and implementation plan, as just, reasonable, not unduly discriminatory or preferential, and in the public interest. As discussed in Section A below, we believe the proposed Reliability Standard will enhance reliability and satisfies a number of the outstanding directives from Order No. 693. In addition, we seek further comment on certain aspects of the proposed Reliability Standard. Accordingly, we discuss the following matters below: (A) proposal to approve FAC–003–2; (B) applicability of the standard to sub-200 kV transmission lines; (C) clearance distances; (D) appropriate Violation Risk Factor for Requirement R2; (E) enforcement issues; (F) inclusion of reporting obligations as a compliance measure; and (G) proposed definitions.

### *A. The Commission Proposes to Approve FAC–003–2*

57. We believe that proposed standard FAC–003–2 is an improvement over the currently-effective Version 1 standard, will support vegetation management practices that can effectively protect against vegetation-related transmission outages, and satisfies a number of the outstanding directives from Order No. 693. As discussed earlier, NERC has explained how many of the Requirements improve upon the currently-effective Version 1 standard. In support of our proposal to approve FAC–003–2, we highlight several of these improvements. For example, in accordance with our directives in Order No. 693, as discussed further below, NERC has expanded the applicability of the Reliability Standard so that it now applies not only to all transmission lines above 200 kV, but also to transmission lines operated *below* 200 kV if they are an element of an IROL or an element of a Major WECC Transfer Path.

58. In addition, NERC has incorporated minimum clearance distances into the text of the Reliability Standard, and no longer includes a required clearance distance based on distances set by IEEE–516 which, as indicated in Order No. 693, served a different purpose than vegetation management. Proposed FAC–003–2 requires a transmission owner to prevent an encroachment into the MVCD, even if the encroachment does not result in a flashover or fault. As NERC explains, ''FAC–003–2 presents a 'zero-tolerance' approach to vegetation management, explicitly treating any encroachment into the MVCD * * * as a violation * * *.'' [87] Finally, encroachments must be prevented under all rated operating conditions, and must take into account sag and sway of the line, as well as vegetative growth rates and frequency of inspection and maintenance.

59. While the Commission did not require NERC to adopt a minimum inspection cycle as part of Order No. 693, the Commission did express concern both prior to and as part of Order No. 693 that inspection cycles should not be left entirely to the discretion of the transmission owner. Accordingly, in Order No. 693, the Commission stated that:

> The Commission continues to be concerned with leaving complete discretion to the transmission owners in determining inspection cycles, which limits the effectiveness of the Reliability Standard. Accordingly, the Commission directs the ERO to develop compliance audit procedures * * * which would identify appropriate inspection cycles based on local factors. These inspections cycles are to be used in compliance auditing of FAC–003–1 by the ERO or Regional Entity to ensure such inspection cycles and vegetation management requirements are properly met by the responsible entities.[88]

NERC has addressed this concern by incorporating a *minimum* inspection cycle requirement in the proposed Reliability Standard (at least once per calendar year and no more than 18 months between inspections).[89]

60. Thus, based on the overall benefits of proposed FAC–003–2, we propose to approve Reliability Standard FAC–003–2 and propose to direct a change in the VRF level assigned to Requirement R2, as discussed further below.

61. In considering whether to approve Reliability Standard FAC–003–2, we give due weight to NERC's technical expertise. In light of our proposal to approve the proposed Reliability Standard, commenters' suggestions that we have failed to give due weight to NERC's technical expertise are moot. Below, however, we will discuss our substantive consideration of the proposed minimum clearance distances derived based on application of the Gallet equation and certain technical points raised by the PNNL Report and commenters.

### *B. Applicability*

62. The currently-effective Reliability Standard, FAC–003–1, is applicable to any transmission line operated at 200 kV and above, and to any line of lesser voltage designated by a Regional Entity [90] as ''critical to the reliability of

[83] KCP&L Comments at 2–3.

[84] *Id.* at 3. KCP&L also points out what it characterizes as a technical error in the PNNL Report related to the impact of multiple gaps on flashover probabilities, maintaining that in the example given by the PNNL Report, the flashover probability with 20 gaps should be 4% rather than 33%. *Id.*

[85] APS Comments at 2.

[86] *Id.*

[87] NERC Petition at 6.

[88] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 721.

[89] *See* NERC Petition at 43.

[90] Reliability Standard FAC–003–1 refers to Regional Reliability Organizations (RROs), the precursors to Regional Entities.

the electric system in the region.'' [91] As discussed above, the Commission accepted this approach in Order No. 693, but directed NERC to address a modification to the applicability of the standard through its Reliability Standards development process:

> We will not direct NERC to submit a modification to the general limitation on applicability as proposed in the NOPR. However we will require the ERO to address the proposed modification through its Reliability Standards development process. As explained in the NOPR, the Commission is concerned that the bright-line applicability threshold of 200 kV will exclude a significant number of transmission lines that could impact Bulk-Power System reliability * * *. We support the suggestions by Progress Energy, SERC and MISO to limit applicability to lower voltage lines associated with IROL and these suggestions should be part of the input to the Reliability Standards development process.
>
> * * * * *
>
> [Other commenters] raise concerns about the cost of implementing this Reliability Standard if the applicability is expanded to lower-voltage facilities. We recognize these concerns * * *and we direct the ERO to develop an acceptable definition that covers facilities that impact reliability but balances extending the applicability of this standard against unreasonably increasing the burden on transmission owners.[92]

63. We believe that NERC has satisfied this directive by considering the various concerns raised by the commenters as noted in Order No. 693, and ultimately by revising the Reliability Standard so that it applies to not only to lines that are 200 kV and above, but also to any sub-200 kV transmission line that is an element of an IROL or a Major WECC Transfer Path. We believe that NERC has supported its approach to the expansion in applicability, noting that proposed FAC–003–2 provides specific criteria to determine applicability for sub-200 kV transmission lines. In addition, NERC has used an impact-based approach for determining applicability rather than a bright-line threshold as a means of balancing the potential increased burden on transmission owners under a standard with expanded applicability.[93]

64. While we view the modified applicability as a significant improvement, there are two aspects on which we seek comment. First, section 4.2.2 of proposed FAC–003–2 provides that the standard applies to overhead transmission lines operated below 200 kV identified as an IROL under NERC Standard FAC–014 by the planning coordinator. However, FAC–014–2 does not explicitly require the planning coordinator to provide information about IROL status to transmission owners. Further, IROLs may change with changing system conditions. Given these factors, we seek a better understanding of how FAC–003–2 will be applied to facilities designated as IROLs. For example, we seek comment on how information regarding IROL status will be transmitted to transmission owners that must comply with FAC–003–2 and how transmission owners can effectively implement vegetation management per FAC–003–2 given that such programs are generally implemented annually and a change in IROL status can take place at any time given changing system conditions.[94]

65. Second, in Order No. 693, the Commission directed that the proposed Reliability Standard apply to ''Bulk-Power System transmission lines that have an impact on reliability as determined by the ERO.'' [95] The Commission noted evidence that some lines below 200 kV can have significant impacts on the Bulk-Power System, including IROLs and System Operating Limits (SOLs).[96] The Commission directed the ERO, however, to balance extending the applicability of the standard against unreasonably increasing the burden on transmission owners.[97] Thus, we seek comment on how the applicability of the proposed Reliability Standard complies with the directive that the standard cover ''lines that have an impact on reliability.'' In addition, since the issuance of Order No. 693, we note that Commission staff and NERC stated in their joint report on the 2011 Southwest outage that failure to properly designate IROLs was a major cause of the outage.[98] Therefore, as part of the broader inquiry into whether the standard covers ''lines that have an impact on reliability,'' we seek comment on how NERC will assure that IROLs are properly designated.

*C. Requirements R1 and R2*

1. Minimum Clearance Values

66. We find that NERC has relied on a reasonable method for setting the MVCD, and has supported the inputs and assumptions it used to develop those minimum clearance distances, at least until such time that empirical data is developed and is available for use in setting MVCDs. We note that the MVCDs are roughly equivalent to, or slightly larger than, the minimum Clearance 2 distances in the current standard.

67. NERC explains that the MVCD is the result of a conservative gap factor. Further, the MVCD clearances represent only one aspect of proposed FAC–003–2. The MVCD establishes a ''*minimum*[] required to prevent Flash-over.'' [99] The proposed standard requires transmission operators to manage vegetation to ensure that vegetation does not encroach into that minimum clearance distance, which requires transmission owners to manage vegetation to a distance further than the MVCD. For example, transmission owners are required to have documented compliance strategies, procedures, processes, or specifications under Requirement R3 to prevent encroachments into the MVCDs after taking into account sag and sway of the lines, as well as vegetative growth rates, planned control methods and frequency of inspections. Similarly, under Requirement R7, a transmission owner is required to ''complete 100% of its annual vegetation work plan of applicable lines to ensure no vegetation encroachments occur within the MVCD.'' [100] Indeed, as NERC has explained, the ''Transmission Owner is obligated to show detailed documentation that clearly explains their system with regard to the geography and how the Transmission Owner will execute the plan to prevent encroachment.'' [101] Further, NERC has indicated that a transmission owner's documentation approach will generally contain the following elements:

> 1. The maintenance strategy used (such as minimum vegetation-to-conductor distance or maximum vegetation height) *to ensure that MVCD clearances are never violated.*
>
> 2. The work methods that the Transmission Owner uses to control vegetation;
>
> 3. A stated Vegetation Inspection frequency;

[91] To date, no Regional Entity has designated any lower voltage lines as critical to regional reliability and therefore subject to FAC–003–1.

[92] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at PP 706, 708.

[93] NERC Petition at 41–42.

[94] For example, if a line is designated to be an IROL element by the planning coordinator, how will the transmission owner know to thereafter apply FAC–003–2 to that line? If the designation of an IROL changes with changes in system conditions, how will a transmission owner document management of vegetation over time?

[95] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 706.

[96] *Id.* P 710.

[97] *Id.* P 708.

[98] *See* FERC and NERC Staff Report, Arizona-Southern California Outages on Sept. 8, 2011: Causes and Recommendations at 6, 97–100 (April 2012).

[99] NERC Petition, Ex. A (Proposed Reliability Standard FAC–003–2) at 26 (Table 2—Minimum Vegetation Clearance Distances (MVCD) For Alternating Current Voltages), n. 7 (emphasis added).

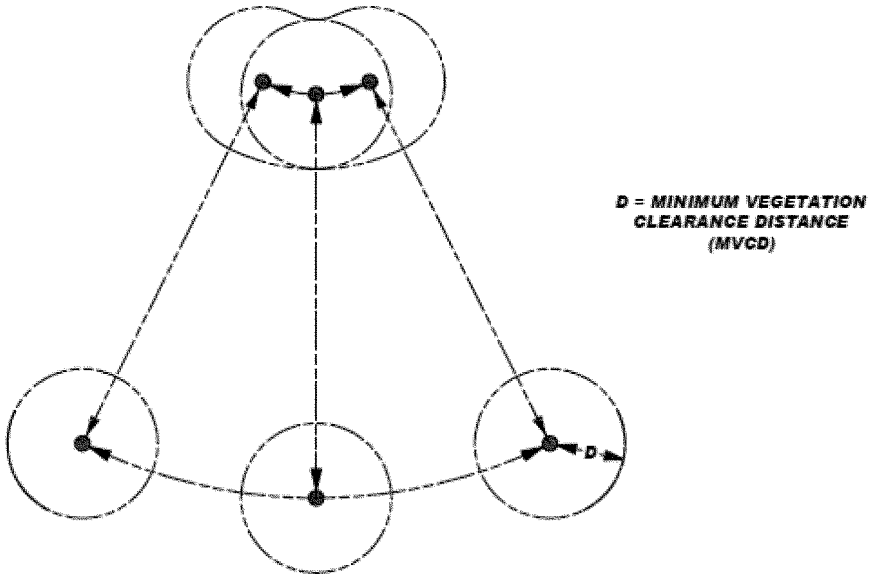
[100] Proposed Reliability Standard FAC–003–2 R7.

[101] *See* NERC Response to Data Request Q2.

4. An annual work plan.[102]

NERC also has indicated in its filing that ''prudent vegetation maintenance practices dictate that substantially greater distances [than the applicable MVCD] will be achieved at time of vegetation maintenance.''[103]

68. NERC also explains that a conductor's position in space at any point in time continuously changes in reaction to a variety of factors, such as the amount of thermal and physical loading, air temperature, wind velocity and direction, and precipitation. The following diagram is a cross-section view of a single conductor at a given point along the span that illustrates six possible conductor positions due to movement resulting from thermal and mechanical loading: [104]




NERC indicates that conductor movements must be taken into account under FAC–003–2, and that the transmission owner is required to show that its approach to vegetation management under Requirement R3 will prevent encroachments under all expected line positions.[105] Thus, a transmission owner must manage vegetation to ensure it does not encroach into the MVCD under multiple conditions.

69. Finally, as NERC explains in its Technical Reference Document, transmission owners will have to clear vegetation to levels ''well away from'' the minimum spark-over zone:

> As the conductor moves through various positions [due to thermal loading and physical loading], a spark-over zone surrounding the conductor moves with it. * * * At the time of making a field observation, however, it is very difficult to precisely know where the conductor is in relation to its wide range of all possible positions. Therefore, Transmission Owners must adopt maintenance approaches that account for this dynamic situation.
>
> * * * * *
>
> In order to maintain adequate separation between vegetation and transmission line conductors, the Transmission Owner must craft a maintenance strategy that keeps vegetation well away from the spark-over zone mentioned above.[106]

70. Thus, while clearances required at the time of maintenance may vary from one region or area to another, our proposed approval of FAC–003–2 is based on our understanding, which is drawn directly from NERC's statements in its petition, that transmission operators will manage vegetation to distances beyond the MVCD to ensure no encroachment into the MVCD.

71. As discussed above, the PNNL Report identifies specific potential concerns regarding NERC's approach to calculating minimum clearance values, such as the appropriate ''gap factor'' to apply. In its response to the PNNL Report, NERC explains the Standard Drafting Team's approach to reach a 1.3 gap factor and how it considered the matters raised in the PNNL Report. For example, with regard to the gap factor, NERC indicates that the drafting team relied on an authoritative source and chose a conservative gap factor value.[107] Based on the record in this proceeding, the application of the Gallet equation appears to be one reasonable method to calculate MVCD values. Further, while questions have been raised regarding certain inputs into the mathematical formula, we believe that NERC has supported use of the MVCD values set forth in FAC–003–2.

72. Notwithstanding our approval of the proposed MVCD, we remain concerned, as indicated in Order No. 693, over the lack of empirical data with regard to actual flashover distances observed through testing or analysis of flashover events.[108] NERC states in its petition that the Electric Power Research Institute (EPRI) is planning to undertake ''the first known field tests of energized high voltage conductor flash-over to vegetation'' at its Lenox facility, and that EPRI could be ready to commence such testing by the summer of 2013.[109] We seek comment on the status of this project and any other similar testing that is planned or ongoing of which NERC or other commenters are aware.

73. NERC further states that ''the results of those [EPRI] tests may be useful to the industry for future reviews of this NERC standard.'' [110] We agree

[102] NERC Response to Data Request Q4 (emphasis added) (citing NERC Petition, Ex. A at 19–20).

[103] NERC Petition, Ex. A (Proposed Reliability Standard FAC–003–2) at 26 (Table 2—Minimum Vegetation Clearance Distances (MVCD) For Alternating Current Voltages), n. 7.

[104] NERC Petition, Ex. A at 20–21.

[105] *See id.* and Requirement R3 of FAC–003–2; *see also* NERC Petition, Ex. I (Technical Reference Document) at 20–29.

[106] NERC Petition, Ex. I (Technical Reference Document) at 21–24.

[107] NERC Comments on PNNL Report at 6–7.

[108] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 735.

[109] NERC Petition at 5, n. 10.

[110] *Id.*

with NERC. While we accept NERC's approach to determine the MVCDs between conductors and vegetation needed to prevent flashovers, we believe it is important that NERC develop empirical evidence that either confirms the MVCD values or gives reason to revisit the Reliability Standard. Accordingly, consistent with the activity that NERC has already initiated, the Commission proposes to direct that NERC conduct or commission testing to obtain empirical data and submit a report to the Commission providing the results of the testing. We seek comment on this proposal, as well as the appropriate time frame for completion of the required testing and the submission of a report.

2. Designation of Medium VRF for Requirement R2

74. Requirement R1 of currently-effective Reliability Standard FAC–003–1 requires a transmission owner to maintain a ''transmission vegetation management program'' pursuant to which a transmission owner must maintain certain clearance distances between applicable transmission lines and vegetation. Requirement R1 of the Version 1 standard is assigned a ''high'' Violation Risk Factor.

NERC Petition

75. Under FAC–003–2, NERC proposes to bifurcate the assigned Violation Risk Factor levels, depending on the type of transmission line involved. NERC proposes to assign a high Violation Risk Factor to Requirement R1, which requires transmission owners to ''manage vegetation to prevent encroachments into the MVCD of its applicable line(s) which are either an element of an IROL, or an element of a Major WECC Transfer Path.'' Requirement R2 of the proposed Reliability Standard, which is assigned a medium Violation Risk Factor, provides that ''[e]ach Transmission Owner shall manage vegetation to prevent encroachments into the MVCD of its applicable line(s) which are *not* either an element of an IROL, or an element of a Major WECC Transfer Path.'' [Emphasis in original.] Thus, the substantive obligation set forth in Requirements R1 and R2 are identical, but the Violation Risk Factors differ based on whether a transmission line is an element of an IROL or Major WECC Transfer Path.

76. NERC maintains that the assignment of a medium Violation Risk Factor for Requirement R2 is appropriate pursuant to existing Violation Risk Factor definitions and guidelines. NERC maintains that ''[l]ines that are not IROLs and are not Major WECC Transfer Paths by definition have less potential for leading to cascading, separation or instability.'' [111] Thus, NERC asserts that the separation into high risk and medium risk categories ''ensure entities properly understand the risk to reliability associated with specific actions.'' [112]

Commission Proposal

77. Based on the information provided in NERC's Petition, it is not clear that NERC has adequately supported a medium Violation Risk Factor designation for Requirement R2. The Commission-approved definition of a ''medium'' risk requirement is:

> A requirement that, if violated, could directly affect the electrical state or the capability of the bulk electric system, or the ability to effectively monitor and control the bulk electric system. However, violation of a medium risk requirement is *unlikely to lead to bulk electric system instability, separation, or cascading failures* * * *.[113]

The definition of a high Violation Risk Factor is:

> A requirement that, if violated, *could directly cause or contribute to* bulk electric system instability, separation, or a cascading sequence of failures, or could place the bulk electric system at an unacceptable risk of instability, separation, or cascading failures * * *.[114]

NERC's support for the medium designation is that transmission lines that are not IROLs and are not Major WECC Transfer Paths ''have less potential for leading to cascading, separation, or instability'' than lines that are IROLs or Major WECC Transfer Paths.[115] But NERC does not explain *why* outages on these relatively high voltage lines (200 kV or higher) would not likely lead to cascading, separation, or instability, or provide any indication of the number of transmission lines and transmission line-miles that would now be subject to a reduced (i.e., medium) Violation Risk Factor designation if FAC–003–2 were in effect.

78. Moreover, transmission lines not designated as an IROL element (or the equivalent) have been instrumental in causing major blackouts, including the August 2003 Northeast blackout. In that case, at least three of the four 345 kV lines (Star-S Canton, Harding-Chamberlin, and Hanna-Juniper) that tripped due to tree contact were not monitored as a flowgate, which could be viewed as the technical equivalent of an IROL at that time.[116] These three lines were the second, third and fourth lines to trip.[117]

79. Likewise, an August 10, 1996 blackout in WECC began with the trip of a 500 kV line (due to a tree contact) that was not identified as part of WECC's relevant path catalog at the time, i.e., the line was not identified as one of the critical paths subject to WECC monitoring and oversight similar to that required for a Major WECC Transfer Path today.[118]

80. Pursuant to proposed Requirements R1 and R2, transmission owners must ''manage vegetation to prevent encroachments into the MVCD of its applicable lines,'' and any encroachment is considered a violation of these requirements regardless of whether it results in a sustained outage. NERC explains that it bifurcated the requirement to eliminate commingling of higher risk reliability objectives and lesser risk reliability objectives. However, analysis of the two aforementioned system disturbances suggests that lines that are not designated as an IROL or a Major WECC Transfer Path at a given point in time (i.e., proposed Requirement R2 lines), may still be associated with higher-risk consequences, including outages that can lead to Cascading.

81. Accordingly, pursuant to our Violation Risk Factor guidelines, which require, among other things, consistency within a Reliability Standard (guideline 2) and consistency between requirements that have similar reliability objectives (guideline 3), we propose to modify the Violation Risk Factor assigned to Requirement R2 from medium to high. However, in its comments on this NOPR, NERC is free to provide additional explanation than provided thus far to demonstrate the lines identified in Requirement R2 are properly assigned a medium Violation Risk Factor.

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[111] NERC Petition at 53.

[112] *Id.* at 54.

[113] *See North American Electric Reliability Corp.,* 119 FERC ¶ 61,145 at P 9, *order on compliance,* 121 FERC ¶ 61,179, at n.2, Appx. A (2007) (emphasis added).

[114] *Id.* (emphasis added).

[115] NERC Petition at 53.

[116] 2003 Blackout Report at 55, 57, 60. The NERC Glossary defines a flowgate as: ''1.) A portion of the Transmission system through which the Interchange Distribution Calculator calculates the power flow from Interchange Transactions. 2.) A mathematical construct, comprised of one or more monitored transmission Facilities and optionally one or more contingency Facilities, used to analyze the impact of power flows upon the Bulk Electric System.'' NERC Glossary at 20.

[117] 2003 Blackout Report at 46 (Fig. 5.1).

[118] The blackout originated with the trip of the Keeler-Allston 500 kV line, *see* NERC 1996 System Disturbances: Review of Selected Electric System Disturbances in North America (August 2002) at 40, 47, and affected 7.5 million people and 28,000 MW of load across fourteen states. 2003 Blackout Report at 106.

*D. Enforceability*

NERC Petition

82. In its petition, NERC describes its approach to enforcement with respect to each of the Reliability Standard's requirements, noting that each requirement is associated with a specific measure for evaluating compliance and Violation Severity Level guidance. With respect to Requirements R1 and R2, NERC explains that the associated measure sets out the types of evidence or documentation that will be required to show that vegetation was managed to prevent encroachments.

83. NERC acknowledges that proposed Requirements R1 and R2 include a general footnote (Footnote 1) describing multiple conditions exempting a transmission owner from these requirements so as not to be held accountable for an encroachment (e.g., a natural disaster or a ''major storm'' as defined either by the transmission owner or an applicable regulatory body). However, NERC explains that this exception would only apply to situations that are beyond the control of the transmission owner or its duly appointed delegate.[119] Further, any determination by the Commission or any other ''applicable regulatory body'' as to whether a given event does or does not qualify as a ''major storm'' would override any such determination by the transmission owner.[120]

84. With respect to the Requirement R3 obligation that a transmission owner document its approach to vegetation management, NERC explains that the transmission owner must not only demonstrate that its program takes into account ''the movement of the conductor, as well as growth rate, control method, and inspection frequency,'' it must also provide ''documentation that is sufficient to satisfy the auditor that the information contained in that documentation is sufficient that the Transmission Owner can use it to prevent encroachment into the MVCD.'' [121] NERC further explains that ''[a]uditors will have to use judgment to evaluate the appropriateness of the documentation provided given the particular circumstances of the entity being audited.'' [122]

85. With respect to the obligation in Requirement R4 to provide notice to the applicable control center of a confirmed vegetation condition likely to cause a fault, NERC again explains that auditors may have to use judgment based on the specific circumstances, ''but it is expected that an entity that does not make this reporting a top priority would be in violation of the standard.'' [123] In addition, NERC explains that the obligation to notify without intentional delay generally ''can be understood to include an immediate (within 1 hour of the observation) communication notwithstanding a safety issue to the personnel, other immediate priority maintenance functions to ensure reliability or system stability, or communications equipment failure that precludes immediate communication.'' [124]

86. With respect to Requirement R5, NERC explains that in the case where a transmission owner is prevented from taking actions needed to prevent an encroachment into the MVCD, the transmission owner must de-energize or de-rate the line to reduce the MVCD as needed to avoid a violation, and must show proof that it has taken that action if needed.[125]

87. With respect to Requirement R7 covering vegetation work plans, NERC notes that the requirement does not explicitly require the creation of such a plan, but states that ''entities will not be able to comply with the requirement without having a documented plan.'' [126] While NERC acknowledges that R7 allows transmission owners to have a ''dynamic work plan,'' it points out that any modifications to the plan must be executed to avoid encroachment of vegetation into the MVCD. Moreover, NERC notes that ''[a]ny such encroachment would be a violation of R1 or R2, and any changes to the plan that resulted in such an encroachment would be a violation of R7.'' [127] Finally, NERC notes that auditors will be able to request and review initial work plans for comparison with completed work plans in order to assess compliance with these requirements.[128]

88. In addition, NERC has identified what it expects a transmission owner's vegetation management program to contain. See P 67, *supra.*

89. The proposed Reliability Standard, as filed, includes a ''Guideline and Technical Basis'' document that further explains NERC's expectations on how the requirements will be enforced and how compliance can be demonstrated. For example, with respect to Requirement R3, NERC explains in greater detail that the documentation showing the transmission owner's approach to vegetation management must provide ''the basis for evaluating the intent, allocation of appropriate resources, and the competency of the Transmission Owner in managing vegetation.'' [129] While NERC notes that there are many acceptable approaches to vegetation management, the transmission owner must be able to show how it conducts work to maintain the required clearances.[130] In addition, as discussed in paragraphs 67–71 above, transmission owners cannot show compliance with the standard without adopting a vegetation management program that keeps vegetation away from the MVCDs under changing conditions.

Commission Proposal

90. We support NERC's overall efforts to develop explicit, verifiable measures for each requirement in order to allow for consistent, non-preferential enforcement.

91. As noted above, NERC has provided information we believe is useful to an overall understanding of the intent of the standard and how it will be interpreted and enforced, including the information that NERC has provided in its petition, in the Guideline and Technical Basis document that is attached as part of Exhibit A to the petition, and in its May 25, 2012 responses to the Commission staff's data requests. We believe these additional resources, while not setting forth requirements or themselves determining whether compliance has occurred, provide guidance with respect to uniform compliance with the proposed Reliability Standard.[131] We expect that NERC will approach its compliance, auditing and enforcement obligations as described in each of these submitted materials. We seek comment as to whether this material should be consolidated as reference material to complement the proposed compliance measures in order that entities that must comply can find these materials in one place and assure implementation of the proposed standard as NERC has supported in its filings.

92. In addition, Requirement R4 requires transmission owners to notify ''without intentional time delay'' the control center with switching authority for the applicable line when the transmission owner has confirmed the

[119] NERC Petition at 34.

[120] NERC Petition at 34.

[121] *Id.* at 35.

[122] *Id.*

[123] *Id.*

[124] *Id.* at 37.

[125] *Id.*

[126] *Id.* at 39.

[127] *Id.*

[128] *Id.* at 40.

[129] *Id.,* Ex. A at 19.

[130] *Id.* at 20.

[131] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 253.

existence of a vegetation condition that is likely to cause an imminent fault. We seek comment on how NERC would or should treat a delay in communication caused by the negligence of the transmission owner or one of its employees, where the delay may be significant and ''unintentional.''

*E. Reporting Requirements*

93. Reliability Standard FAC–003–1, Requirements R3 and R4, require quarterly reporting to the Regional Entities of sustained transmission outages caused by vegetation. While the proposed Reliability Standard moves these reporting requirements to the ''Additional Compliance Information'' section as a Periodic Data Submittal, NERC maintains that the reporting requirements remain enforceable under NERC's Rules of Procedure. Among other things, NERC states that it and Regional Entities can require entities to provide ''such information as is necessary to monitor compliance with the reliability standards'' under Section 401.3 of NERC's Rules of Procedure.[132] In addition, NERC asserts that it ''has certain courses of action it may undertake as necessary to ensure the entity complies with the Rules,'' pursuant to NERC Rule of Procedure Section 100, including notifying the Commission of the entity's failure to comply.[133]

94. We agree that pursuant to section 401.3 of NERC's Rules of Procedure, NERC and the Regional Entities can require transmission owners to make quarterly reports of sustained transmission outages because these reports provide information relating to compliance with the requirements of proposed FAC–003–2. This rule states: ''All Bulk Power System owners, operators and users shall provide to NERC and the applicable Regional Entity such information as is necessary to monitor compliance with the Reliability Standards.'' Further, a periodic data submittal is a requirement to provide compliance information pursuant to section 3.6 of NERC's Compliance Monitoring and Enforcement Program.[134] However, we seek comment on NERC's statement regarding the ''courses of action'' that are available to it in order to ensure compliance, other than notifying the Commission of the entity's failure to comply.

*F. Definitions*

95. We propose to accept the new definition of Minimum Vegetation Clearance Distance and the revised definitions of Vegetation Inspection and Right-of-Way for inclusion in the NERC Glossary of Terms. However, we seek further comment regarding the proposed revision to the definition of Right-of-Way, as discussed below.

Revised Definition of Right-of-Way

96. As noted above, we directed NERC in Order No. 693 to consider FirstEnergy's suggestion that ''rights-of-way be defined to encompass the required clearance areas instead of the corresponding legal rights, and that the standards should not require clearing the entire right-of-way when the required clearance for an existing line does not take up the entire right-of-way.'' [135] In response to this directive, NERC now proposes the following new definition of Right-of-Way (ROW):

> The corridor of land under a transmission line(s) needed to operate the line(s). The width of the corridor is established by engineering or construction standards as documented in either construction documents, pre-2007 vegetation maintenance records, or by the blowout standard in effect when the line was built. The ROW width in no case exceeds the Transmission Owner's legal rights but may be less based on the aforementioned criteria.

97. Under Requirements R1.1 and R2.1 of the proposed Reliability Standard, encroachments into the MVCD observed in real time would be violations of R1 or R2 regardless of whether they cause a sustained outage and regardless of whether the vegetation is within the Right-of-Way as defined under FAC–003–2. However, under proposed Requirements R1.2, R1.3 and R1.4 and the corresponding sub-requirements of R2, fall-ins, blow-ins and grow-ins that cause a sustained outage are violations of the proposed standard only if they occur from *inside* this newly-defined Right-of-Way, which could give transmission owners the perverse incentive to ''define'' a particular Right-of-Way as narrowly as possible in order to limit the likelihood of an R1 or R2 violation.

98. In response to the Commission staff data requests, NERC has provided information suggesting that encroachments from within the legal right-of-way (i.e., the area within the transmission owner's control) would, in most cases, still be violations of FAC–003–2, even if the Right-of-Way is more narrowly defined. In response to Commission staff's question about a transmission owner's obligation to respond when it identifies a vegetation condition that might encroach into the MVCD if the vegetation is located outside of the Right-of-Way (as proposed under the new definition), but within the transmission owner's *legal* right-of-way, NERC provided the following explanation:

> 1. A grow-in from a tree or the tree wall into the ROW. The definition of ROW provides for ''The corridor of land under a transmission line(s) needed to operate the line(s).'' Therefore, in order to operate the line consistent with its rating, the ROW includes space for ''blowout'' of the lines within the context of the MVCD. With respect to the grow in of a tree from outside the ROW as defined but within the legal ROW, the TO will use vegetations [sic] inspections to identify ''those vegetation conditions under the Transmission Owner's control that are likely to pose a hazard to the line(s) prior to the next planned maintenance or inspection.'' In the event, an inspection shows that a tree has already grown inside the MVCD, the TO would be in violation of R1 item 1 or R2 item 1. Another way to consider this issue is that tree growing into the MVCD from the side is no different from a tree growing into the MVCD from below the line.
>
> 2. A fall-in of danger timber (dead, diseased or dying) from outside of the ROW but within the TO's control. The definition of inspection covers vegetation ''* * * vegetation conditions on a Right-of-Way and those vegetation conditions *under the Transmission Owner's control* that are likely to pose a hazard to the line(s) prior to the next planned maintenance or inspection.'' Under this requirement, if the TO is regularly identifying its danger trees and has a program for managing the risk of fall-in there would be no violation. Conversely, if an outage occurs and it is confirmed that the TO was not attempting to identify its danger timber risk, the TO would be in violation of R6* * *. Also, if the TO identifies the danger tree but puts no plan into effect to manage the risk of fall-in, the TO would be in violation of R7 * * *.[136]

99. NERC distinguishes these cases from a case where a fall-in occurs from a *green or healthy tree* outside the corridor-based Right-of-Way, but within the right-of-way controlled by the transmission owner. In that case, NERC acknowledges that there would be no violation under the proposed standard, and maintains that the ''fact that the Transmission Owner owns additional ROW over and above * * * that needed

[132] NERC Rules of Procedure Section 401.3.

[133] *See* NERC Petition at 31–32. *See* NERC Rule of Procedure, Section 100 (''[e]ach Bulk Power System owner, operator, and user shall comply with all Rules of Procedure of NERC that are made applicable to such entities * * *. If NERC determines that a Rule of Procedure has been violated, or cannot practically be complied with, NERC shall notify [the Commission] and take such other actions as NERC deems appropriate to address the situation'').

[134] NERC Rules of Procedure, Appx. 4C § 3.6.

[135] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 734.

[136] NERC Data Responses, Responses to Q9 (May 25, 2012).

by the MVCD is insufficient reason to cut healthy green trees. To require the cutting of green, healthy trees that pose no known threat would likely not be environmentally, socially, or politically acceptable.'' [137]

100. We agree with NERC that in the situation in which a fall-in occurs from a green or healthy tree outside the corridor based Right-of-Way, but within the ROW controlled by the transmission owner, there would be no violation under the revised Reliability Standard. Moreover, we note that the proposed Reliability Standard does not require clear-cutting along the right-of-way, but instead gives the transmission owner the flexibility to adopt an appropriate vegetation management strategy to comply with FAC–003–2 based on the particular circumstances for a given line. As NERC notes in its Technical Reference Document, different vegetation management strategies may be appropriate for different areas, and FAC–003–2 gives transmission owners the option to adopt strategies to comply with FAC–003–2 that encourage active vegetation management and Integrated Vegetation Management rather than clear-cutting.[138] NERC's Technical Reference Document describes ANSI A–300—Best Management Practices for Tree Care Operations and identifies Integrated Vegetation Management as a best management practice, including incorporation of wire-border zone management techniques and the establishment and maintenance of compatible vegetation.

101. However, we seek further comment on NERC's enforcement approach with respect to a fall-in by ''danger timber'' (dead, diseased or dying trees or limbs) from within the transmission owner's legally-owned and controlled right-of-way. Specifically, NERC indicates in its data responses (restated in P 98, *supra*) that ''if the TO is regularly identifying its danger trees and has a program for managing the risk of fall-in there would be no violation.'' The Commission's concern is that this statement could be read to mean that, as long as the transmission owner identifies danger trees and has a program to manage the risk of those trees, an encroachment into the MVCD from a location within the transmission owner's control would not be a violation. The Commission would not agree with such a reading. The mere existence of a program to identify danger trees and a program to manage risk should not shield a transmission owner from enforcement if, notwithstanding the existence of the program, an encroachment into the MVCD occurred. The Commission seeks comment on this reading and, based on the comments, will consider whether changes are needed.

102. We also note that the proposed definition of Right-of-Way includes guidance as to how the transmission owner may define its Right-of-Way, requiring that it be based on construction documents, pre-2007 vegetation maintenance records, or as-built blowout standards. We seek comment on how the identified guidance in the new definition will be used: (1) by the transmission owner to establish criteria to determine an appropriate Right-of-Way; and (2) by auditors to establish criteria to determine compliance with the proposed standard.

*G. Implementation Plan*

103. We propose to approve the Implementation Plan as submitted in Ex. B of NERC's petition.

## V. Information Collection Statement

104. The following collection of information contained in the Proposed Rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995 (PRA).[139] OMB's regulations require that OMB approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency.[140] Upon approval of a collection of information, OMB will assign an OMB control number and expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

105. The Commission is proposing to submit these reporting and recordkeeping requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimate, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

106. This Notice of Proposed Rulemaking proposes to approve Reliability Standard FAC–003–2, which includes certain requirements to create and maintain records related to a transmission owner's vegetation management work plan and its performance of inspections. Because transmission owners have vegetation management plans they follow per the existing transmission vegetation management standard (FAC–003–1), and must compile and maintain similar records and provide similar reports under the existing standard, the proposed revisions are expected to have a minor impact on the burden of record-keeping and reporting. In addition, by allowing greater flexibility compared to the currently-effective Version 1 standard with regard to the materials that must be maintained for a vegetation management plan or strategy, the NERC proposal may prove to reduce the reporting burden for some entities.

107. *Public Reporting Burden:* Our estimate below regarding the number of respondents is based on the NERC compliance registry as of July 24, 2012. According to the compliance registry, NERC has registered 330 transmission owners within the United States. Transmission owners must report and retain certain data pursuant to the currently effective Version 1 Standard. Thus, the burden estimate below is based on the potential change in the reporting burden imposed by proposed FAC–003–2. As discussed earlier, Requirement R3 of NERC's proposal provides more flexibility for transmission owners in preparing and maintaining a vegetation management program, and the incremental change in the burden may be negligible or even decrease for some portion of transmission owners. The individual burden estimates are based on each transmission owner having to perform a one-time review of the revised Reliability Standard's information collection requirements and to make any required modifications to its existing vegetation management plans and documentation procedures. In addition, the burden estimate takes into account an on-going, albeit very minor increase in the quarterly reporting burden, based on the increased burden to confirm whether or not reportable outages have occurred on lines not previously subject to FAC–003–1's requirements. Further, the burden estimate takes into account the increased recordkeeping burden associated with the proposed standard's annual vegetation inspection requirements, which is estimated to increase the inspection cycles (and the associated documentation to

[137] *Id.,* Response to Q9 at P 3.

[138] *See* NERC Petition, Ex. I (Technical Reference Document) at 24–29.

[139] 44 U.S.C. 3507(d) (2006).

[140] 5 CFR § 1320.11 (2012).

demonstrate compliance) for about one third of transmission owners (110 transmission owners).

| FAC–003–2 (transmission vegetation management) | Number of transmission owner respondents (1) | Number of responses per respondent (2) | Average burden hours per response (3) | Total annual burden hours (1)x(2)x(3) |
|---|---|---|---|---|
| One-time review and modifications to existing documentation, plans and procedures | 330 | 1 | 16 | *5,280 |
| Quarterly Reporting | 115 | 4 | 0.5 | [141] 330 |
| Annual Vegetation Inspections Documentation | 110 | 1 | 2 | 220 |
| Total | | | | 5,830 |

* (One-time).

*Total Annual Hours for Collection:* (Compliance/Documentation) = 5,830 hours.

*Quarterly Reporting Cost for Transmission Owners:* = 330 hours @ $70/hour[142] = $23,100.

*Annual Vegetation Inspections Documentation:* = 220 hours @ $28/hour[143] = $6,160.

*Total Annual Cost (Reporting + Record Retention):* = $23,100 + $6,160 = $29,260.

*One-Time Review and Modification of Plans and Documentation:* 5,280 hours @ $52/hour[144] = $274,560.

*Title:* Mandatory Reliability Standards for the Bulk-Power System.

*Action:* Proposed revisions to collection FERC–725A.

*OMB Control No.:* 1902–0244.

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

*Frequency of Responses:* Annual, quarterly, and one-time.

*Necessity of the Information:* The proposed revision of NERC standard FAC–003–2 Transmission Vegetation Management is part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk Power System. Specifically, the proposal would ensure that transmission owners are protecting transmission lines from encroachment of vegetation.

*Internal Review:* The Commission has reviewed the proposed revision to the current Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimate associated with the information requirements.

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

109. For submitting comments concerning the collection of information and the associated burden estimate, please send your comments to the Commission and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–4638, fax: (202) 395–7285]. For security reasons, comments to OMB should be submitted by email to: *oira_submission@omb.eop.gov.* Comments submitted to OMB should include Docket Number RM12–04 and OMB Control Number 1902–0244.

## VI. Regulatory Flexibility Act Certification

110. The Regulatory Flexibility Act of 1980 (RFA)[145] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's (SBA's) Office of Size Standards develops the numerical definition of a small business.[146] The SBA has established a size standard for electric utilities, stating that a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.[147]

111. Proposed Reliability Standard FAC–003–2 will be applicable to overhead transmission lines operated at 200 kV or higher, and, for the first time, to transmission lines operated at less than 200 kV if they are elements of an IROL as defined by FAC–014 or elements of a Major WECC Transfer Path. In addition, Proposed Reliability Standard FAC–003–2 will require annual vegetation inspections for all applicable lines, which could result in an increase in annual inspections performed for a subset of transmission owners.

112. Comparison of the NERC Compliance Registry with data submitted to the Energy Information Administration on Form EIA–861 indicates that, of the 330 transmission owners in the United States registered by NERC, 127 of these entities qualify as small businesses. The Commission estimates that the 127 transmission owners that qualify as small businesses will incur increased costs associated solely with a one-time review of the proposed standard and modification to existing plans and procedures. As described in the information collection section of this NOPR, the estimated cost

[141] While approval of FAC–003–2 is not expected to increase the number of reports made or the number of reportable outages experienced, some utilities may experience a very slight increase in the amount of time required to confirm whether or not any reportable outages occurred due to the increased applicability of the standard to certain sub-200 kV transmission lines.

[142] This figure is the average of the salary plus benefits for a manager and an engineer. The figures are taken from the Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*

[143] Wage figure is based on a Commission staff study of record retention burden.

[144] This figure is the average of the salary plus benefits for an engineer and a forester. The figures are taken from Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*

[145] 5 U.S.C. 601–612 (2006).

[146] 13 CFR 121.101 (2012).

[147] 13 CFR 121.201, Sector 22, Utilities & n.1.

for the increased data collection and retention is approximately $1,000 per entity.

113. Further, some transmission owners that qualify as small entities will incur costs associated with an increase in frequency of inspections. As indicated above, currently-effective FAC–003–1 requires periodic vegetation management inspections of transmission line rights-of-way at an interval determined by each transmission owner. Requirement R6 of the proposed standard would require each transmission owners to inspect 100 percent of the transmission lines at least once per year. Based on a review of available information, including data provided in response to a 2004 vegetation management study performed by Commission staff,[148] we estimate that approximately one third, i.e., 42, of the transmission owners that qualify as small entities would incur costs associated with more frequent inspection cycles. Assuming that (1) such small entities own approximately 50–200 miles of transmission lines, (2) approximately 15–20 miles of transmission line can be inspected per day and (3) cost of labor is approximately $47 per hour,[149] the estimated increase in inspection cost for these 42 small entities is in the range of approximately $5,000 to 10,000 per entity. As discussed above, NERC's proposal would modify the applicability of the Reliability Standard to include overhead transmission lines that are operated below 200 kV if they are either an element of an IROL or an element of a Major WECC Transfer Path. Based on a review of the Major WECC Transfer Paths and a sample of sub-200 kV IROLs in the Eastern Interconnect, the Commission believes that most, if not all, of the transmission lines subject to the expanded applicability of proposed FAC–003–2 are owned by large entities. Thus, the increased cost of the new rule to small entities appears to be negligible with respect to the expanded applicability of the Reliability Standard.

114. Based on the above, the Commission does not consider the cost of the NERC proposal to be a significant economic impact for small entities because it should not represent a significant percentage of an affected small entity's operating budget.

115. Based on the above, the Commission certifies that the new or revised requirements set forth in proposed Reliability Standard FAC–003–2 will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory flexibility analysis is required.

## VII. Environmental Analysis

116. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[150] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. The actions proposed here fall within the categorical exclusion in the Commission's regulations for rules that are clarifying, corrective or procedural or that do not substantially change the effect of the regulations being amended.[151] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

## VIII. Comment Procedures

117. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 24, 2012. Comments must refer to Docket No. RM12–4–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

118. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

119. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

120. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

## IX. Document Availability

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

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

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

## List of Subjects in 18 CFR Part 40

Electric power; Electric utilities; Reporting and recordkeeping requirements.

By direction of the Commission.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26112 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## 18 CFR Part 40

**[Docket No. RM12–22–000]**

## Reliability Standards for Geomagnetic Disturbances

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Under section 215 of the Federal Power Act, the Federal Energy

[148] *See Utility Vegetation Management and Bulk Electric Reliability Report from the Federal Energy Regulatory Commission,* p. 8–10 (Sept. 7, 2004). Available at: *http://www.ferc.gov/industries/electric/indus-act/reliability/veg-mgmt-rpt-final.pdf.*

[149] The wage figure is taken from the Bureau of Labor and Statistics at *http://bls.gov/oes/current/naics3_221000.htm.*

[150] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[151] 18 CFR 380.4(a)(2)(ii) (2012).

Regulatory Commission (Commission) proposes to direct the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization, to submit for approval Reliability Standards that address the impact of geomagnetic disturbances (GMD) on the reliable operation of the Bulk-Power System. The Commission proposes to do this in two stages. In the first stage, the Commission proposes to direct NERC to file, within 90 days of the effective date of a final rule in this proceeding, one or more Reliability Standards that require owners and operators of the Bulk-Power System to develop and implement operational procedures to mitigate the effects of GMDs consistent with the reliable operation of the Bulk-Power System. In the second stage, the Commission proposes to direct NERC to file, within six months of the effective date of a final rule in this proceeding, one or more Reliability Standards that require owners and operators of the Bulk-Power System to conduct initial and on-going assessments of the potential impact of GMDs on Bulk-Power System equipment and the Bulk-Power System as a whole. Based on those assessments, the Reliability Standards would require owners and operators to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD. This plan cannot be limited to operational procedures or enhanced training alone, but should, subject to the needs indentified in the assessments, contain strategies for protecting against the potential impact of GMDs based on factors such as the age, condition, technical specifications, or location of specific equipment. These strategies could include automatically blocking geomagnetically induced currents from entering the Bulk-Power System, instituting specification requirements for new equipment, inventory management, and isolating certain equipment that is not cost effective to retrofit. This second stage would be implemented in phases, focusing first on the most critical Bulk-Power System assets.

**DATES:** Comments are due December 24, 2012.

**ADDRESSES:** Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov*. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

*Instructions:* For detailed instructions on submitting comments and additional information on the rulemaking process, see the Comment Procedures Section of this document.

**FOR FURTHER INFORMATION CONTACT:**

David Huff (Technical Information), Office of Electric Reliability, Division of Security, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (301) 665–1603, *David.Huff@ferc.gov*.

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

**SUPPLEMENTARY INFORMATION:**

## Notice of Proposed Rulemaking

*Issued October 18, 2012.*

1. Pursuant to section 215(d)(5) of the Federal Power Act (FPA),[1] the Federal Energy Regulatory Commission (Commission) proposes to direct the North American Electric Reliability Corporation (NERC), the Commission-certified Electric Reliability Organization (ERO), to file for approval with the Commission Reliability Standards (GMD Reliability Standards) that address the risks posed by geomagnetic disturbances (GMD) to the reliable operation of the Bulk-Power System.[2] The Commission proposes to direct NERC to develop the GMD Reliability Standards in two stages. In the first stage, within 90 days of the effective date of a final rule in this proceeding, NERC would file one or more proposed Reliability Standards that require owners and operators of the Bulk-Power System to develop and implement operational procedures to mitigate the effects of GMDs consistent with the reliable operation of the Bulk-Power System. In the second stage, within six months of the effective date of a final rule in this proceeding, NERC would file one or more proposed Reliability Standards that require owners and operators of the Bulk-Power System to conduct initial and on-going assessments of the potential impact of GMDs on Bulk-Power System equipment and the Bulk-Power System as a whole. Based on those assessments, the Reliability Standards would require owners and operators to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD.[3] This plan cannot be limited to operational procedures or enhanced training alone, but should, subject to the needs indentified in the assessments, contain strategies for protecting against the potential impact of GMDs based on factors such as the age, condition, technical specifications, or location of specific equipment. These strategies could include automatically blocking geomagnetically induced currents (GICs) from entering the Bulk-Power System, instituting specification requirements for new equipment, inventory management, and isolating certain equipment that is not cost effective to retrofit.[4] This second stage would be implemented in phases, focusing first on the most critical Bulk-Power System assets.

2. We take this action based on government-sponsored studies and NERC studies that conclude that GMD events can have an adverse, wide-area impact on the reliable operation of the Bulk-Power System.[5] In a 2010 study prepared for the Commission, Department of Energy, and Department of Homeland Security, the Oak Ridge National Laboratory reported that GMD events can develop quickly over large

[1] 16 U.S.C. 824o(d)(5) (2006).

[2] ''A geomagnetic disturbance occurs when the magnetic field embedded in the solar wind is opposite that of the earth. This disturbance, which results in distortions to the earth's magnetic field, can be of varying intensity and has in the past impacted the operation of pipelines, communications systems, and electric power systems.'' Oak Ridge National Laboratory, *Electric Utility Industry Experience with Geomagnetic Disturbances* at xiii (1991), *available at http://www.ornl.gov/~webworks/cpr/v823/rpt/51089.pdf.*

[3] 16 U.S.C. 824o(a)(4) (2006).

[4] Some examples of automatic blocking include series line capacitors, transformer neutral GIC blocking and/or reduction devices, and selective tripping of vulnerable assets. Automatic blocking measures can also include the use of relays that can be set so that they are activated only when needed.

[5] *See, e.g.,* The Oak Ridge National Laboratory prepared a study consisting of six technical reports (collectively, ''Oak Ridge Study'') on the effects of electromagnetic pulses on the Bulk-Power System. *Available at http://www.ornl.gov/sci/ees/etsd/pes/ferc_emp_gic.shtml;* North American Electric Reliability Corp., 2012 Special Reliability Assessment Interim Report: Effects of Geomagnetic Disturbances on the Bulk Power System at 85 (February 2012) (*NERC Interim GMD Report*), *available at http://www.nerc.com/files/2012GMD.pdf;* North American Electric Reliability Corp., *High-Impact, Low-Frequency Event Risk to the North American Bulk Power System* at 68 (June 2010) (*HILF Report), available at http://www.nerc.com/files/HILF.pdf.*

geographic footprints, having the capability to produce geographically-large outages and significant damage to Bulk-Power System equipment.[6]

3. The seriousness of the risk posed by GMDs to the reliable operation of the Bulk-Power System was expressed at a Technical Conference held on April 30, 2012.[7] At the Technical Conference, several panelists indicated that severe GMD events could potentially compromise the reliable operation of the Bulk-Power System, with some noting as an example the GMD-induced disruption of the Hydro-Québec grid in 1989.[8] At the Technical Conference, panelists stated that the current 11-year solar activity cycle is expected to hit its maximum activity in 2013 and large solar events often occur within four years of such a cycle maximum.[9] While strong GMDs are infrequent events, their potential impact on the reliable operation of the Bulk-Power System (e.g., widespread blackouts) requires Commission action under section 215(d)(5) of the FPA.[10]

4. Currently, GMD vulnerabilities are not adequately addressed in the Reliability Standards.[11] This constitutes a reliability gap because, as discussed below, GMD events can cause the Bulk-Power System to collapse suddenly and can potentially damage the Bulk-Power System.

5. GMD events affect the Bulk-Power System by introducing geomagnetically-induced currents [12] that can cause ''half-cycle saturation'' of certain high-voltage Bulk-Power System transformers.[13] Half-cycle saturation of transformers can lead to increased consumption of reactive power and creation of disruptive harmonics that can cause the sudden collapse of the Bulk-Power System.[14] Further, half-cycle saturation from GICs can potentially damage Bulk-Power System transformers because of overheating.[15] Permanent damage to large transformers due to GICs can lead to restoration delays for the power grid.[16] For example, the Oak Ridge Study assessed the effects of a ''1-in-100 year'' geomagnetic storm on the modern Bulk-Power System.[17] The Oak Ridge Study simulation concluded that such an event could put a significant number of Bulk-Power System transformers at risk for failure or permanent damage.[18] The Oak Ridge Study simulation also found that the effects of a GMD event may be substantially larger if it occurred at lower latitudes.[19] Estimates prepared by the National Research Council of the National Academies concluded that these events have the potential to cause widespread, long-term losses with economic costs to the United States estimated at $1–2 trillion and a recovery time of four to ten years.[20] The NERC Interim GMD Report concluded, on the other hand, that the worst-case scenario is ''voltage instability and subsequent voltage collapse,'' and cites as an example the 1989 Hydro-Québec blackout.[21] While the conclusions of these reports differ significantly, our proposed action is warranted by even the lesser consequence of a projected widespread blackout without long-term, significant damage to the Bulk-Power System. Taking steps to prevent such blackouts is consistent with maintaining the reliable operation of the Bulk-Power System.[22]

6. Given the potentially severe, widespread impact to the reliable operation of the Bulk-Power System from GMD events and the absence of existing Reliability Standards to address it, the Commission proposes to direct the ERO to file with the Commission for approval Reliability Standards that address this

[6] Oak Ridge National Laboratory, *Electromagnetic Pulse: Effects on the U.S. Power Grid: Meta–R–319* at pages 1–30, 1–31, 4–1 (January 2010) (*Oak Ridge Study 319 Report*), *available at http://www.ornl.gov/sci/ees/etsd/pes/pubs/ferc_Meta-R-319.pdf*.

[7] Written statements presented at the Technical Conference, post-Technical Conference comments, and Technical Conference transcript are accessible through the Commission's eLibrary document retrieval system in Docket No. AD12–13–000.

[8] *See, e.g.,* Statement of Scott Pugh, U.S. Department of Homeland Security at 2 (citing 1989 Hydro-Québec blackout); Statement of Frank Koza, PJM Interconnection, L.L.C. at 1 (''The combination of half-cycle transformer saturation and increased reactive power consumption can lead to voltage collapse and blackouts if not properly managed.''); Statement of John Kappenman at 8 (''The bulk power system is the nation's most important critical infrastructure and unlike other threats, a severe geomagnetic storms [sic] can impose a near simultaneous nationwide crippling threat to this vital infrastructure.''); Statement of Gerry Cauley, NERC at 1 (''Previous examples, such as the 1989 event in Hydro Québec demonstrate that severe solar storms represent a serious risk that can challenge the reliability of the bulk power system.'').

[9] April 30, 2012 Technical Conference Tr. 84:14–19 (Pugh); 106:9–15, 169:1–19 (Murtagh).

[10] 16 U.S.C. 824o(d)(5); *see also Transmission Relay Loadability Reliability Standard,* 134 FERC ¶ 61,127, at P 25 (2011) (explaining that under section 215(d)(5) ''the Commission, and not just the ERO, has the responsibility and authority to identify 'specific matters' that it considers appropriate to carry out section 215. Section 215 establishes a paradigm by which both the Commission and the ERO are responsible for identifying reliability gaps—the ERO through its Reliability Standards development process, where it can independently identify areas of concern and develop Standards to address them; and the Commission through its review of proposed Reliability Standards and authority to direct modifications or new Standards that address specific issues necessary to effectuate the purposes of section 215.'').

[11] NERC Reliability Standard IRO–005–3a (Reliability Coordination—Current Day Operations), Requirement R3, is the only existing requirement that discusses GMDs. Requirement R3 requires reliability coordinators to make transmission operators and balancing authorities aware of GMD forecast information and assist as needed in the development of response plans, but it does not require steps for mitigating the effects of GMD events.

[12] GIC is an electrical current created by a solar event that appears as direct current to the bulk electric system. North American Electric Reliability Council, *March 13, 1989 Geomagnetic Disturbance* at 36 (1989), *available at http://www.nerc.com/files/1989-Quebec-Disturbance.pdf*. Automatic blocking prevents or reduces GICs flows into protected Bulk-Power System components without operator intervention. *NERC Interim GMD Report* at 73.

[13] NERC Interim GMD Report at iii–iv. Half-cycle saturation is an abnormal operating condition whereby a transformer operates outside nominal voltage design values, saturating the transformer core with magnetic flux and forcing magnetic flux into other parts of the transformer. *Id.* at 25.

[14] *Id.* at 3 (''GMD can have * * * a wide range of impacts on power apparatus and power system operations. The effects on apparatus range from nuisance events, such as tripping of electrical equipment, radio interference, and control malfunctions, to large-scale events, such as voltage and reactive power fluctuations, local disruption of service, limited equipment failure, and potential voltage instability resulting in uncontrolled cascading of the bulk power system.'').

[15] While disagreements exist as to the likely severity of transformer damage from GMDs compared with the likelihood of voltage collapse due to increased reactive power absorption arising from GMDs, there appears to be a consensus that GMDs can cause at least some damage to Bulk-Power System transformers. *See, e.g.,* Comments of the North American Electric Reliability Corporation, Docket No. AD12–13–000, at 5 (filed May 21, 2012) (''Though the most likely result is voltage collapse, the GMD Task Force members agreed that, depending on the transformer health, design, geology and geomagnetic latitude, geomagnetic induced current flows can result in transformer loss-of-life, and may ultimately result in the failure of some transformers.'').

[16] *Oak Ridge Study 319 Report* at pages 4–1, 4–3 (''The recovery could plausibly extend into months in many parts of the impacted regions * * * These multi-ton apparatus [transformers] generally cannot be repaired in the field, and if damaged in this manner, they need to be replaced with new units, which have manufacture lead times of 12 months or more in the world market.''); NERC Interim GMD Report at iv (''[R]estoration times for system collapse due to voltage instability would be a matter of hours to days, while replacing transformers requires long-lead times (a number of months) to replace or move spares into place, unless they are in a nearby location. Therefore, the failure of a large numbers [sic] of transformers would have considerable impacts on portions of the system.'').

[17] *Oak Ridge Study 319 Report* at page 3–22.

[18] *Id.* at page 1–14, Tables 4–1, 4–2, 4–3 (listing numbers of at-risk transformers).

[19] *Id.* at pages 3–25, 3–26.

[20] National Research Council of the National Academies, *Severe Space Weather Events—Understanding Societal and Economic Impacts: A Workshop Report* at 4 (2008) (*NAS Workshop Report*), *available at http://www.nap.edu/catalog/12507.html*.

[21] NERC Interim GMD Report at 69.

[22] 16 U.S.C. 824o(a)(4) (''The term 'reliable operation' means operating the elements of the bulk-power system within equipment and electric system thermal, voltage, and stability limits so that instability, uncontrolled separation, or cascading failures of such system will not occur as a result of a sudden disturbance, including a cybersecurity incident, or unanticipated failure of system elements.'').

reliability gap. In proposing to address the risks posed by GMDs in two stages, the Commission finds that there are Reliability Standards that the ERO can develop and file quickly (i.e., requiring GMD operational procedures) to mitigate the effects of GMDs while it develops other Reliability Standards that require owners and operators of the Bulk-Power System to assess the potential impact of GMDs on Bulk-Power System equipment and the Bulk-Power System as a whole. Based on those assessments, the Reliability Standards would require owners and operators to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD. This plan cannot be limited to operational procedures or enhanced training alone, but should, subject to the needs identified in the assessments, contain strategies for protecting against the potential impact of GMDs based on factors such as the age, condition, technical specifications, or location of specific equipment. These strategies could include automatically blocking geomagnetically induced currents from entering the Bulk-Power System, instituting specification requirements for new equipment, inventory management, and isolating certain equipment that is not cost effective to retrofit.[23]

7. We recognize that, depending on the results of the initial and ongoing assessments that would be required under this proposed rule, there could be substantial costs associated with some measures to protect against damage to the Bulk-Power System from GMDs.[24] In determining that it is appropriate to issue this proposed rule, however, we have compared such costs against the societal harms, including the potential costs of equipment damage or prolonged blackouts, that could result from taking no action.[25]

## I. Background

### *A. Section 215 and Mandatory Reliability Standards*

8. Section 215 of the FPA requires the Commission to certify an ERO to develop mandatory and enforceable Reliability Standards, subject to Commission review and approval.[26] Once approved, the Reliability Standards may be enforced in the United States by the ERO, subject to Commission oversight, or by the Commission independently.

9. Pursuant to section 215(d)(5) of the FPA, the Commission has the authority, upon its own motion or upon complaint, to order the ERO to submit to the Commission a proposed Reliability Standard or a modification to a Reliability Standard that addresses a specific matter if the Commission considers such a new or modified Reliability Standard appropriate to carry out section 215 of the FPA.[27]

### *B. Studies of GMD Events on the Bulk-Power System*

10. The impact of GMDs on the Bulk-Power System has been evaluated in several government-sponsored studies and NERC reports. The EMP Commission issued reports assessing the threat to the United States from Electromagnetic Pulse (EMP) attack in 2004 and 2008, which also addressed the effects of geomagnetic storms on the electric power infrastructure.[28] The NAS Workshop Report addressing the impact of severe space weather events was released in 2008. The Oak Ridge National Laboratory issued the Oak Ridge Study on the effects of electromagnetic pulses on the Bulk-Power System in January 2010. The NERC HILF Report on high-impact, low-frequency risks to the Bulk-Power System was issued in June 2010.[29] In February 2012, NERC issued the NERC Interim GMD Report evaluating the effects of GMDs on the Bulk-Power System.

11. The Commission conducted a staff-led Technical Conference on April 30, 2012 to discuss the effects of GMDs on the reliable operation of the Bulk-Power System. NERC, government agencies, industry stakeholders, and other interested entities attended the Technical Conference and submitted post-Technical Conference comments.

### *C. Effects of GMD Events on the Bulk-Power System*

12. The interaction of the Earth's magnetic field and solar events can cause low frequency GICs to flow along the surface of the Earth and in the oceans. Reliability issues arise when GICs enter the Bulk-Power System from the Earth. Since many Bulk-Power System transformers are grounded, the GIC appears as electrical current to the Bulk-Power System and flows through the ground connection and conductors, such as transformers and transmission lines.[30]

13. GICs can cause transformer cores to become ''saturated,'' resulting in loss of reactive power (VARs), the introduction of harmonic distortions, and possible physical damage to the transformer.[31] GICs enter the Bulk-Power System through the grounded neutrals of transformers and are responsible for forcing their metal cores into saturation.[32] A primary effect of saturation is the potential for transformer damage through the overheating of internal components.[33]

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[23] *See infra* PP 34–36.

[24] For example, estimates for installing blocking devices on transformers range from $100,000 to $500,000 for each affected transformer. *See* Foundation for Resilient Societies, Comments on Advance Notice of Proposed Rulemaking (ANPR) of the Nuclear Regulatory Commission Relating to the Prevention and Mitigation of Station Blackout, filed in Docket No. AD12–13–000, at 13 (May 4, 2012) (citing $500,000 installed costs per transformer); MITRE Corp., Impacts of Severe Space Weather on the Electric Grid, at 66 (November 2011) (citing $100,000 cost for neutral-current-blocking-capacitors per transformer), *available at http://www.fas.org/irp/agency/dod/jason/spaceweather.pdf.*

[25] For example the estimated total cost of the August 2003 four-day blackout in the United States is between $4 billion and $10 billion, with the Department of Energy calculating the total cost to be $6 billion. Electricity Consumers Resource Council, The Economic Impacts of the August 2003 Blackout, *available at http://www.elcon.org/Documents/EconomicImpactsOfAugust2003Blackout.pdf. See also supra* P 5 (citing estimates by the National Research Council of the National Academies of potentially $1–2 trillion in economic costs from a severe GMD event).

[26] 16 U.S.C. 824o (2006).

[27] 16 U.S.C. 824o(d)(5); 18 CFR 39.6(f) (2012).

[28] These reports are accessible at the Commission to Assess the Threat to the United States from Electromagnetic Pulse (EMP) Attack Web site at *http://www.empcommission.org/.*

[29] The HILF Report was prepared by NERC, Department of Energy, and a steering committee comprised of industry and risk experts and was approved by the NERC Board of Trustees on May 17, 2010. *HILF Report* at 2.

[30] Oak Ridge National Laboratory, *Electromagnetic Pulse: Effects on the U.S. Power Grid (Meta-R-322)* at page 1–1 (January 2010) (*Oak Ridge Study 322 Report*), *available at http://www.ornl.gov/sci/ees/etsd/pes/pubs/ferc_Meta-R-322.pdf.*

[31] *HILF Report* 70–71. Harmonics are currents or voltages with frequencies that are integer multiples of the fundamental power frequency (i.e., 60 Hz in the United States). *See* Northeast Power Coordinating Council, Inc. Glossary of Terms, *available at https://www.npcc.org/Standards/Directories/Glossary%20of%20Terms.pdf.* They can cause overcurrent relays to automatically trip components (e.g., capacitor banks and static VAR compensators) from service. *HILF Report* at 71. Automatic removal of such components can further exacerbate system voltages already reduced by the GIC-related absorption of reactive power.

[32] *Oak Ridge Study 322 Report* at pages 1–1, 7–11.

[33] *HILF Report* at 70 (''Transformers experience excessive levels of internal heating brought on by stray flux when GICs cause the transformer's magnetic core to saturate and spill flux outside the normal core steel magnetic circuit. Previous well-documented cases have noted heating failures that caused melting and burn-through of large-amperage copper windings and leads in these transformers (Figure 9).''); *Oak Ridge Study 319 Report* at page 2–29 (''Also of note from this particular [March 1989] storm is strong evidence that GIC-induced half-cycle saturation of transformers can indeed produce enough heat to severely damage or even destroy exposed large power transformers.'').

Saturation is also responsible for secondary effects, such as the production of harmonics that are not present during normal Bulk-Power System operation and for substantially increasing the transformer's absorption of reactive power from the system, thus requiring significant amounts of additional voltage support to compensate for reactive power absorption. Harmonic production and reactive power absorption may interfere with normal system operations creating secondary effects on other Bulk-Power System facilities. These primary and secondary effects can occur almost simultaneously over a large geographic area, resulting in a multiple contingency outage that has the potential to cascade across the Bulk-Power System.[34]

14. The Oak Ridge Study identified factors that determine the severity of GMD events, including: (1) Location and strength of the underlying solar event; (2) ground conductivity in the affected locations (i.e., the geology of the location); (3) orientation of the transmission lines; (4) length of transmission lines; and (5) grid construction.[35] A solar disturbance can cause near-simultaneous, multi-point failures that can trigger collapse of the Bulk-Power System.[36]

## II. Discussion

15. As discussed below, the Commission finds that there is a gap in the Reliability Standards regarding GMDs. Therefore, in order to carry out section 215 of the FPA, the Commission proposes to direct the ERO to develop and file for approval Reliability Standards that address the potentially severe, wide-spread impact of GMD events on the reliable operation of the Bulk-Power System.

16. We propose that the ERO develop and file the GMD Reliability Standards in two stages. In the first stage, within 90 days of the effective date of a final rule in this proceeding, the Commission proposes to direct NERC to file one or more Reliability Standards that require owners and operators of the Bulk-Power System to develop and implement operational procedures to mitigate the effects of GMDs consistent with the reliable operation of the Bulk-Power System. In the second stage, the Commission proposes to direct NERC to file one or more Reliability Standards, within six months of the effective date of a final rule in this proceeding, that require owners and operators of the Bulk-Power System to assess the impact of GMDs on Bulk-Power System equipment and the Bulk-Power System as a whole. Based on those assessments, the Reliability Standards would require owners and operators to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD. This plan cannot be limited to operational procedures or enhanced training alone, but should, subject to the needs indentified in the assessments, contain strategies for protecting against the potential impact of GMDs based on factors such as the age, condition, technical specifications, or location of specific equipment. These strategies could include automatically blocking geomagnetically induced currents from entering the Bulk-Power System, instituting specification requirements for new equipment, inventory management, and isolating certain equipment that is not cost effective to retrofit.[37]

17. In proposing to direct the ERO to submit Reliability Standards that address the impact of GMD events on the reliable operation of the Bulk-Power System, we are not proposing specific requirements or otherwise pre-judging what the ERO may eventually submit. Instead, we identify concerns that we believe should be addressed in any GMD Reliability Standards. We expect the ERO to support its proposed Reliability Standards and explain how they address the Commission's concerns.

### *A. Reliability Standards Requiring Operational Procedures*

18. Requiring operational procedures, while not a complete solution, constitutes a first step to addressing the GMD reliability gap because they can be implemented relatively quickly.[38] The Commission does not propose to require the ERO or owners and operators of the Bulk-Power System to adopt any particular operational procedures. Owners and operators of the Bulk-Power System are the most familiar with the equipment and system configurations. Accordingly, we propose that the ERO file one or more Reliability Standards requiring owners and operators of the Bulk-Power System to develop and implement operational procedures to mitigate the effects of GMDs consistent with the reliable operation of the Bulk-Power System based on the following guidance.

19. Operational procedures may help alleviate abnormal system conditions due to transformer absorption of reactive power during GMD events, helping to stabilize system voltage swings, and may potentially isolate some equipment from being damaged or misoperated. The NERC Interim GMD Report identifies examples of operational procedures to mitigate GMD events (i.e., the effects of GICs), including: reduction of equipment loading (e.g., by starting off-line generation), unloading the reactive load of operating generation, reductions of system voltage, and system and/or equipment isolation through reconfiguration of the transmission system.[39] Some entities already have operational procedures to mitigate the effect of GICs on the Bulk-Power System utilizing system resources.[40] The Commission expects that the ERO and owners and operators of the Bulk-Power System will draw on industry's experience in developing and implementing existing operational procedures. Given that experience, we propose to direct NERC to file, within 90 days of the effective date of a final rule in this proceeding, proposed Reliability Standards that require the development and implementation of operational procedures. While this deadline is aggressive, mandatory and enforceable Reliability Standards requiring owners and operators to implement operational procedures should be established quickly to afford some level of uniform protection to the Bulk-Power System against GMD events. As discussed above, the impact of GMDs on the Bulk-Power System has been studied extensively for many years, laying the foundation for the prompt development of these first stage Reliability Standards. Moreover, the fact that operational procedures are already in place in some areas should allow for

[34] *HILF Report* at 71–72.

[35] *Oak Ridge Study 319 Report* at page 2–5.

[36] *Id.* at pages 4–1, 4–2. One example cited in the Oak Ridge Study is the March 13, 1989 solar disturbance that triggered the collapse of the Hydro-Québec power grid, which went from normal to a situation where it sustained seven contingencies in an elapsed time of 57 seconds. *Id.*

[37] The second stage Reliability Standards would not require owners and operators of the Bulk-Power System to protect the Bulk-Power System beyond what is found to be required based on the initial and ongoing assessments.

[38] NERC Interim GMD Report at 79 (''Operating procedures are the quickest way to put in place actions that can mitigate the adverse effects of GIC on system reliability * * * Both system operating and transmission owner organizations need to have appropriate procedures and training in place.'').

[39] NERC Interim GMD Report at 80–81.

[40] *See, e.g.,* PJM Interconnection, L.L.C., Manual 13: Emergency Operations at 47, *available at http://www.pjm.com/~/media/documents/manuals/m13.ashx;* Northeast Power Coordinating Council, Inc., Procedures for Solar Magnetic Disturbances Which Affect Electric Power Systems, *available at https://www.npcc.org/Standards/Procedures/c-15.pdf.*

faster development and implementation of these Reliability Standards.

20. While the proposed Reliability Standards should not necessarily specify what operational procedures must be adopted, the ERO should give owners and operators of the Bulk-Power System guidance as to what procedures have been or are expected to be effective in mitigating the effects of GMDs consistent with the reliable operation of the Bulk-Power System. Moreover, the proposed Reliability Standards should address the coordination of operational procedures among responsible entities across regions.[41] Since there could be potential equipment damage resulting from a GMD event, the proposed Reliability Standards should also address operational procedures for restoring GMD-impacted portions of the Bulk-Power System that take into account the potential for equipment that is damaged or out-of-service for an extended period of time.

21. We do not propose to direct a specific implementation schedule for the proposed Reliability Standards, but the Commission encourages the ERO to require owners and operators of the Bulk-Power System to implement the required operational procedures 90 days after Commission approval of the Reliability Standards. Following implementation, the Commission proposes to require NERC to provide periodic reports assessing the effectiveness of the operational procedures in mitigating the effects of GMD events. In addition, NERC should periodically review the required operational procedures and recommend to owners and operators that they incorporate lessons-learned and new research findings.

22. In addition to developing Reliability Standards that require operational procedures during the first stage, the Commission also proposes to accept aspects of the ''Initial Actions'' proposal set forth in NERC's May 21, 2012 post-Technical Conference comments. Specifically, NERC proposed to ''identify facilities most at-risk from severe geomagnetic disturbance'' and to ''conduct wide-area geomagnetic disturbance vulnerability assessment.'' [42] As noted in NERC's comments regarding the vulnerability assessments, special attention would be given to evaluating critical transformers (e.g., step-up transformers at large generating facilities). We agree with NERC that critical Bulk-Power System facilities should be evaluated for GMD vulnerability as an initial action. In addition, as part of the initial action, special attention should be given to those Bulk-Power System facilities that provide service to critical and priority loads.[43] The Commission, therefore, proposes to direct NERC to conduct this ''initial action'' simultaneously with the development and implementation of the first stage GMD Reliability Standards. The Commission seeks comment from NERC and other interested entities on all aspects of this proposal.

*B. Second Stage Reliability Standards*

23. To address GMDs comprehensively, the Commission proposes to direct NERC to develop, in a second stage, Reliability Standards that require owners and operators of the Bulk-Power System to conduct initial and on-going assessments of the potential impact of GMDs on Bulk-Power System equipment and on the Bulk-Power System as a whole. Based on those assessments, the Reliability Standards would require owners and operators to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD. This plan cannot be limited to operational procedures or enhanced training alone, but should, subject to the needs identified in the assessments, contain strategies for protecting against the potential impact of GMDs based on factors such as the age, condition, technical specifications, or location of specific equipment. These strategies could include automatically blocking geomagnetically induced currents from entering the Bulk-Power System, instituting specification requirements for new equipment, inventory management, and isolating certain equipment that is not cost effective to retrofit. While the Commission proposes to direct the ERO to submit the proposed second stage Reliability Standards within six months of the effective date of a final rule in this proceeding, the Commission seeks comment on the feasibility of a six-month deadline.

24. We propose to direct the filing of these second stage GMD Reliability Standards because of two concerns with relying on operational procedures alone: (1) Owners and operators of the Bulk-Power System may not have enough time to initiate effective operating procedures after being warned of a GMD event; and (2) operational procedures may not prevent permanent damage to Bulk-Power System equipment.[44] Current GMD forecasting methods provide limited time for operators to react once a GMD warning is issued.[45] Even with enough time to react, the Oak Ridge Study found that, given a large enough GMD event, operational procedures are unlikely to provide the substantial levels of GIC reduction needed to limit the potential for permanent damage to transformers.[46] The Oak Ridge Study and the HILF Report also found that widespread damage to Bulk-Power System transformers could result in prolonged outages.[47]

25. We recognize that the NERC Interim GMD Report concludes that a prolonged blackout due to extensive

[41] NERC Interim GMD Report at 79 (''The [operating] procedures of these organizations need to be coordinated with each other and with their neighboring organizations.'').

[42] NERC Comments at 8–9 (''As the first step in identifying the risk of geomagnetic disturbance to the bulk power system, NERC intends to complete a system-wide vulnerability assessment * * * special attention will be given to the evaluation of critical transformers, such as generator step-up units at large generating facilities * * * a high level review will be conducted to identify and classify the at-risk population based on existing peer-reviewed research. This assessment will be based on a high level screening approach that will include transformer design, condition, geology and geomagnetic location.'').

[43] The NERC Severe Impact Resilience Task Force identified critical and priority loads in a report. *See* Severe Impact Resilience: Considerations and Recommendations at 26 (Accepted by NERC Board of Trustees on May 9, 2012), *available at http://www.nerc.com/docs/oc/sirtf/SIRTF_Final_May_9_2012-Board_Accepted.pdf.*

[44] NERC Interim GMD Report at 10 (''These warning can be received as short as 30 minutes before the onset of an impending geomagnetic storm.''). At the April 30, 2012 Technical Conference, Mr. Murtagh, Program Coordinator at the National Oceanic and Atmospheric Administration's Space Weather Prediction Center, stated that a warning is issued when a GMD event reaches the NASA Advanced Composition Explorer (ACE) satellite and at that point, in some cases, it could be 20 or 30 minutes before the event reaches the Earth's magnetic field. April 30, 2012 Technical Conference Tr. 170:5–22 (Murtagh).

[45] Mr. Pugh, from the U.S. Department of Homeland Security's Interagency Programs Office Science & Technology Directorate, stated that the operators in the 1989 Hydro-Québec blackout only had 90 seconds to react, which was insufficient to ''prevent a massive blackout and significant equipment damage.'' April 30, 2012 Technical Conference Tr. 12:4–7 (Pugh).

[46] *Oak Ridge Study 322 Report* at pages ix and 1–1.

[47] *HILF Report* at 12 (''The physical damage of certain system components (e.g. extra-high-voltage transformers) on a large scale, as could be effected by any of these threats, could result in prolonged outages as procurement cycles for these components range from months to years.''); *Oak Ridge Study 319 Report* at pages 2–33, 2–34 (''An especially large storm or GIC event could plausibly create the potential for widespread failure of many exposed transformers and hamper rapid restoration capabilities. In extreme cases, where replacements may take months, a situation may exist where the demand for electric service can only be partially supplied, raising the prospect of rationing and rotating blackouts to regions that are unable to be fully served.'').

damage to Bulk-Power System transformers is less likely than voltage instability due to increased reactive power consumption and loss of reactive power support, which can lead to blackouts like the 1989 Hydro-Québec event.[48] The Commission's proposed two-stage approach recognizes this difference by focusing first on the development of Reliability Standards requiring operational procedures in a relatively short time frame. The Commission proposes to give NERC and owners and operators of the Bulk-Power System more time to perform, in the second stage, initial and on-going assessments. Based on those assessments, the Reliability Standards would require owners and operators to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD. This plan cannot be limited to operational procedures or enhanced training alone, but should, subject to the needs identified in the assessments, contain strategies for protecting against the potential impact of GMDs based on factors such as the age, condition, technical specifications, or location of specific equipment. These strategies could include automatically blocking geomagnetically induced currents from entering the Bulk-Power System, instituting specification requirements for new equipment, inventory management, and isolating certain equipment that is not cost effective to retrofit. Moreover, although the NOPR proposes that the second stage Reliability Standards be filed within six months of the effective date of the final rule, we seek comment on the feasibility of that deadline.

26. Below, we offer guidance on the assessments of Bulk-Power System vulnerability to GMDs and potential measures for automatically protecting critical or vulnerable components. In addition, recognizing the potential for substantial investments of time and resources to implement these Reliability Standards, we offer guidance on an implementation schedule, which will likely consist of an extended, multi-phase process. The Commission seeks comment from NERC and other interested entities on all aspects of this proposal.

1. GMD Vulnerability Assessments of the Bulk-Power System

27. The Commission proposes to direct the ERO to develop Reliability Standards that require owners and operators of the Bulk-Power System to conduct vulnerability assessments to determine how critical or vulnerable Bulk-Power System components react to simulated GICs of varying intensities.[49] The Commission proposes to direct the ERO to consider the following parameters as it develops the Reliability Standards.[50]

28. First, the Reliability Standards should contain uniform evaluation criteria for owners and operators to follow when conducting their assessments. As the Commission noted with respect to other reliability assessments, uniformity increases the accuracy of transmission system reliability assessments and consequently enhances overall reliability.[51]

29. Second, the assessments should, through studies and simulations, evaluate the primary and secondary effects of GICs on Bulk-Power System transformers, including the effects of GICs originating from and passing to other regions.

30. Third, the assessments should evaluate the effects of GICs on other Bulk-Power System equipment, system operations, and system stability, including the anticipated loss of critical or vulnerable devices or elements resulting from GIC-related issues.[52]

31. Fourth, in conjunction with assessments by owners and operators of their own Bulk-Power System components, wide-area or Regional assessments of GIC impacts should be performed. A severe GMD event can cause simultaneous stresses at multiple locations on the Bulk-Power System, potentially resulting in a multiple-outage event.[53] In predicting GIC flows, it is necessary to take into consideration the network topology as an integrated whole (i.e., on a wide-area basis).[54]

32. Fifth, the assessments should be periodically updated, taking into account new facilities, modifications to existing facilities, and new information, including new research on GMDs, to determine whether there are resulting changes in GMD impacts that require modifications to Bulk-Power System mitigation schemes.

33. The Commission seeks comments from NERC and other interested entities on all aspects of this proposal.

2. Automatic GIC Blocking for Critical or Vulnerable Bulk-Power System Components

34. While we do not propose to require a particular solution in the second stage Reliability Standards to address GMDs, we expect that some assessments will demonstrate that automatic blocking is necessary in some instances. The Commission, above, proposes to direct the ERO to develop Reliability Standards that require owners and operators of the Bulk-Power System to develop and implement a plan so that instability, uncontrolled separation, or cascading failures of the Bulk-Power System, caused by damage to critical or vulnerable Bulk-Power System equipment, or otherwise, will not occur as a result of a GMD. Automatic blocking measures address the major concerns with relying exclusively on operational procedures to mitigate GMDs (i.e., the short period of time to react to a GMD event and the potential consequences of not reacting fast enough). Blocking can prevent the flow of GICs through power transformers and the Bulk-Power System.[55] Eliminating GICs in transformers prevents transformer core saturation and, thus, mitigates or prevents the effects of GMDs on the Bulk-Power System (i.e., transformer overheating, reactive power absorption, and harmonic generation).

35. The Commission does not propose to direct the ERO to require a particular automatic blocking technology, where blocking is necessary. Instead, the Commission proposes to direct the ERO to identify in the proposed Reliability Standards what would constitute appropriate automatic blocking measures. In defining what is an

[48] NERC Interim GMD Report at vi.

[49] To accurately simulate the impact of GMDs on the Bulk-Power System, the assessments should consider the impact of GICs that may enter the system through transformers that are not treated as part of the bulk electric system and any impact that the non-bulk electric system transformers may have on the reliability of the Bulk-Power System. We do not propose, however, that equipment falling outside of our jurisdiction would be required to be protected under the proposed Reliability Standard.

[50] The vulnerability assessments in the second phase Reliability Standards are distinct from the ''initial action'' evaluations, discussed above, which NERC proposed to do and we propose to have NERC conduct simultaneous with the development and implementation of the first phase Reliability Standards. We expect, however, that the analyses performed in the ''initial action'' evaluations will be used to quickly identify and protect the most critical and vulnerable Bulk-Power System components once the second stage Reliability Standards become effective.

[51] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, at P 1298, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[52] The Oak Ridge Study assessment included GMD modeling, simulation and review of storm impacts, power grid GIC flows and reactive power demands, transformer heating and risk of potential damage to transformers. *See generally Oak Ridge Study 319 Report.*

[53] *Oak Ridge Study 319 Report* at pages A1–1, A1–2.

[54] *Id.* at page 1–17.

[55] NERC Interim GMD Report at 73.

appropriate blocking measure, the ERO should address: (1) Its feasibility and effectiveness; and (2) its ability to operate without adversely impacting the reliable operation of the Bulk-Power System. The Commission proposes that the Reliability Standards should include a means by which the ERO can verify that selected blocking measures are appropriate.

36. The use of automatic blocking devices, such as transmission line series capacitors and transformer neutral blocking, are possible measures.[56] These devices block or reduce the flow of GIC in a power grid.[57] Although not a means for blocking GICs, another possible option is to improve the ''withstand'' capability of Bulk-Power System components. The ''withstand'' capability, in this context, refers to a component's ability to withstand stresses imposed by GICs before suffering damage, but it does not prevent GICs from affecting the rest of the Bulk-Power System (e.g., it does not prevent the secondary effects of harmonics or increased reactive power consumption).[58] The ERO should consider whether the reliability goals of the proposed Reliability Standards can be achieved by a combination of automatic protection measures, including, for example, some combination of automatic blocking and improved ''withstand'' capability. In any event, the measures must be adequate to protect the reliability of the Bulk-Power System against the risks identified in the assessments.

37. The Commission seeks comments from NERC and other interested entities on all aspects of this proposal.

3. Implementation Schedule

38. The second stage Reliability Standards will likely require an extended, multi-phase implementation period given the time needed to conduct the required assessments and the time and cost of installing any required automatic protection measures. Although the Commission does not propose to direct the ERO to develop a specific implementation plan, we believe it would be appropriate for the proposed Reliability Standard to include an implementation schedule that requires owners and operators of the Bulk-Power System to prioritize implementation so that components considered vital to the reliable operation of the Bulk-Power System are provided with any necessary automatic protection measures in the earliest phase of the plan.[59]

39. The Commission seeks comments from NERC and other interested entities on an implementation plan.

## III. Information Collection Statement

40. The Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of an agency rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number. The Paperwork Reduction Act (PRA) requires each federal agency to seek and obtain OMB approval before undertaking a collection of information directed to ten or more persons, or contained in a rule of general applicability.

41. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the PRA. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

42. The Public Reporting Burden and cost related to the proposed rule in Docket No. RM12–22–000 are covered by, and already included in, the existing FERC–725, Certification of Electric Reliability Organization; Procedures for Electric Reliability (OMB Control No. 1902–0225). FERC–725 includes the ERO's overall responsibility for developing Reliability Standards, such as the Reliability Standards for Geomagnetic Disturbances.

43. Internal review: The Commission has reviewed the proposed changes and has determined that the changes are necessary to ensure the reliability and integrity of the Nation's Bulk-Power System.

44. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426 [Attention: Ellen Brown, Office of the Executive Director, email: *DataClearance@ferc.gov,* Phone: (202) 502–8663, fax: (202) 273–0873]. Comments on the requirements of this rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission]. For security reasons, comments should be sent by email to OMB at *oira_submission@omb.eop.gov.* Please reference OMB Control No. 1902–0225, FERC–725 and the docket number of this proposed rulemaking in your submission.

## IV. Environmental Analysis

45. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[60] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[61] The actions proposed here fall within this categorical exclusion in the Commission's regulations.

## V. Regulatory Flexibility Act

46. The Regulatory Flexibility Act of 1980 (RFA)[62] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities.

47. By only proposing to direct NERC, the Commission-certified ERO, to develop GMD Reliability Standards, this Notice of Proposed Rulemaking will not have a significant or substantial impact on entities other than NERC. The ERO develops and files with the Commission for approval Reliability Standards affecting the Bulk-Power System, which represents: (a) A total electricity demand of 830 gigawatts (830,000 megawatts) and (b) more than $1 trillion worth of assets. Therefore, the Commission certifies that this Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities.

48. Any Reliability Standards proposed by NERC in compliance with

[56] *Oak Ridge Study 322 Report* at ix-x.

[57] *Id.*

[58] NERC Interim GMD Report at 67.

[59] For example, critical Bulk-Power System equipment identified by NERC in the first stage ''initial actions'' assessments, discussed previously, should be protected in the earliest phase of the implementation plan.

[60] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[61] 18 CFR 380.4(a)(2)(ii).

[62] 5 U.S.C. 601–612.

this rulemaking will be considered by the Commission in future proceedings. As part of any future proceedings, the Commission will make determinations pertaining to the Regulatory Flexibility Act based on the content of the Reliability Standards proposed by NERC.

**VI. Comment Procedures**

49. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due December 24, 2012. Comments must refer to Docket No. RM12–22–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

50. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

51. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

52. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

**VII. Document Availability**

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

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

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

By direction of the Commission.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26131 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket Number USCG–2012–0938]**

**RIN 1625–AA87**

## Security Zone, Potomac and Anacostia Rivers; Washington, DC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary security zone encompassing certain waters of the Potomac and Anacostia Rivers. This action is necessary to prevent terrorist acts and incidents and to safeguard high-ranking government officials and the public-at-large immediately before, during and after activities associated with the Presidential Inauguration in Washington, DC from January 15, 2013 through January 24, 2013. This rule prohibits vessels and people from entering the security zone and requires vessels and persons in the security zone to depart the security zone, unless specifically exempt under the provisions in this rule or granted specific permission from the Coast Guard Captain of the Port Baltimore.

**DATES:** Comments and related material must be received by the Coast Guard on or before November 23, 2012.

**ADDRESSES:** You may submit comments identified by docket number using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ronald L. Houck, Sector Baltimore, Waterways Management Division, U.S. Coast Guard; telephone (410) 576–2674, email *Ronald.L.Houck@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

**Table of Acronyms**

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

**A. Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

*1. Submitting Comments*

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at *http://www.regulations.gov,* or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2012–0938] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

*2. Viewing Comments and Documents*

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2012–0938) in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*3. Privacy Act*

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

*4. Public Meeting*

We do not now plan to hold a public meeting. But you may submit a request for one, using one of the methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**B. Regulatory History and Information**

This rule involves the Presidential Inauguration, an event with a swearing-in ceremony that takes place in Washington, DC every four years on January 20th following the U.S. General election in November. The 55th and 56th Presidential Inaugurations were designated National Special Security Events by the Department of Homeland Security.

**C. Basis and Purpose**

On January 20, 2013, the U.S. Presidential Inauguration swearing-in ceremony will take place at the U.S. Capitol in Washington, DC. Activities associated with the Presidential Inauguration include several Inaugural ceremonies, balls, parades and receptions in the District of Columbia, which are scheduled to occur from January 15, 2013 through January 24, 2013. During these activities, a gathering of high-ranking United States officials and the public-at-large is expected to take place. These activities are located along navigable waterways within the Captain of the Port Baltimore's Area of Responsibility. The Coast Guard has given each Coast Guard Captain of the Port the ability to implement comprehensive port security regimes designed to safeguard human life, vessels, and waterfront facilities while still sustaining the flow of commerce.

The Captain of the Port Baltimore is proposing to establish a security zone to address the aforementioned security concerns and to take steps to prevent the catastrophic impact that a terrorist attack against the large gatherings of high-ranking United States officials, the public-at-large, and surrounding waterfront areas and communities would have. The proposed security zone is necessary to safeguard life and property on the navigable waters before, during, and after activities associated with the Presidential Inauguration and will help the Coast Guard prevent vessels or persons from bypassing the security measures established on shore for the events and engaging in waterborne terrorist actions during the highly-publicized events.

**D. Discussion of Proposed Rule**

Through this regulation, the Coast Guard proposes to establish a temporary security zone. The proposed zone will be in effect from January 15, 2013 through January 24, 2013. The proposed zone will cover (1) all waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge at mile 113.0, downstream to and bounded on the south between the Virginia shoreline and the District of Columbia shoreline along latitude 38°51′00″ N, including the waters of the Georgetown Channel Tidal Basin; and (2) all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the 11th Street (I–295) Bridge at mile 2.1, downstream to and bounded on the south by its confluence with the Potomac River.

This rule requires that entry into or remaining in this security zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor in the security zone at the time the security zone is implemented do not have to depart the zone. All vessels underway within this security zone at the time it is implemented are to depart the zone. To seek permission to transit the area of the security zone, the Captain of the Port Baltimore can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Coast Guard vessels enforcing the security zone can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Federal, state, and local agencies may assist the Coast Guard in the enforcement of the security zone. The Coast Guard will issue notices to the maritime community to further publicize the security zone and notify the public of changes in the status of the zone. Such notices will continue until the event is complete.

**E. Regulatory Analyses**

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

*1. Regulatory Planning and Review*

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. There is no vessel traffic associated with recreational boating and commercial fishing expected during the effective period, and vessels may seek permission from the Captain of the Port Baltimore to enter and transit the zone.

*2. Impact on Small Entities*

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial

number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or transit through or within the security zone during the enforcement period. Although the security zone will apply to the entire width of the Potomac and Anacostia Rivers, traffic may be allowed to pass through the zone with the permission of the Captain of the Port Baltimore. Before the effective period, maritime advisories will be widely available to the maritime community. Additionally, given the time of year this event is scheduled, the vessel traffic is expected to be minimal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

*3. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

*4. Collection of Information*

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

*5. Federalism*

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

*6. Protest Activities*

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

*7. Unfunded Mandates Reform Act*

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

*8. Taking of Private Property*

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

*9. Civil Justice Reform*

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

*10. Protection of Children From Environmental Health Risks*

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

*11. Indian Tribal Governments*

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

*12. Energy Effects*

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

*13. Technical Standards*

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

*14. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves establishing a temporary security zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. A preliminary environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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

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

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

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

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

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

2. Add § 165.T05–0938 to read as follows:

**§ 165.T05–0938 Security Zone, Potomac and Anacostia Rivers; Washington, DC.**

(a) *Location.* The following area is a security zone: (1) all waters of the Potomac River, from shoreline to shoreline, bounded on the north by the Francis Scott Key (U.S. Route 29) Bridge at mile 113.0, downstream to and

bounded on the south between the Virginia shoreline and the District of Columbia shoreline along latitude 38°51′00″ N, including the waters of the Georgetown Channel Tidal Basin; and (2) all waters of the Anacostia River, from shoreline to shoreline, bounded on the north by the 11th Street (I–295) Bridge at mile 2.1, downstream to and bounded on the south by its confluence with the Potomac River. All coordinates refer to datum NAD 1983.

(b) *Regulations.* The general security zone regulations found in 33 CFR 165.33 apply to the security zone created by this temporary section, § 165.T05–0938.

(1) All persons are required to comply with the general regulations governing security zones found in 33 CFR 165.33.

(2) Entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port Baltimore. Vessels already at berth, mooring, or anchor at the time the security zone is implemented do not have to depart the security zone. All vessels underway within this security zone at the time it is implemented are to depart the zone.

(3) Persons desiring to transit the area of the security zone must first obtain authorization from the Captain of the Port Baltimore or his designated representative. Permission may be requested prior to activation of the zone. To seek permission to transit the area, the Captain of the Port Baltimore and his designated representatives can be contacted at telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). The Coast Guard vessels enforcing this section can be contacted on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Upon being hailed by a U.S. Coast Guard vessel, or other Federal, State, or local agency vessel, by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port Baltimore or his designated representative and proceed at the minimum speed necessary to maintain a safe course while within the zone.

(4) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(c) *Definitions.* As used in this section:

*Captain of the Port Baltimore* means the Commander, U.S. Coast Guard Sector Baltimore, Maryland.

*Designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the security zone described in paragraph (a) of this section.

(d) *Effective period.* This section will be enforced from 8 a.m. on January 15, 2013 through 10 p.m. on January 24, 2013.

Dated: October 10, 2012.

**Kevin C. Kiefer,**

*Captain, U.S. Coast Guard, Captain of the Port Baltimore.*

[FR Doc. 2012–26218 Filed 10–23–12; 8:45 am]

**BILLING CODE 9110–04–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MB Docket No. 12–270; RM–11676; DA 12–1555]**

### Radio Broadcasting Services; Maysville, Georgia

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rulemaking filed by Appalachian Broadcasting Company, Inc., proposing the allotment of Channel 265A at Maysville, Georgia, as the community's second local FM transmission service. A staff engineering analysis indicates that Channel 265A can be allotted to Maysville consistent with the minimum distance separation requirements of the Rules with a site restriction 13.4 kilometers (8.3 miles) northwest of the community. The reference coordinates are 34–20–16 NL and 83–39–52 WL.

**DATES:** Comments must be filed on or before November 19, 2012, and reply comments on or before December 4, 2012.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Douglas M. Sutton, Jr., President, Appalachian Broadcasting Company, Post Office Drawer E, 233 Big A Road, Toccoa, Georgia 30577.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No.12–270, adopted September 27, 2012, and released September 28, 2012. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street SW., Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or via email *www.BCPIWEB.com*. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

Federal Communications Commission.

**Nazifa Sawez,**

*Assistant Chief, Audio Division, Media Bureau.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

## PART 73—RADIO BROADCAST SERVICES

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

**Authority:** 47 U.S.C. 154, 303, 334, 336 and 339.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding Maysville, Channel 265A.

[FR Doc. 2012–26202 Filed 10–23–12; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 97

**[WT Docket Nos. 12–283 and 09–209, RM–11629 and RM–11625; FCC 12–121]**

### Amateur Service Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Commission proposes to amend the amateur radio service rules to grant examination credit for expired and beyond-the-grace-period-for renewal amateur radio operator licenses; to shorten the grace period during which an expired amateur license may be renewed to 180 days; to revise the time a call sign is not available to the vanity call sign system correspondingly; and to reduce to two the number of volunteer examiners needed to administer an amateur license examination. This document also asks for comment on amending the rules to permit remote test administration, and proposes to amend the amateur radio service rules to allow amateur stations to transmit certain additional emission types.

**DATES:** Submit comments on or before December 24, 2012 and reply comments are due January 22, 2013.

**ADDRESSES:** You may submit comments, identified by WT Docket No. 12–283; FCC 12–121, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** William T. Cross, Mobility Division, Wireless Telecommunications Bureau, (202) 418–0680, TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking and Order* (*NPRM*), in WT Docket No. 12–283, FCC 12–121, adopted October 1, 2012, and released October 2, 2012. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Digest/2012/dd121003.html.* The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, Suite CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. The Commission initiated this proceeding to amend the part 97 Amateur Radio Service rules that apply to examination credit for amateur radio operator licenses, to shorten the grace period during which an expired amateur license may be renewed, to reduce the number of volunteer examiners needed to administer an amateur license examination, and to allow amateur stations to transmit additional emission types. The Commission found that certain provisions in the rules applicable to the examination credit for an expired license treat a former licensee differently than a licensee who passed the same examination(s) but continuously renewed his or her license and that the fact that an individual allowed his or her license to expire more than two years ago does not necessarily mean that the person no longer possess adequate knowledge of the subject. Specifically, the Commission proposed in this *NPRM* to amend the amateur service rules to revise § 97.505 to require that volunteer examiners (VEs) give examination credit to an applicant who can demonstrate that he or she formerly held a particular class of amateur radio operator license. It also proposed to reduce the grace period for renewal to six months (180 days), noting that it believes 180 days is a sufficient period of time for individuals who forget to renew or experience unforeseen difficulties when renewing their licenses.

2. The Commission also proposed to reduce the number of VEs required to administer an examination from three to two noting that reducing the number of required VEs can increase the availability of examination opportunities while not compromising the reasons the Commission decided that more than one VE is necessary. It also noted that in the years since the VE system was established, methods that would allow a VE examiner to observe an examinee from afar have been developed, such as audio and video links, either hard-wired to a site or available through the use of wireless Internet or satellite technologies, and it requested comment on whether it should amend Section 97.509(c) to provide that, at the option of the administering VEs and the VEC coordinating the examination session, the VEs may be ''present and observing'' an examinee for purposes of the rule when they are using an audio and video system that can assure the proper conduct and necessary supervision of each examination.

3. The Commission also proposed to amend § 97.3(c)(5) to allow emission type FXE as a phone emission and to amend § 97.307(f)(8) to allow emission type FXD as a data emission. It noted that this proposed rule change would encourage licensees to more fully utilize time division multiple access (TDMA) technologies in experimentation and promote more efficient use of the radio spectrum currently allocated to the amateur service.

## I. Procedural Matters

*A. Ex Parte Rules—Permit-but-Disclose Proceeding*

4. This is a permit-but-disclose notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

*B. Comment Dates*

5. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before December 24, 2012, and reply comments are due January 22, 2013.

6. Commenters may file comments electronically using the Commission's Electronic Comment Filing System (ECFS), the Federal Government's eRulemaking Portal, or by filing paper copies. Commenters filing through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* If multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Commenters may also submit an electronic comment by Internet

email. To get filing instructions for email comments, commenters should send an email to *ecfs@fcc.gov,* and should include the following words in the body of the message, ''get form.'' Commenters will receive a sample form and directions in reply. Commenters filing through the Federal eRulemaking Portal *http://www.regulations.gov,* should follow the instructions provided on the Web site for submitting comments.

7. Commenters who chose to file paper comments must file an original and four copies of each comment. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, 445 12th Street SW., Room TW–A325, Washington, DC 20554.

8. Commenters may send filings by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 445 12th Street SW., Washington, DC 20554. Commenters must bind all hand deliveries together with rubber bands or fasteners and must dispose of any envelopes before entering the building. This facility is the only location where the Commission's Secretary will accept hand-delivered or messenger-delivered paper filings. Commenters must send commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) to 9300 East Hampton Drive, Capitol Heights, MD 20743. Commenters should address U.S. Postal Service first-class mail, Express Mail, and Priority Mail to 445 12th Street SW., Washington, DC 20554.

*C. Paperwork Reduction Act*

9. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

## II. Initial Regulatory Flexibility Analysis

10. The Regulatory Flexibility Act requires an initial regulatory flexibility analysis to be prepared for notice and comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. In this *NPRM,* we propose to amend the amateur service rules applicable to the license examination system and to matters concerning emission types that amateur stations may transmit. Because ''small entities,'' as defined in the RFA, are not persons eligible for licensing in the amateur service, these proposed rules do not apply to ''small entities.'' Rather, the rules apply exclusively to individuals who currently are amateur service licensees and individuals who may be interested in again becoming an amateur service licensee. Therefore, we certify that the proposals in this *Notice,* if adopted, will not have a significant economic impact on a substantial number of small entities.

## III. Ordering Clauses

12. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Notice of Proposed Rulemaking and Order,* including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 97**

Radio.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 97 as follows:

## PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

**Authority:** 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. Section 97.3 is amended by revising paragraph (c)(5) to read as follows:

**§ 97.3 Definitions.**

* * * * *

(c) * * *

(5) *Phone.* Speech and other sound emissions having designators with A, C, D, F, G, H, J or R as the first symbol; 1, 2, 3, or X as the second symbol; E as the third symbol. Also speech emissions having B as the first symbol; 7, 8 or 9 as the second symbol; E as the third symbol. MCW for the purpose of performing the station identification procedure, or for providing telegraphy practice interspersed with speech. Incidental tones for the purpose of selective calling or alerting or to control the level of a demodulated signal may also be considered phone.

* * * * *

3. Section 97.19 is amended by revising paragraphs (c)(1) through (3) to read as follows:

**§ 97.19 Application for a vanity call sign.**

* * * * *

(c) * * *

(1) A call sign shown on an expired license grant is not available to the vanity call sign system for 180 days following the expiration of the license.

(2) A call sign shown on a surrendered or canceled license grant (except for a license grant that is canceled pursuant to § 97.31) is not available to the vanity call sign system for 180 days following the date such action is taken. (The availability of a call sign shown on a license canceled pursuant to § 97.31 is governed by paragraph (c)(3) of this section.)

(i) This 180 day period does not apply to any license grant pursuant to paragraph (c)(3)(i), (ii), or (iii) of this section that is surrendered, canceled, revoked, voided, or set aside because the grantee acknowledged or the Commission determined that the grantee was not eligible for the exception. In such a case, the call sign is not available to the vanity call sign system for 30 days following the date such action is taken, or for the period for which the call sign would not have been available to the vanity call sign system pursuant to paragraphs (c)(2) or (3) of this section but for the intervening grant to the ineligible applicant, whichever is later.

(ii) An applicant to whose operator/primary station license grant, or club station license grant for which the applicant is the trustee, the call sign was previously assigned is exempt from the 180 day period set forth in paragraph (c)(2) of this section.

(3) A call sign shown on a license canceled pursuant to § 97.31 of this part

is not available to the vanity call sign system for 180 days following the person's death, or for 180 days following the expiration of the license grant, whichever is sooner. If, however, a license is canceled more than 150 days after the licensee's death, the call sign is not available to the vanity call sign system for 30 days following the date such action is taken. The following applicants are exempt from this 180 day period:

* * * * *

4. Section 97.21 is amended by revising paragraph (b) to read as follows:

**§ 97.21 Application for a modified or renewed license grant.**

* * * * *

(b) A person whose amateur station license grant has expired may apply to the FCC for renewal of the license grant for another term during a 180-day filing grace period. The application must be received at the address specified above prior to the end of the grace period. Unless and until the license grant is renewed, no privileges in this part are conferred.

* * * * *

5. Section 97.307 is amended by revising paragraphs (f)(8) and (10) to read as follows:

**§ 97.307 Emission standards.**

* * * * *

(f) * * *

(8) A RTTY or data emission having designators with A, B, C, D, E, F, G, H, J or R as the first symbol; 1, 2, 7, 9 or X as the second symbol; and D or W as the third symbol is also authorized.

* * * * *

(10) A station having a control operator holding a Novice Class operator license or a Technician Class operator license may only transmit a CW emission using the international Morse code or phone emissions J3E and R3E.

* * * * *

6. Section 97.505 is revised to read as follows:

**§ 97.505 Element credit.**

The administering VEs must give credit as specified below to an examinee holding any of the following license grants or license documents:

(a) An unexpired or expired FCC-granted Amateur Extra Class operator license grant: Elements 2, 3, and 4.

(b) An unexpired or expired FCC-granted Advanced Class or General Class operator license grant: Elements 2 and 3.

(c) An unexpired or expired FCC-granted Technician Class or Technician Plus operator license document: Element 2.

(d) An expired FCC-issued Technician Class operator license document granted before March 21, 1987; Element 3.

(e) A CSCE: Each element the CSCE indicates the examinee passed within the previous 365 days.

7. Section 97.507 is amended by removing paragraph (d) and revising paragraphs (a) introductory text, (a)(2), and (c) to read as follows:

**§ 97.507 Preparing an examination.**

(a) Each written question set administered to an examinee must be prepared by a VE holding an Amateur Extra Class operator license. A written question set may also be prepared for the following elements by a VE holding an operator license of the class indicated:

* * * * *

(2) Element 2: Advanced, General, or Technician Plus Class operators

* * * * *

(c) Each written question set administered to an examinee for an amateur operator license must be prepared, or obtained from a supplier, by the administering VEs according to instructions from the coordinating VEC.

8. Section 97.509 is amended by removing and reserving paragraph (g), and revising paragraphs (a), (f) and (i) to read as follows:

**§ 97.509 Administering VE requirements.**

(a) Each examination for an amateur operator license must be administered by a team of at least 2 VEs at an examination session coordinated by a VEC. The number of examinees at the session may be limited.

* * * * *

(f) No examination that has been compromised shall be administered to any examinee. The same question set may not be re-administered to the same examinee.

(g) [Removed and Reserved]

* * * * *

(i) When the examinee is credited for all examination elements required for the operator license sought, 2 VEs must certify that the examinee is qualified for the license grant and that the VEs have complied with these administering VE requirements. The certifying VEs are jointly and individually accountable for the proper administration of each examination element reported. The certifying VEs may delegate to other qualified VEs their authority, but not their accountability, to administer individual elements of an examination.

* * * * *

[FR Doc. 2012–26201 Filed 10–23–12; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register
Vol. 77, No. 206
Wednesday, October 24, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

October 18, 2012.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

### Food and Nutrition Service

*Title:* Federal-State Special Supplemental Nutrition Program Agreement.

*OMB Control Number:* 0584–0332.

*Summary of Collection:* The Supplemental Nutrition Program for Women, Infants and Children (WIC), the WIC Farmers' Market Nutrition Program (FMNP), and the Senior Farmers Market Nutrition Program (SFMNP) are carried out by the U.S. Department of Agriculture under Section 17 of the Child Nutrition Act (CNA) of 1966, as amended, and the SFMNP under 7 U.S.C. 3007. The Federal-State Special Supplemental Nutrition Programs Agreement (FNS–339) is the annual contract between USDA and each State agency seeking to operate one or more of the following programs: (1) WIC, (2) FMNP, and (3) SFMNP. A signed contract is required before the Food and Nutrition Service (FNS) can release Program funds.

*Need and Use of the Information:* The agreement requires the signatures of the Chief State agency official and includes a certification/assurance regarding drug free work place, a certification regarding lobbying and a disclosure of lobbying activities. If the information is not collected Federal funds cannot be provided to the State agency without a signed agreement.

*Description of Respondents:* State, Local, or Tribal Government.

*Number of Respondents:* 142.

*Frequency of Responses:* Recordkeeping; Reporting: Annually.

*Total Burden Hours:* 36.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2012–26122 Filed 10–23–12; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* 2013 National Census Contact Test.

*OMB Control Number:* None.

*Form Number(s):* None

*Type of Request:* New collection.

*Burden Hours:* 4,667.

*Number of Respondents:* 40,000.

*Average Hours per Response:* 7 minutes.

*Needs and Uses:* The U.S. Census Bureau is committed to using alternative approaches for contacting potential respondents, such as cell phones, landlines, text messages and emails in an effort to reduce costs by increasing self-response. However, developing and implementing successful and secure contact and response strategies during the 2020 Census requires research throughout the next decade. The Census Bureau must conduct a series of research projects and tests to fulfill its commitment to provide the public with an option to complete their 2020 Decennial Census questionnaire using these alternate contact strategies through a self-response test.

The 2013 National Census Contact Test (NCCT), formerly named the 2013 Alternative Contact Strategy Test, supports this alternate contact research. The 2013 NCCT will be conducted over the telephone, using a Computer Assisted Telephone Instrument (CATI) with approximately 40,000 households between January 7, 2013, and February 1, 2013. These interviews will enable Census staff to assess the quality of the data from vendor files that are under consideration for use in the construction of an Alternate Contact Frame. The 2013 NCCT questionnaire will ask respondents for basic demographic information collected in a Census. Demographic information includes questions such as household roster, age, race, Hispanic origin, relationship, and sex. The questionnaire also takes the approach of requesting email addresses and telephone numbers from the respondents. Afterward, the respondent-provided address, phone numbers, and email addresses will be matched to the vendor data being evaluated as well as to the Master Address File (MAF). In addition, the NCCT provides an opportunity for the Census Bureau to test potential enhancements to its automated processing of responses

lacking a pre-assigned Census Identification number. ''Non-ID Processing,'' as it is known within the Census Bureau, compares respondent addresses to the MAF, which is a national inventory of living quarters addresses compiled and maintained by the Census Bureau. In the case of a non-match, Non-ID processing includes the assignment of geographic codes to the respondent address, which enables a record to be tabulated to the correct geographic area (e.g. State, Congressional District, County, Census tract, etc.). Finally, the interview contains a question intended to gauge respondents' attitudes regarding the collection of Global Positioning System (GPS) coordinate data from a respondent's mobile device, such as cellular phone or tablet, made available through technology referred to as ''location based services.''

The Census Bureau designed the 2013 National Census Contact Test to inform the 2020 Census testing and planning design. The intent is to research and validate the quality of the administrative records files, which contain alternate contact data to connect with individuals and households, such as email addresses and cell phone numbers, as well as evaluate enhancements to the Census Bureau's process for matching and geocoding Non-ID'd responses. Additionally, responses to the final interview question (regarding collection of respondent coordinate location) will be compiled and provide some indication of public attitude regarding the use of location-based services on mobile devices to derive a respondent's location.

The results from the 2013 NCCT will influence internal Census Bureau planning decisions that will guide the design of additional 2020 Decennial Census testing later this decade. By testing in 2013, we aim to establish a baseline approach for multi-mode testing. Testing enhancements to Non-ID processing early in the decade will inform early planning for the 2020 Census design, as well as the infrastructure required to support large-scale processing of electronic Non-ID response data submitted via the Internet or a Census-provided questionnaire application designed for mobile devices.

The Census Bureau plans to make the aggregated results of this study available to the public. Data from the research will be included in reports with clear statements about the limitations and that the data were produced for strategic and tactical decision-making and exploratory research and not for official estimates. Research results may be prepared for presentation at professional meetings or in publications in professional journals to promote discussion between the larger survey and statistical community, and to encourage further research and refinement.

*Affected Public:* Individuals or households.

*Frequency:* One time.

*Respondent's Obligation:* Mandatory.

*Legal Authority:* Title 13 United States Code, Sections 141 and 193.

*OMB Desk Officer:* Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: October 18, 2012.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–26125 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency:* National Oceanic and Atmospheric Administration (NOAA).

*Title:* NOAA Bay Watershed Education and Training (B–WET) Program National Evaluation System.

*OMB Control Number:* None.

*Form Number(s):* NA.

*Type of Request:* Regular submission (new information collection).

*Number of Respondents:* 6,919.

*Average Hours per Response:* Grantee questionnaires, 1 hour; teacher questionnaires, 30 minutes; teacher nonresponse questionnaires, 5 minutes.

*Burden Hours:* 3,519.

*Needs and Uses:* This request is for a new information collection.

The NOAA Office of Education's Bay Watershed Education and Training (B–WET) program seeks to contribute to NOAA's mission by supporting education efforts to create an environmentally literate citizenry with the knowledge, attitudes, and skills needed to protect watersheds and related ocean, coastal, and Great Lakes ecosystems. B–WET currently funds projects in seven regions (California, Chesapeake Bay, Great Lakes, Gulf of Mexico, Hawaii, New England, and the Pacific Northwest). B–WET proposes to create an across-region, internal evaluation system to provide ongoing feedback on program implementation and outcomes to ensure maximum quality and efficiency of the B–WET program. The evaluation system will be sustained by B–WET staff with occasional assistance from an outside contractor.

B–WET awardees and the awardees' professional development teacher-participants will be asked to voluntarily complete an online survey form to provide evaluation data. One individual from each awardee organization will be asked to complete a form once per year of the award, and the teacher participants will be asked to complete one form at the end of their professional development program. In addition, B–WET seeks approval of an item bank that awardees can choose to use to construct surveys for youth participants (ages 10–17) in B–WET-funded programs.

*Affected Public:* Not-for-profit institutions; individuals or households.

*Frequency:* Annually.

*Respondent's Obligation:* Required to obtain or retain benefits; voluntary.

*OMB Desk Officer:* *OIRA_Submission@omb.eop.gov.*

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 18, 2012.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–26150 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–12–P**

## DEPARTMENT OF COMMERCE

### U.S. Census Bureau

### Proposed Information Collection; Comment Request; State Government Research and Development (R&D) Survey

**AGENCY:** U.S. Census Bureau.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** To ensure consideration, written comments must be submitted on or before December 24, 2012.

**ADDRESSES:** Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW, Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lisa McNelis, U.S. Census Bureau, Governments Division, 4600 Silver Hill Road, Washington, DC 20233–6800; (301) 763–7344.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The National Science Foundation (NSF) and the United States Census Bureau plan to continue to conduct the biennial State Government Research and Development Survey (SGRD) to measure research and development supported and performed by state governments in the United States. This survey is a joint effort between the NSF and the Census Bureau. The NSF Act of 1950 includes a statutory charge to ''provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources and to provide a source of information for policy formulation by other agencies in the Federal Government.'' Under the aegis of this legislative mandate, the NSF sponsored surveys of research and development since 1953, including since 2006 the State Government R&D Survey. The Census Bureau's authority to undertake this work is found at 13 U.S.C. 8(b) which provides that the Census Bureau ''may make special statistical compilations and surveys for departments, agencies, and establishments of the Federal government, the government of the District of Columbia, the government of any possession or area (including political subdivisions thereof) * * * State or local agencies, or other public and private persons and agencies.''

The State Government Research and Development Survey is the only comprehensive source of research and development expenditure data collected on a nationwide scale using uniform definitions, concepts, and procedures. The collection covers the expenditures of all agencies in the fifty state governments, the District of Columbia, and Puerto Rico that conduct research and development. The NSF has coordinated with the Census Bureau for the data collection. The NSF uses this collection to satisfy its need to collect research and development expenditures data.

Fiscal data provided by respondents aid data users in measuring the effectiveness of resource allocation. The products of this data collection make it possible for data users to obtain information on such things as expenditures according to source *of funding, by performer* of the work (*i.e.,* internal and external to state agencies), *by type* (*e.g.,* agriculture, energy, health, transportation, etc), *by character* of work (*i.e.,* basic research, applied research, or development), and by R&D plant (*e.g.,* construction projects). Final results produced by the NSF contain state and national estimates useful to a variety of data users interested in research and development performance including: the National Science Board; the Office of Management and Budget; the Office of Science and Technology Policy and other science policy makers; institutional researchers; and private organizations.

The survey announcements and forms used in the research and development survey are:

*Survey Announcement.* The Governor's letter is mailed to solicit the Governor's Office to announce the survey collection and for assignment of a State Coordinator to facilitate the assistance of the state agencies. The State Coordinator's Announcement is sent electronically at the beginning of each survey period with information regarding their role in facilitating their state agency responses and data submissions. It establishes the conditions by which the state agencies provide their research and expenditure data to the Census Bureau.

*Form SRD–1.* This form contains item descriptions and definitions of the research and development items collected jointly by the Census Bureau and the NSF. It is used primarily as a worksheet and instruction guide by the state agencies providing research and development expenditure data in their respective states. All states supply their data by electronic means.

#### II. Method of Collection

The Census Bureau collects all of the research and development expenditure data from approximately 500 state agencies facilitated by a State Coordinator appointed by their Governor. Once an agency completes and submits their data to the State Coordinator, the State Coordinator reviews and submits this information to the Census Bureau in electronic format over the Internet via file transfer protocol.

#### III. Data

*OMB Control Number:* 0607–0933.

*Form Number:* SRD–1.

*Type of Review:* Regular submission.

*Affected Public:* State Government Agencies.

*Estimated Number of Respondents:* 52 state coordinators and 500 State agencies.

*Estimated Time Per Response:* 4 hours for every state coordinator and 1 hour and 45 minutes for every state agency.

*Estimated Total Annual Burden Hours:* 542.

*Estimated Total Annual Cost:* $19,000.

*Respondents Obligation:* Voluntary.

**Authority:** U.S. Code: 42 U.S.C. 1862: ''National Science Foundation Act of 1950''as amended. Title 13, U.S.C., 8 (b), 161, and 182. Title 15 United States Code, 1525.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 19, 2012.

**Glenna Mickelson,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 2012–26186 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[B–75–2012]**

### Foreign-Trade Zone 35—Philadelphia, PA; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Philadelphia Regional Port Authority, grantee of FTZ 35, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 19, 2012.

FTZ 35 was approved by the Board on March 24, 1978 (Board Order 128, 43 FR l453l, 4/8/1978) and expanded on August 21, 1980 (Board Order 162, 45 FR 58388, 9/3/1980), December 29, 1993 (Board Order 678, 59 FR 1372, 1/10/1994), September 25, 2001 (Board Order 1189, 66 FR 52742, 10/17/2001), and June 27, 2002 (Board Order 1236, 67 FR 45456, 7/9/2002).

The current zone includes the following sites: *Site 1* (2.4 acres)—2994–2996 Samuel Drive, Bensalem, Bucks County; *Site 2* (90 acres)—Pier 98 South Annex, Columbus Blvd. at Oregon Ave., Philadelphia, Philadelphia County; *Site 3* (3 acres)—Pier 38 and Pier 40, 1 Brown Street, Philadelphia, Philadelphia County; *Site 4* (35 acres)—Penn Terminals Complex, 1 Saville Avenue, Eddystone, Delaware County; *Site 6* (38 acres)—Publicker Site, 2937 Christopher Columbus Blvd., Philadelphia, Philadelphia County; *Site 7* (2 acres)—American Foodservice Corporation, 400 Drew Court, King of Prussia, Montgomery County; *Site 8* (35 acres)—Philadelphia International Airport, Philadelphia, Philadelphia County; *Site 10* (4.8 acres)—Philadelphia Naval Complex, Building 694, 1701 Langley Avenue, Philadelphia, Philadelphia County; *Site 11* (37.52 acres)—Urban Outfitters, Inc., 755 Brackbill Road, Gap, Lancaster County (approved on a temporary basis until 12/31/2012); and, *Site 12* (80 acres)—Kinder Morgan Bulk Terminals, Inc., 1 Sinter Road, Fairless Hills, Bucks County (approved on a temporary basis until 11/30/2013).

The grantee's proposed service area under the ASF would be Philadelphia, Delaware, Bucks, Montgomery, Chester, Lancaster and Berks Counties, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Philadelphia Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone project to include existing Sites 1–6, 10 and 12 as ''magnet'' sites and existing Sites 7, 8 and 11 as usage-driven sites. The applicant is also requesting approval of the following usage-driven sites: *Proposed Site 13* (2.462 acres)—Delaware River Stevedores, Inc., 3451 North Delaware Ave., Philadelphia, Philadelphia County; *Proposed Site 14* (10.12 acres)—David's Bridal, Inc., 44 North Lane, Conshohocken, Montgomery County; and, *Proposed Site 15* (26.5 acres)—David's Bridal, Inc., 100 Crossing Drive, Suite B, Bristol, Bucks County. The application would have no impact on FTZ 35's previously authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is *December 24, 2012.* Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to *January 7, 2013.*

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: October 9, 2012.

**Elizabeth Whiteman,**

*Acting Executive Secretary.*

[FR Doc. 2012–26216 Filed 10–23–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–840]**

### Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** Apex Frozen Foods Private Limited (Apex Frozen) has requested a changed circumstances review of the antidumping duty order on certain frozen warmwater shrimp from India pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b). The Department of Commerce (the Department) is initiating this changed circumstances review and issuing this notice of preliminary results pursuant to 19 CFR 351.221(c)(3)(ii). We have preliminarily determined that Apex Frozen is the successor-in-interest to Apex Exports (Apex).

**DATES:** *Effective Date:* October 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Eastwood or David Crespo, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3874 or (202) 482–3693, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 1, 2005, the Department published in the **Federal Register** an antidumping duty order on certain frozen warmwater shrimp from India.[1]

On September 6, 2012, Apex Frozen informed the Department that on April 1, 2012, Apex legally converted from a partnership firm to a limited liability (*i.e.,* private limited) company and

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India,* 70 FR 5147 (Feb. 1, 2005).

changed its name to Apex Frozen. Apex Frozen provided supporting documentation. Additionally, Apex Frozen requested that the Department conduct an expedited changed circumstances review under 19 CFR 351.221(c)(3)(ii) to confirm that it is the successor-in-interest to Apex for purposes of determining antidumping duty cash deposits and liabilities.

**Scope of the Order**

The scope of this order includes certain frozen warmwater shrimp and prawns, whether wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTSUS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn *(Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp *(Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTSUS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTSUS subheadings 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTSUS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTSUS subheading 1605.20.10.40); (7) certain battered shrimp. Battered shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and ten percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to IQF freezing immediately after application of the dusting layer. When dusted in accordance with the definition of dusting above, the battered shrimp product is also coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classified under the following HTSUS subheadings: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. These HTSUS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

**Initiation and Preliminary Results**

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the ''Background'' section, we have received information indicating that Apex was incorporated as a private limited company and changed its name to Apex Frozen, effective April 1, 2012. This constitutes changed circumstances warranting a review of the order. *See* CFR 19 351.216(d). Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information contained in Apex's submission.

Section 351.221(c)(3)(ii) of the Department's regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have on the record the information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[3] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Brake Rotors.* Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same antidumping treatment as its predecessor.

In its submission, Apex Frozen has provided sufficient evidence to warrant an expedited review to determine if it is the successor-in-interest to Apex. Apex Frozen states that its company's management, production facilities and customer/supplier relationships have not changed as a result of the conversion process. To support its claims, Apex Frozen submitted the following documents: (1) The original Apex partnership deed, dated October, 24, 1995; (2) the new Apex partnership deed, dated January 1, 2012; (3) the chart showing the particulars of Apex's capital and Apex Frozen's shareholding ownership; (4) the newspaper article notifying the public of Apex's intent to convert to a company; (5) the Certificate

[2] ''Tails'' in this context means the tail fan, which includes the telson and the uropods.

[3] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (Feb. 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); and *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (Nov. 18, 2005) (*Brake Rotors*), citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992).

of Incorporation for Apex Frozen; (6) the affidavits related to company conversion; (7) the Notice of Extraordinary General Meeting for Apex; (8) the Articles of Association of Apex Frozen; (9) the online printout from the Ministry of Corporate Affairs showing the approved name change; (10) the Certificate of Registration of Processing Plants for Apex, as issued by the Marine Products Export Development Authority of India (MPEDA); (11) the Certificate of Registration of Storage Premises for Apex, as issued by MPEDA; (12) the Certificate of Importer Exporter Code for Apex Frozen; (13) the Certificate of Importer Exporter Code for Apex; (14) a list of the company's main suppliers before/after the name change; and (15) a list of the company's main customers before/after the name change.

Based on the evidence reviewed, we preliminarily find that Apex Frozen is the successor-in-interest to Apex because Apex's conversion from a partnership firm to a limited liability company resulted in no significant changes to management, production facilities, supplier relationships, and customers. As a result, we preliminarily find that Apex Frozen operates as the same business entity as Apex. Thus, we preliminarily find that Apex Frozen should receive the same antidumping duty cash-deposit rate (*i.e.,* 2.51 percent) with respect to the subject merchandise as Apex, its predecessor company. For further details of our analysis, see the October 17, 2012, Memorandum from David Crespo, Analyst, Office 2, to James Maeder, Director, Office 2, entitled, ''Changed Circumstances Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from India: Successor-In-Interest Determination for Apex Exports and Apex Frozen Foods Private Limited.''

However, because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive and therefore no change will be made to Apex Frozen's cash deposit rate as a result of these preliminary results. If Apex Frozen believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate and receive a refund of any excess deposits. *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880 (Nov. 30, 1999). As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct U.S. Customs and Border Protection to suspend shipments of subject merchandise made by Apex Frozen at Apex's cash deposit rate (*i.e.,* 2.51 percent) effective on the publication date of our final results.

**Public Comment**

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). A hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: October 17, 2012.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

[FR Doc. 2012–26217 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–570–987]**

### Hardwood and Decorative Plywood From the People's Republic of China: Initiation of Countervailing Duty Investigation

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* October 24, 2012.

**FOR FURTHER INFORMATION CONTACT:** David Lindgren and Toni Page, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3870 and (202) 482–1398, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On September 27, 2012, the Department of Commerce (Department) received a countervailing duty (CVD) petition concerning imports of hardwood and decorative plywood from the People's Republic of China (PRC) [1] filed in proper form by the Coalition for Fair Trade of Hardwood Plywood and its individual members (Petitioners).[2] On October 3, 2012, the Department issued requests to Petitioners for additional information and for clarification of certain areas of the CVD Petition. Petitioners informed the Department on October 10, 2012, that they would not provide any additional information regarding the matter raised by the Department.

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (Act), Petitioners allege that producers/exporters of hardwood and decorative plywood from the PRC received countervailable subsidies within the meaning of sections 701 and 771(5) of the Act, and that imports from these producers/exporters materially injure, or threaten material injury to, an industry in the United States.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because Petitioners are interested parties, as defined in section 771(9)(C) of the Act, and have demonstrated sufficient industry support with respect to the investigation that it requests the Department to initiate.[3]

**Period of Investigation**

The period of investigation is January 1, 2011, through December 31, 2011.

**Scope of Investigation**

The products covered by this investigation are hardwood and decorative plywood from the PRC. For a full description of the scope of the investigation, please see the ''Scope of

[1] *See* Petition for the Imposition of Antidumping and Countervailing Duties: Hardwood Plywood from the People's Republic of China, dated September 27, 2012 (Petition).

[2] The members of the Coalition for Fair Trade of Hardwood Plywood are: Columbia Forest Products, Commonwealth Plywood Inc., Murphy Plywood, Roseburg Forest Products Co., States Industries Inc., and Timber Products Company.

[3] *See* ''Determination of Industry Support for the Petition'' below.

the Investigation'' Appendix I to this notice.

**Comments on Scope of Investigation**

During our review of the Petition, we discussed the scope with Petitioners to ensure that it is an accurate reflection of the products for which the domestic industry is seeking relief. As a result, the ''Scope of Investigation'' language has been modified from the language in the Petition to reflect these clarifications.[4]

Moreover, as discussed in the preamble to the regulations,[5] we are setting aside a period of time for interested parties to raise issues regarding product coverage. The Department encourages interested parties to submit such comments by 5:00 p.m. EST on Tuesday, November 6, 2012, which is twenty calendar days from the signature date of this notice. All comments must be filed on the records of both the PRC antidumping duty (AD) investigation as well as the PRC CVD investigation.

**Filing Requirements**

All submissions to the Department must be 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 the time and date set by the Department. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the Import Administration's APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, and stamped with the date and time of receipt by the deadline noted above.[6]

**Consultations**

Pursuant to section 702(b)(4)(A)(ii) of the Act, on September 28, 2012, the Department invited representatives of the Government of the PRC (GOC) for consultations with respect to the CVD petition.[7] Those consultations were held on October 15, 2012.[8]

**Determination of Industry Support for the Petition**

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the industry.

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The U.S. International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (*see* section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioners do not offer a definition of domestic like product distinct from the scope of the investigations. Based on our analysis of the information submitted on the record, we have determined that hardwood and decorative plywood constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, *see* ''Countervailing Duty Investigation Initiation Checklist: Hardwood and Decorative Plywood from the People's Republic of China'' (''Initiation Checklist''), at Attachment II, Analysis of Industry Support for the Petitions Covering Hardwood and Decorative Plywood from the People's Republic of China, on file in the Central Records Unit (CRU), Room 7046 of the main Department of Commerce building.

In determining whether Petitioners have standing under section 702(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of Investigation'' section above. To establish industry support, Petitioners provided their production of the domestic like product in 2011 and compared this to the estimated total production of the domestic like product for the entire domestic industry. *See* Volume I of the Petitions, at 3–5, and Exhibits I–3A, I–3B, and I–3C; *see also* Supplement to the CVD Petition dated October 5, 2012, at 3 and Exhibit I–9; *see also* Second Supplement to the CVD Petition dated October 9, 2012, at 2–8. Petitioners estimated 2011 production of the domestic like product by non-petitioning companies based on their knowledge of the industry. We have relied upon data Petitioners provided for purposes of measuring industry support. For further discussion, *see* Initiation Checklist at Attachment II.

[4] *See* October 15, 2012, letter from Petitioner regarding Hardwood Plywood from the People's Republic of China: Petitioner's Revision to the Proposed Scope of Investigations.

[5] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[6] *See http://www.gpo.gov/fdsys/pkg/FR-2011-07-06/pdf/2011-16352.pdf* for details of the Department's Electronic Filing Requirements, which went into effect on August 5, 2011. Information on help using IA ACCESS can be found at *https://iaaccess.trade.gov/help.aspx* and a handbook can be found at *https://iaaccess.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf.*

[7] *See* Letter to Wang Xin, Embassy of the PRC regarding ''Countervailing Duty Petition on Hardwood Plywood from the People's Republic of China,'' dated September 28, 2012.

[8] *See* Ex-Parte Memorandum on Consultations with Officials from the Government of the People's Republic of China on the Countervailing Duty Petition regarding Hardwood Plywood, dated October 16, 2012.

On October 9, 2012, we received a submission on behalf of an importer of hardwood and decorative plywood, an interested party to this proceeding as defined in section 771(9)(A) of the Act, questioning the industry support calculation. On October 11, 2012, we received a second submission on behalf of that importer of hardwood and decorative plywood, supplementing the importer's October 9, 2012, challenge to Petitioners' industry support calculation. On October 15, 2012, Petitioners filed their response to the importer's industry support challenge.[9] On October 16, 2012, we received a third submission on behalf of the importer of hardwood and decorative plywood. On October 17, 2012, Petitioners submitted an additional response to the importer's industry support challenge.

Based on information provided in the Petition, supplemental submissions, and other information readily available to the Department, we determine that Petitioners have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product. *See* Initiation Checklist at Attachment II. Based on information provided in the Petition and supplemental submissions, the domestic producers and workers have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition. Accordingly, the Department determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act. *See* Initiation Checklist at Attachment II.

The Department finds that Petitioners filed the Petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9)(C), (E), and (F) of the Act and they have demonstrated sufficient industry support with respect to the CVD investigation that they are requesting the Department initiate. *Id.*

**Injury Test**

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a U.S. industry.

**Allegations and Evidence of Material Injury and Causation**

Petitioners allege that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, Petitioners allege that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.

Petitioners contend that the industry's injured condition is illustrated by reduced market share; underselling and price depression or suppression; lost sales and revenue; reduced capacity and capacity utilization; increased inventories; decline in financial performance; and employment data. *See* Volume I of the Petition, at 14–57 and Exhibits I–9 through I–27, and Supplement to the AD Petition, at 1, 3–4, and Exhibits Supp I–2 through Supp I–4. We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist, at Attachment III.

**Initiation of Countervailing Duty Investigation**

Section 702(b)(1) of the Act requires the Department to initiate a CVD proceeding whenever an interested party files a petition on behalf of an industry that: (1) Alleges the elements necessary for an imposition of a duty under section 701(a) of the Act; and (2) is accompanied by information reasonably available to the petitioner(s) supporting the allegations. The Department has examined the Petition on hardwood and decorative plywood from the PRC and finds that it complies with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702(b) of the Act, we are initiating a CVD investigation to determine whether manufacturers, producers, or exporters of hardwood and decorative plywood in the PRC receive countervailable subsidies. For a discussion of evidence supporting our initiation determination, *see* the CVD Initiation Checklist.

We are including in our investigation the following programs alleged in the Petition to have provided countervailable subsidies to producers and exporters of the subject merchandise in the PRC:

A. Income Tax Programs
   1. Tax Exemptions and Reductions for ''Productive'' Foreign Invested Enterprises (FIEs) (*i.e.,* the ''Two Free, Three Half'' Program)
   2. Provincial Tax Exemptions and Reductions for ''Productive'' FIEs
   3. Tax Reductions for FIEs in Designated Geographic Locations

B. Other Tax Programs
   1. VAT and Tariff Exemptions on Imported Equipment

C. Government Provision of Goods or Services For Less Than Adequate Remuneration (LTAR)
   1. Electricity

We are not including in our investigation the following program alleged to benefit producers and exporters of the subject merchandise in the PRC:

1. Provision of Timber at LTAR

For further information explaining why the Department is not investigating this program, *see* CVD Initiation Checklist.

**Respondent Selection**

For this investigation, the Department expects to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of investigation. We intend to make our decision regarding respondent selection within 20 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within seven calendar days of publication of this **Federal Register** notice.

**Distribution of Copies of the Petition**

In accordance with section 702(b)(4)(A)(i) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the representatives of the GOC. Because of the particularly large number of producers/exporters identified at Exhibit I–7 of the Petition, the Department considers the service of the public version of the Petition to the foreign producers/exporters satisfied by the delivery of the public version to the GOC, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We have notified the ITC of our initiation, as required by section 702(d) of the Act.

**Preliminary Determination by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which

[9] For further discussion of these submissions, *see* Initiation Checklist at Attachment II.

the Petition is filed, whether there is a reasonable indication that imports of subsidized hardwood and decorative plywood from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry.[10] A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634. Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.[11] Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any AD or CVD proceedings initiated on or after March 14, 2011.[12] The formats for the revised certifications are provided at the end of the *Interim Final Rule.* Foreign governments and their officials may continue to submit certifications in either the format that was in use prior to the effective date of the *Interim Final Rule,* or in the format provided in the *Interim Final Rule.*[13] The Department intends to reject factual information submissions in any proceeding segments initiated on or after March 14, 2011, if the submitting party does not comply with the revised certification requirements.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: October 17, 2012_.

**Paul Piquado,**

*Assistant Secretary for Import Administration.*

## Appendix I

**Scope of the Investigation**

Hardwood and decorative plywood is a panel composed of an assembly of two or more layers or plies of wood veneer(s) in combination with a core. The several layers, along with the core, are glued or otherwise bonded together to form a finished product. A hardwood and decorative plywood panel can be composed of one or more species of hardwoods, softwoods, or bamboo, (in addition to other materials that are used for the core, as detailed below).

Hardwood and decorative plywood is generally manufactured to American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2009; it is differentiated from ''structural plywood'' (also known as ''industrial plywood'' or ''industrial panels''), which must meet the ''bond performance'' requirements set forth at paragraph 5.8.6.4 of U.S. Products Standard PS 1–09 for Structural Plywood.

Hardwood and decorative plywood is primarily manufactured as a panel. The most common panel sizes are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches). However, these panels may be cut-to-size by the manufacturer in accordance with a customer's requirements, or made to other sizes.

A ''veneer'' is a thin slice of wood, rotary cut, sliced or sawed from a log, bolt or flitch. The face veneer is the exposed veneer of a hardwood and decorative plywood product which is of a superior grade than that of the other exposed veneer of the product (i.e., as opposed to the inner veneers). The face veneer is also either side of the product when the two exposed veneers are of the same grade. The face veneer is also the side of the product that is intended to be exposed for view after installation.

The core of hardwood and decorative plywood consists of the layer or layers of material(s) that are situated between the front and back veneers. The core may be composed of a range of materials, including but not limited to veneers, particleboard, and medium-density fiberboard (MDF).

All hardwood and decorative plywood is included within the definition of subject merchandise regardless whether or not the face and/or back veneers are surface coated. Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing. The face veneer may also be stained (i.e., to achieve a particular color).

Unless subject to a specifically enumerated exclusion detailed below, all hardwood and decorative plywood is included within the definition of subject merchandise, without regard to: dimension (overall thickness, thickness of face veneer thickness of back veneer, thickness of core, and thickness of inner veneers; width; and length); wood species used for the face, back and inner veneers (including hardwoods, softwoods or bamboo); core composition; the grade of the face and back veneers; and whether or not surface coated (i.e., ''unfinished'' or ''prefinished''). The face and/or back veneers of the product may be sanded, smoothed, scraped or stained.

Hardwood and decorative plywood is generally manufactured to American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2009. Regardless of whether the product meets the ANSI/HPVA standard, all hardwood and decorative plywood is included within this definition if it meets the physical description set forth therein.

The scope of the investigation excludes the following items: (1) Structural plywood that is manufactured and stamped to meet U.S. Products Standard PS 1–09 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the ''bond performance'' requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard; (2) plywood platforms with a face and back ply of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A–570–970 and C–570–971 (published December 8, 2011); (4) plywood further manufactured or further worked aside from sanding, surface coating (*i.e.,* ''prefinishing''), scraping or staining (*e.g.,* bent or molded plywood; bent or molded plywood is defined as a flat panel that is purposely further manufactured through whatever means to achieve a shape or design other than a flat plane).

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; and 4412.99.9000. While HTSUS subheadings are provided for

[10] *See* section 703(a)(2) of the Act.

[11] *See* section 782(b) of the Act.

[12] *See Certification of Factual Information for Import Administration during Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (*Interim Final Rule*), amending 19 CFR 351.303(g)(1) and (2).

[13] *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011).

convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.

[FR Doc. 2012–26220 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC014**

### Marine Mammals; File Nos. 15777 and 17670

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

**ACTION:** Notice; withdrawal of application and receipt of application.

**SUMMARY:** Notice is hereby given that the NMFS Northeast Fisheries Science Center, Woods Hole, MA (Responsible Party: Michael Simpkins), has withdrawn application File No. 15777 and submitted a new application (File No. 17670) for a permit to take marine mammals during scientific research in coastal waters and adjacent waters off the northeast U.S.

**DATES:** Written, telefaxed, or email comments must be received on or before November 23, 2012.

**ADDRESSES:** The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 15777 from the list of available applications.

These documents are also available 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;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

**FOR FURTHER INFORMATION CONTACT:** Tammy Adams or Amy Sloan, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

*File No. 15777.* The application, submitted under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216) was made available for public comment on May 4, 2012 (77 FR 26513). In response to public comments, the applicant proposed substantial changes to the numbers of and manner in which marine mammals may be taken. The changes, which are equivalent to a major permit amendment as defined in the regulations, require additional public review and comment. The application is hereby withdrawn and replaced with a revised version, referred to as File No. 17670.

*File No. 17670.* The subject permit is requested under the authority of the MMPA, and the regulations governing the taking and importing of marine mammals (50 CFR part 216). The applicant requests a five-year permit to take harbor seals (*Phoca vitulina concolor*), gray seals (*Halichoerus grypus*), harp seals (*Pagophilus groenlandicus*), and hooded seals (*Cystophora cristata*) during conduct of stock assessment research, including estimation of distribution and abundance, determination of stock structure, habitat requirements, foraging ecology, health assessment and effects of natural and anthropogenic factors. Types of take include harassment during shipboard, skiff, and aircraft transect and photo-identification surveys, and scat collection; and capture with tissue sampling and instrument or tag attachment. The applicant proposes to capture up to 175 harbor seals and 225 gray seals annually for measurement of body condition, collection of tissue samples (e.g., blood, blubber biopsy, skin, hair, swab samples, vibrissae), and attachment of telemetry devices. Up to 200 harp seals, 50 hooded seals, 59,000 harbor seals, and 67,000 gray seals could be harassed annually incidental to surveys, scat collections and capture operations. The applicant also requests research-related mortality of up to 8 gray seals, 8 harbor seals, 2 harp seals, and 2 hooded seals per year. Permission is also sought to import and export pinniped specimen material (including soft and hard tissue, blood, extracted DNA, and whole dead animals or parts thereof) to/from any country. The study area includes waters within or proximal to the U.S. EEZ from North Carolina northward to Maine, and Canadian waters in the Gulf of Maine.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: October 18, 2012.

**P. Michael Payne,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–26233 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC284**

### Endangered and Threatened Species; Initiation of 5-Year Review for the Southern Distinct Population Segment of North American Green Sturgeon

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

**ACTION:** Notice of initiation of 5-year review; request for information.

**SUMMARY:** NMFS announces a 5-year review of the Southern Distinct Population Segment (DPS) of North American green sturgeon (*Acipenser medirostris*) (hereafter, Southern DPS) under the Endangered Species Act of 1973, as amended (ESA). On April 7, 2006, NMFS issued a final listing determination for the Southern DPS as threatened under the ESA. The purpose of the 5-year review is to ensure the accuracy of the listing classification for this species. A 5-year review is based on the best scientific and commercial data available; therefore, we are requesting submission of any such information on the Southern DPS that has become available since the listing determination in 2006. We are also requesting information regarding the status of the Northern DPS of the North American green sturgeon (hereafter, Northern

DPS), which is a NMFS Species of Concern.

**DATES:** To allow adequate time to conduct this review, we must receive your information no later than December 24, 2012.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2012–0198, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''submit a comment'' icon, then enter NOAA–NMFS–2012–0198 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.

• *Mail or hand-delivery:* Chris Yates, ATTN: Green Sturgeon Status Review, National Marine Fisheries Service, Southwest Region, Protected Resources Division, 501 West Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213.

*Instructions:* Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive information that you wish to protect from disclosure. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

**FOR FURTHER INFORMATION CONTACT:** Melissa Neuman, NMFS Southwest Region, Protected Resources Division, 562–980–4115.

**SUPPLEMENTARY INFORMATION:** Section 4(c)(2)(A) of the ESA requires that we conduct a review of listed species at least once every five years. The regulations in 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Southern DPS of green sturgeon currently listed as threatened.

**Public Solicitation of New Information**

To ensure that the 5-year review is complete and based on the best available scientific and commercial information, we are soliciting new information from the public, governmental agencies, Tribes, the scientific community, industry, environmental entities, and any other interested parties concerning the status of the Southern DPS since the listing determination in 2006. The 5-year review considers the best scientific and commercial data and all new information that has become available since the listing determination or most recent status review. Categories of requested information include: (1) Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics; (2) habitat conditions including, but not limited to, amount, distribution, and suitability; (3) conservation measures that have been implemented that benefit the species; (4) status and trends of threats; (5) other new information, data, or improved analytical methods; and (6) corrections including, but not limited to, taxonomic or nomenclatural changes. The Southern DPS consists of populations originating from coastal and Central Valley watersheds south of the Eel River in California, with the only known spawning population in the Sacramento River. NMFS also seeks new information available on the Northern DPS, consisting of populations originating from coastal watersheds north of and including the Eel River. The Northern DPS is listed as a NMFS Species of Concern. At the time of the Southern DPS proposed listing, NMFS volunteered to revisit and update, if necessary, the Northern DPS' status in five years time (70 FR 17386; April 6, 2005). Therefore, any information submitted regarding the Northern DPS will not be used as part of a formal 5-year status review, but rather an informal assessment of the DPS' status to verify whether its current position on the Species of Concern List is still appropriate.

Any new information will be considered during the 5-year review and will also be useful in evaluating ongoing research and conservation activities and may be incorporated into the final recovery plan for the Southern DPS.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: October 18, 2012.

**Angela Somma,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–26237 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC308**

### Gulf of Mexico Fishery Management Council; Public Meeting

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

**ACTION:** Notice of a public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a webinar of the Standing and Special Reef Fish Scientific and Statistical Committees (SSC).

**DATES:** The webinar will convene at 1 p.m. on Thursday, November 8, 2012 and will conclude approximately 5 p.m.

**ADDRESSES:** The meeting will be held via webinar and is accessible by computers (Windows or Mac), or by iPhone, iPad, or Android device with the GoToMeeting app available from the App Store or Google Play. A registration link to sign up for the webinar will be available on the Council Web site.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

**FOR FURTHER INFORMATION CONTACT:** Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

**SUPPLEMENTARY INFORMATION:** The Standing and Special Reef Fish SSC will meet jointly via webinar on Thursday, November 8, 2012 to review an analysis of this year's red snapper overharvest. Under a rule published on May 30, 2012 [77 FR 31734] the acceptable biological catch (ABC) for red snapper was set at 8.080 million pounds for 2012 and 8.690 million pounds for 2013, with 51 percent of the ABC allocated to a commercial quota and 49 percent to a recreational quota. The increase in the ABC 2013 was contingent upon the stock ABC not being exceeded in 2012. If the stock ABC was exceeded in 2012, the stock ABC and sector quotas would remain at the 2012 levels unless the best scientific information available

determines maintaining the quotas from the previous year is unnecessary. Preliminary estimates indicate that the 2012 recreational red snapper quota (3.959 mp) will be exceeded by 440,000–840,000 pounds, which will result in the 2012 ABC being exceeded. As a result, the National Marine Fisheries Service Southeast Fisheries Science Center will evaluate the effect of this overharvest on the red snapper rebuilding plan. Based on the results of the analysis, the SSC will determine whether the 2013 ABC can be increased to its original level, to a different level, or should remain at the 2012 level.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.*

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Dated: October 18, 2012.

**Tracey L. Thompson,**

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

[FR Doc. 2012–26128 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–BC69**

### Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Replacement of the Elliott Bay Seawall in Seattle, WA

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

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the Seattle Department of Transportation (SDOT), on behalf of the City of Seattle (City), for authorization for the take, by Level B harassment, of marine mammals incidental to construction associated with the replacement of the Elliott Bay Seawall in Seattle, Washington, for the period September 2013-September 2018. Pursuant to Marine Mammal Protection Act (MMPA) implementing regulations, NMFS is announcing receipt of SDOT's request for the development and implementation of 5-year regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on SDOT's application and request.

**DATES:** Comments and information must be received no later than November 23, 2012.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Magliocca@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* 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.

**FOR FURTHER INFORMATION CONTACT:** Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8400.

**SUPPLEMENTARY INFORMATION:**

#### Availability

A copy of SDOT's application may be obtained by visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring, and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

#### Summary of Request

On September 17, 2012, NMFS received a complete application from SDOT requesting authorization for the take of nine marine mammal species incidental to replacement of the Elliott Bay Seawall in Seattle, Washington over the course of 5 years, which would necessitate the promulgation of 5-year regulations. The purpose of the proposed project is to reduce the risks of coastal storm and seismic damage and to protect public safety, critical infrastructure, and associated economic activities in the area. Additionally, the project would improve the degraded ecosystem functions and processes of the Elliott Bay nearshore around the existing seawall. Noise produced during pile installation and removal activities has the potential to take marine mammals. SDOT requests authorization to take nine marine mammal species by Level B harassment only: Pacific harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californianus*), Steller sea lion (*Eumetopias jubatus*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), both

southern resident and transient killer whales (*Orcinus orca*), humpback whale (*Megaptera novaengliae*), and gray whale (*Eschrichtius jubatus*). Injury or mortality is unlikely during the proposed project, and take by Level A harassment (including injury) or mortality is not requested in SDOT's application.

**Specified Activities**

In the application submitted to NMFS, SDOT requests authorization to take marine mammals incidental to replacement of the Elliott Bay Seawall. Construction activities, namely vibratory and impact pile installation and removal, would occur in two phases. Phase 1 involves construction of the Central Seawall and Phase 2 involves construction of the North Seawall. The entire project is expected to take 7 years, but SDOT's request covers the first 5 years. Section 2 of SDOT's application describes the activities in detail, as well as the location and construction schedule.

**Information Solicited**

Interested persons may submit information, suggestions, and comments concerning SDOT's request (see **ADDRESSES**). All information, suggestions, and comments related to SDOT's request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by SDOT's activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: October 18, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–26236 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMODITY FUTURES TRADING COMMISSION

### Meeting of Technology Advisory Committee

**AGENCY:** Commodity Futures Trading Commission (''CFTC'').

**ACTION:** Notice.

**SUMMARY:** The CFTC announces that on Tuesday, October 30, 2012, its Technology Advisory Committee (TAC) will hold a public meeting in Chicago at the Hilton Chicago, 720 South Michigan Ave., Chicago, Illinois, 60605, from 9:00 a.m. to 5:00 p.m. The TAC will have presentations on the definition for High Frequency Trading (HFT) from its Subcommittee on Automated and High Frequency Trading, and presentations on technology solutions for both protecting customer funds, and solutions related to futures commission merchant (FCM) and designated contract market (DCM) risk management.

**DATES:** The meeting will be held on October 30, 2012, from 10:00 a.m. to 5:00 p.m. Members of the public who wish to submit written statements in connection with the meeting should submit them by October 29, 2012.

**ADDRESSES:** The meeting will take place in Chicago at the Hilton Chicago, 720 South Michigan Ave., Chicago, Illinois, 60605. Written statements should be submitted to: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, attention: Office of the Secretary. Please use the title ''Technology Advisory Committee'' in any written statement submitted. Any statements submitted in connection with the committee meeting will be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Bella Rozenberg, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, (202) 418–5119.

**SUPPLEMENTARY INFORMATION:** The CFTC has determined that holding the announced TAC meeting is in the public interest in connection with the duties imposed on the CFTC by the Commodity Exchange Act, 7 U.S.C. 1–26, as amended. Therefore, the meeting is being announced with less than the 15 calendar days' notice provided by 41 CFR 102–3.150(b). The TAC meeting will focus on three significant issues facing the futures and swaps industries as the Commission continues to finalize rules under the Dodd Frank Act. Those issues are: (1) HFT definitions; (2) protecting customer funds; and (3) FCM and DCM risk management. The meeting will be open to the public with seating on a first-come, first-served basis. Members of the public who wish to listen to the meeting by telephone may do so by calling a toll-free telephone line to contact to a live, listen-only audio feed. Call-in participants should be prepared to provide their first name, last name and affiliation. Additionally, a video recording of the meeting will be published through a link on the CFTC's Web site.

All written submissions provided to the CFTC in any form will also be published on the Web site of the CFTC.

*Domestic Toll Free:* 1–866–844–9416.

*International Toll:* Under Related Documents to be posted on *www.cftc.gov*.

*Conference ID:* 6403947.

*Call Leader Name:* Michael Jones.

*Pass Code/Pin Code:* CFTC.

**Authority:** 5 U.S.C. app. 2 § 10(a)(2).

By the Commodity Futures Trading Commission.

Dated: October 19, 2012.

**Sauntia S. Warfield,**

*Assistant Secretary of the Commission.*

[FR Doc. 2012–26173 Filed 10–23–12; 8:45 am]

**BILLING CODE 6351–01–P**

## THE BUREAU OF CONSUMER FINANCIAL PROTECTION

### Privacy Act of 1974, as Amended

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Notice of Proposed Privacy Act System of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Bureau of Consumer Financial Protection, hereinto referred to as the Consumer Financial Protection Bureau (''CFPB'' or the ''Bureau''), gives notice of the establishment of a Privacy Act System of Records.

**DATES:** Comments must be received no later than November 23, 2012. The new system of records will be effective December 3, 2012, unless the comments received result in a contrary determination.

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

- *Electronic: privacy@cfpb.gov.*
- *Mail/Hand Delivery/Courier:* Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

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) 435–7220. All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** Claire Stapleton, Chief Privacy Officer, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552, (202) 435–7220.

**SUPPLEMENTARY INFORMATION:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (''Act''), Public Law 111–203, Title X, established the CFPB to administer and enforce federal consumer financial law. The new system of records described in this notice, CFPB.023—CFPB Prize Competitions Program Records, will enable the CFPB to manage its prize competition program authorized by the America COMPETES Reauthorization Act of 2010, select judges for CFPB sponsored prize competitions, maintain accounting and financial information associated with making authorized payments to companies or individuals who are CFPB sponsored prize competition awardees, develop reports to applicable federal, state, and local taxing officials of taxable income, and to meet other reporting requirements. The CFPB will maintain control over the records covered by this notice.

The report of the new system of records has been submitted to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated November 30, 2000,[1] and the Privacy Act, 5 U.S.C. 552a(r).

The system of records entitled ''CFPB.023—CFPB Prize Competitions Program Records'' is published in its entirety below.

Dated: October 16, 2012.

**Claire Stapleton,**

*Chief Privacy Officer, Bureau of Consumer Financial Protection.*

**CFPB.023**

**SYSTEM NAME:**

CFPB Prize Competitions Program Records.

**SYSTEM LOCATION:**

Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered by this system include: (1) Any individual who participates in a CFPB sponsored prize competition, or is a CFPB sponsored prize competition awardee, including representatives of companies who, in their business capacity, may participate in or otherwise represent their companies in CFPB sponsored prize competitions; (2) Any individual who nominates an individual to serve as a judge for a CFPB sponsored prize competition, or is nominated to serve as a judge, is currently serving as a judge, has been selected as an alternative judge, and/or has served as a judge and is no longer serving; and (3) Any individual who notarizes, witnesses, or otherwise verifies a declaration of participation associated with a CFPB sponsored prize competition.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information maintained on CFPB sponsored prize competition participants will include: contact information (including name, address, email address, and telephone number). Information maintained on CFPB sponsored prize competition awardees will include: (1) Contact information (including name, address, email address, and telephone number); (2) employment information, including title; (3) information necessary for payment, including Social Security number (''SSN''), Tax Identification Number (''TIN''), Employee Identification Number (''EIN''), Data Universal Numbering System (''DUNS'') Number, Commercial and Government Entity (''CAGE'') number, Electronic Funds Transfer (''EFT'') data, and/or financial institution name, routing, and account numbers; and (4) information relevant to determination of eligibility for selection as a prize competition awardee, such as employment information, citizenship status, and declaration of desire and eligibility to participate. Information maintained on individuals who nominate an individual to serve as a judge for a CFPB sponsored prize competition will include name and contact information (including name, address, email address, and telephone number). Information maintained on individuals serving as, or being nominated to serve as a judge for a CFPB sponsored prize competition will include place of birth, date of birth, gender, citizenship status, declaration of desire and eligibility to participate, SSN, financial disclosure information, and other information that can be used to determine if the individual is fit to participate. Information collected about individuals who notarize, witness, or otherwise verify declarations of participation associated with a CFPB sponsored prize competition includes name and notary seal (including name, state of issue, and commission expiration date) only.

Records are subject to the Privacy Act only to the extent that they concern individuals; information pertaining to corporations and other business entities and organizations are not subject to the Privacy Act.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

America COMPETES Reauthorization Act of 2010, Public Law 111–358, Section 105, codified at 15 U.S.C. 3719; Dodd-Frank Wall Street Reform and Consumer Financial Protection Act of 2010, Public Law 111–203, Section 1012, codified at 12 U.S.C. 5492.

**PURPOSE(S):**

Records in this system are collected to enable the CFPB to manage its prize competition program authorized by the America COMPETES Reauthorization Act of 2010, select judges for CFPB sponsored prize competitions, maintain accounting and financial information associated with making authorized payments to companies or individuals who are CFPB sponsored prize competition awardees, develop reports to applicable federal, state, and local taxing officials of taxable income, and to meet other reporting requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

These records may be disclosed, consistent with the CFPB Disclosure of Records and Information Rules, promulgated at 12 CFR 1070 *et seq.,* to:

(1) Appropriate agencies, entities, and persons when: (a) The CFPB suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the CFPB has determined that, as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the CFPB or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the CFPB's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm;

(2) Another federal or state agency to (a) permit a decision as to access, amendment or correction of records to be made in consultation with or by that agency, or (b) verify the identity of an individual or the accuracy of

[1] Although the CFPB, under 12 U.S.C. 5497(a)(4)(E), is not legally required to follow OMB-issued guidance, it voluntarily follows OMB privacy-related guidance as a best practice and to facilitate cooperation and collaboration with other agencies.

information submitted by an individual who has requested access to or amendment or correction of records;

(3) The Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf;

(4) Congressional offices in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Contractors, agents, or other authorized individuals performing work on a contract, service, cooperative agreement, job, or other activity on behalf of the CFPB or Federal Government and who have a need to access the information in the performance of their duties or activities;

(6) The U.S. Department of Justice (''DOJ'') for its use in providing legal advice to the CFPB or in representing the CFPB in a proceeding before a court, adjudicative body, or other administrative body, where the use of such information by the DOJ is deemed by the CFPB to be relevant and necessary to the advice or proceeding, and such proceeding names as a party in interest:

(a) The CFPB;

(b) Any employee of the CFPB in his or her official capacity;

(c) Any employee of the CFPB in his or her individual capacity where DOJ has agreed to represent the employee; or

(d) The United States, where the CFPB determines that litigation is likely to affect the CFPB or any of its components;

(7) Members of the media, federal, state, and local government officials or other recipients of the CFPB's external affairs communications to inform them about CFPB sponsored prize competitions, awardees, related selection processes, and other program activities;

(8) To the public, members of the media, federal, state, and local government officials, or other recipients of CFPB reports, viewers of the CFPB's Web site, blog postings, and other social media, and recipients of other public relations materials issued by the CFPB about CFPB sponsored prize competitions, awardees, related selection processes, and other program activities; and

(9) To the Treasury Department, Internal Revenue Service, and other governmental entities, including state and local taxing officials, to facilitate taxation of payments made to CFPB sponsored prize competition awardees.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Paper and electronic records.

**RETRIEVABILITY:**

Records are retrievable by a variety of fields including, without limitation, the individual's name, SSN, address, account number, phone number, date of birth, employer, prize competition name, or by some combination thereof.

**SAFEGUARDS:**

Access to electronic records is restricted to authorized personnel who have been issued non-transferrable access codes and passwords. Other records are maintained in locked file cabinets or rooms with access limited to those personnel whose official duties require access.

**RETENTION AND DISPOSAL:**

The CFPB will maintain electronic and paper records indefinitely until the National Archives and Records Administration (''NARA'') approves the CFPB's records disposition schedule.

**SYSTEM MANAGER(S) AND ADDRESS:**

Consumer Financial Protection Bureau, Chief Financial Officer, 1700 G Street NW., Washington, DC 20552.

**NOTIFICATION PROCEDURE:**

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing in Title 12, Chapter 10 of the CFR, ''Disclosure of Records and Information.'' Address such requests to: Chief Privacy Officer, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20552.

**RECORD ACCESS PROCEDURES:**

See ''Notification Procedures'' above.

**CONTESTING RECORD PROCEDURES:**

See ''Notification Procedures'' above.

**RECORD SOURCE CATEGORIES:**

Information in this system is provided by individuals who participate in CFPB sponsored prize competition activities, by individuals who nominate an individual to serve as a judge for a CFPB sponsored prize competition, or individuals who are nominated or serve as judges for a CFPB sponsored prize competition, and by individuals who notarize, witness, or otherwise verify declarations of participation associated with a CFPB sponsored prize competition.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 2012–26141 Filed 10–23–12; 8:45 am]

**BILLING CODE 4810–AM–P**

## DEPARTMENT OF ENERGY

**[FE Docket No. 12–97–LNG]**

## Cheniere Marketing, LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 22-Year Period

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on August 31, 2012, by Cheniere Marketing, LLC (CMI), requesting long-term, multi-contract authorization to export up to 782 million MMBtu per year of LNG, equivalent to approximately 767 Bcf per year of natural gas, for a period of 22 years beginning on the earlier of the date of first export or eight years from the date the authorization is granted by DOE/FE. The LNG would be exported from the proposed Corpus Christi Liquefaction Project (CCL Project) to be located near Corpus Christi, Texas, to any country with which the United States does not have now or in the future has a free trade agreement (FTA) requiring national treatment for trade in natural gas and LNG; that has, or in the future develops, the capacity to import LNG; and with which trade is not prohibited by U.S. law or policy. On October 10, 2012, in a letter to DOE/FE, CMI clarified that it is requesting this authorization to export LNG both on its own behalf and as agent for other parties who hold title to the LNG at the point of export. The Application was filed under section 3 of the Natural Gas Act (NGA). Protests, motions to intervene, notices of intervention, and written comments are invited.

**DATES:** Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., eastern time, December 24, 2012.

**ADDRESSES:**

*Electronic Filing by email: fergas@hq.doe.gov.*

*Regular Mail:* U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil

Energy, P.O. Box 44375, Washington, DC 20026–4375.

*Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.):* U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:**

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Natural Gas Regulatory Activities, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–3397.

**SUPPLEMENTARY INFORMATION:**

## Background

CMI, a Delaware limited liability company with its principal place of business in Houston, Texas, is affiliated with Corpus Christi Liquefaction, LLC (CCL) and Cheniere Corpus Christi Pipeline, L.P. (CCP), the developers of the CCL Project. CMI is an indirect subsidiary of Cheniere Energy, Inc. (Cheniere Energy), a Delaware corporation with its primary place of business in Houston, Texas. Cheniere Energy is a developer of LNG terminals and natural gas pipelines on the Gulf Coast, including the CCL Project. CMI is authorized to do business in the States of Texas and Louisiana.

CMI states that it is filing this Application in conjunction with the CCL Project being developed by CMI's affiliates, CCL and CCP, at the site of the previously authorized CCLNG import terminal and associated pipeline in San Patricia and Nueces Counties Texas.[1] CMI states that, concurrent with this Application, CCL is filing an application with the Federal Energy Regulatory Commission (FERC) for authorization pursuant to Section 3(a) of the NGA to site, construct, and operate the CCL Terminal facilities (CCL Terminal). In addition, CCP is filing an application with the FERC pursuant to Section 7(c) of the NGA to construct, own, and operate the Corpus Christi Pipeline (Pipeline) to connect the CCL Terminal facilities to interstate and intrastate natural gas supplies and markets.

On August 31, 2012, in FE Docket No. 12–99–LNG, CMI filed with DOE/FE a separate application for long-term multi-contract authorization to engage in the export of LNG in an amount up to 782 million MMBtu per year, to any country with which the U.S. does not now or in the future will have an FTA requiring the national treatment for trade in natural gas and LNG; that has developed, or in the future develops, the capacity to import LNG; and with which trade is not prohibited by U.S. law or policy. DOE/FE subsequently issued an order in FE Docket No 12–99–LNG granting long-term export authorization to FTA countries from the CCL Project.[2]

## Current Application

In the instant Application, CMI seeks long-term, multi-contract authorization to export up to 782 million MMBtu per year of LNG, equivalent to approximately 767 Bcf per year of natural gas, for a period of 22 years beginning on the earlier of the date of first export or eight years from the date the authorization is granted by DOE/FE. CMI requests authorization to export LNG to any country with which the United States does not have an FTA requiring national treatment for trade in natural gas, that has, or in the future develops, the capacity to import LNG, and with which trade is not prohibited by U.S. law or policy.

CMI states that the CCL Project will be located on the northern shore of the La Quinta Channel north and east of the City of Corpus Christi, Texas. CMI states that the CCL Project will include three ConocoPhillips Optimized Cascade℠ LNG trains, each with a nominal liquefaction capacity of approximately five million metric tons per year. CMI states that the CCL Project will be designed to export 782 million MMBtu of LNG per year and to import up to 400,000 MMBtu of LNG per day. CMI states that at the CCL Project site, natural gas will be liquefied into LNG and stored in three 160,000 cubic meters full-containment LNG storage tanks. CMI further states that the LNG will be exported on LNG carriers that will arrive at the CCL Terminal through the La Quinta Channel in the Corpus Christi Bay.

CMI states that concurrent with this Application, CCL is filing an application with the Federal Energy Regulatory Commission (FERC) for authorization pursuant to Section 3(a) of the NGA to site, construct and operate the CCL Terminal, and CCP is filing an application with FERC pursuant to Section 7(c) of the NGA to construct, own and operate the Corpus Christi Pipeline to connect the CCL Terminal facilities to interstate and intrastate natural gas supplies and markets.[3] DOE/FE will act as a cooperating agency in the FERC's environmental review process for the CCL Project and in the preparation of an environmental assessment (EA) or environmental impact statement (EIS) to satisfy DOE/FE's NEPA responsibilities.

CMI states that it proposes to source natural gas to be used as feedstock for LNG production at the CCL Project from the interstate and intrastate grid at points of interconnection with other pipelines and points of liquidity both upstream and downstream of the Pipeline. CMI notes that through the Pipeline's interconnects with various interstate and intrastate pipeline systems, the CCL Project will have access to virtually any point on the U.S. interstate pipeline system through direct delivery or by displacement.

CMI states that it currently is engaged in commercial discussions with CCL to obtain all the available liquefaction capacity at the CCL Terminal. CMI states that either CMI or the CCL Project will bear the responsibility for sourcing gas supplies for delivery to the CCL Terminal. CMI states that CCL will commence negotiations with CCP for transportation capacity on the Pipeline once commercial discussion between CCL and CMI progress.

CMI states that it will comply with all DOE/FE requirements for exporters and agents, including the registration requirements as first established in *Freeport LNG Development, L.P.,* DOE/FE Order No. 2913 and most recently set forth in *Excelerate Liquefaction Solutions I, LLC,* DOE/FE Order No. 3128.[4]

[1] The CCL Project is being developed at the same general locations proposed for in the previously authorized Corpus Christi LNG, L.P. import terminal and associated pipeline. *See Corpus Christi LNG, L.P. and Cheniere Corpus Christi Pipeline Company, Order Granting Authority Under Section 3 of the Natural Gas Act and Issuing Certificates,* 111 FERC ¶ 61,081 (2005).

[2] *Cheniere Marketing, LLC,* Order Granting Long-Term Multi-Contract Authorization to Export Liquefied Natural Gas by Vessel from the Proposed Corpus Christi Liquefaction Project to Free Trade Agreement Nations, DOE/FE Order No. 3164, October 16, 2012 (FE Docket No 12–99–LNG).

[3] CMI stated that CCL commenced the FERC's mandatory National Environmental Policy Act (NEPA), 42 U.S.C. 4321, *et seq.,* prefiling process for the CCL Project on December 22, 2011 in Docket No. PF12–3–000. Through a May 31, 2012, filing, CCL and CCP formally notified the Commission of the inclusion of CCP in the NEPA prefiling process in Docket No. PF 12–3–000.

[4] *Freeport LNG Development, L.P., Order Granting Long-Term Authorization to Export Liquefied Natural Gas from Freeport LNG Terminal to Free Trade Nations,* FE Docket No. 10–160–LNG, DOE/FE Order No. 2913 (February 10, 2011); *Excelerate Liquefaction Solutions I, LLC,* FE Docket No. 12–61–LNG, DOE/FE Order No. 3128 (August 9, 2012).

CMI states that it has not yet entered into any long-term gas supply or long-term export contracts with regards to this Application. CMI states that, accordingly, it is not submitting transaction-specific information (e.g., long-term supply agreements and long-term export agreements) at this time and requests that DOE/FE make a similar finding to that made in *Sabine Pass Liquefaction, LLC,* DOE/FE Order No. 2961, issued on May 20, 2011, in Docket No. 10–111–LNG, with regard to the transaction-specific information requested in Section 590.202(b) of the DOE regulations. CMI states that it is cognizant of the DOE/FE Policy Guidelines (of 1984) and expects to enter into export transactions that are responsive to the relative level of natural gas prices in the United States, similar to those entered into in connection with the Sabine Pass liquefaction and export project (DOE/FE Docket No. 10–111–LNG), thereby creating supply to mitigate price impacts if the U.S. market is in greater need of natural gas than would otherwise be exported.

Lastly, CMI requests that DOE/FE issue a conditional Order authorizing the export of domestically produced LNG as requested in this Application by February 2013, followed by issuance of a final order immediately upon completion of the environmental review of the CCL Project by the FERC.

**Public Interest Considerations**

CMI states that it proposed the project in part due to the improved outlook for domestic natural gas production, owing to drilling productivity gains that have enabled rapid growth in new supplies in South Texas and elsewhere in the United States. CMI contends that improvements in drilling and extraction technologies have coincided with a rapid diffusion of knowledge in the natural gas industry of the resource base and best practices in drilling and resource development. CMI notes that these changes have rendered obsolete once prominent concerns of declining future domestic natural gas production. CMI maintains that authorizing exports of LNG will further the responsible development of these emerging sources of domestic natural gas, providing a positive market solution that will:

(1) Raise domestic natural gas productive capacity and promote stability in domestic natural gas pricing,

(2) Stimulate the regional, state, and national economy through job creation and increased economic activity,

(3) Promote the liberalization of contract structures in global LNG markets by lowering the cost of energy in foreign nations, thereby fostering economic growth abroad and creating demand for U.S.-sourced goods and services,

(4) Expand economic activity and job creation in the domestic natural gas and petrochemicals sectors,

(5) Promote greater national security by expanding American influence in international energy markets while enabling greater production in domestic petroleum basins,

(6) Improve the U.S. balance of payments between $5.88 billion and $9.52 billion annually through the exportation of natural gas and the displacement of imports of other petroleum liquids, and

(7) Increase economic trade and ties with foreign trading partners and hemispheric allies, and displace environmentally damaging fuels in those countries.

In support of its Application, CMI commissioned a report from Advanced Resources International (ARI), titled *U.S. Natural Gas Resources and Productive Capacity: Mid-2012* (ARI Resource Report), to assess the scope of domestic natural gas resources and their potential for future recovery. CMI states that the ARI Resource Report, as well as publicly available information, demonstrates that the U.S. has significant natural gas resources available to meet projected future domestic needs, including the quantities contemplated for export under this Application. CMI also states that the ARI Resource Report establishes that the availability of new natural gas reserves is likely to continue expanding into the future as new unconventional formations are discovered and the oil and gas industry continues to improve drilling and extraction techniques. CMI further states that the ARI Resource Report also shows that the incremental price impact of such exports is modest in comparison to the benefits garnered by the CCL Project, and when compared to the normal year-to-year price volatility in the natural gas market, is statistically insignificant.

In support of its Application, CMI also commissioned a report from the Perryman Group, titled *The Anticipated Impact of Cheniere's Proposed Corpus Christi Liquefaction Facility on Business Activity in Corpus Christi, Texas, and the US* (Perryman Report). Based on this report, CMI presents the following reasons why the CCL Project is in the public interest:

First, with respect to economic activity, the Perryman Report estimates that the cumulative beneficial direct impact to business activity and tax receipts due to the construction and operation of the CCL project over 25 years will range from $9.9 billion to $11.2 billion to the regional economy, $19.6 billion to $23.5 billion to the Texas economy, and $25.5 billion to $31.1 billion to the U.S. economy.

Second, the Perryman Report estimates that the total indirect benefits due to enhanced natural gas exploration and production investments over 25 years made possible by the CCL Project will be $13.8 billion to the regional economy, $101.0 billion to the Texas economy, and $111.4 billion to the U.S. economy.

Third, with respect to job creation, the Perryman Report estimates the construction and operation of the CCL Project over 25 years will create between 39,823 and 52,613 jobs nationwide, and that an additional 44,341 jobs will be indirectly generated owing to stimulus in the E&P sector.

Fourth, CMI states that another indirect benefit of the CCL Project will be captured by the chemical industry, which CMI says will be advantageously impacted by the additional production of NGLs, such as ethane, made possible through LNG exports. CMI states that the economic benefits due to the construction of new chemical manufacturing facilities supported by exports from the CCL Project will be $1.1 billion to the regional economy, $2.1 billion to the Texas economy, and $3.0 billion to the U.S. economy.

CMI states that these as well as other benefits enumerated in this Application compellingly demonstrate that the export of LNG and the approval of this Application are in the public interest.

Further details can be found in the Application, which has been posted at *http://www.fe.doe.gov/programs/gasregulation/index.html.*

**Environmental Impact**

CMI states that the potential environment impacts of the Project will be reviewed by the FERC under the National Environmental Policy Act (NEPA). CMI notes that DOE/FE has agreed to act as a cooperating agency in the environmental review process for the CCL project, including the preparation of an EA or EIS, which will satisfy the NEPA responsibilities associated with the LNG exports as proposed in the Application. Accordingly, CMI requests that DOE/FE issue a conditional order authorizing the export of LNG as requested in the Application, conditioned on completion of the environmental review of the CCL Project by the FERC.

**DOE/FE Evaluation**

The Application will be reviewed pursuant to section 3 of the NGA, as amended, and the authority contained in DOE Delegation Order No. 00–002.00L (April 29, 2011) and DOE Redelegation Order No. 00–002.04E (April 29, 2011). In reviewing this LNG export Application, DOE will consider any issues required by law or policy. To the extent determined to be relevant or appropriate, these issues will include the impact of LNG exports associated with this Application, and the cumulative impact of any other application(s) previously approved, on domestic need for the gas proposed for export, adequacy of domestic natural gas supply, U.S. energy security, and any other issues, including the impact on the U.S. economy (GDP), consumers, and industry, job creation, U.S. balance of trade, international considerations, and whether the arrangement is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should comment in their responses on these issues, as well as any other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicants, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

**Public Comment Procedures**

In response to this notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene or notices of intervention must meet the requirements specified by the regulations in 10 CFR part 590.

Filings may be submitted using one of the following methods: (1) emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 12–97–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–97–LNG; or (3) hand delivering an original and three paper copies of the filing to the Office of Natural Gas Regulatory Activities at the address listed in **ADDRESSES**. The filing must include a reference to FE Docket No. 12–97–LNG.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application filed by CMI is available for inspection and copying in the Office of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html.*

Issued in Washington, DC, on October 18, 2012.

**John A. Anderson,**

*Manager, Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Fossil Energy.*

[FR Doc. 2012–26191 Filed 10–23–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Senior Executive Service; Performance Review Board

**AGENCY:** U.S. Department of Energy.

**ACTION:** SES Performance Review Board Standing Register.

**SUMMARY:** This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

**DATES:** These appointments are effective as of September 30, 2012.

ADAMS, VINCENT NMN
ADCOCK, DONALD E
AIYAR, PRIYA R
ALEXANDER, KATHLEEN B
ALLISON, JEFFREY M
AMARAL, DAVID M
ANDERSON, CYNTHIA V
ANDERSON, ROBERT T
ANDREWS, CLAUDIA R
AOKI, STEVEN NMN
ARANGO III, JOSEPH NMN
ASCANIO, XAVIER NMN
ATKINS, ARTHUR G
AZAR, LAUREN L
BAKER, KENNETH E
BARHYDT, LAURA L
BATTERSHELL, CAROL J
BEAMON, JOSEPH A
BEARD, JEANNE M
BEARD, SUSAN F
BEAUSOLEIL, GEOFFREY L
BEKKEDAHL, LARRY N
BELL, MELODY C
BIENIAWSKI, ANDREW J
BIERBOWER, WILLIAM J
BISHOP, CLARENCE T
BISHOP, TRACEY L
BLACK, STEVEN K
BOARDMAN, KAREN L
BODI, F LORRAINE
BONILLA, SARAH J
BORGSTROM, CAROL M
BOSCO, PAUL NMN
BOUDREAU, ROBERT N
BOULAY, TIMOTHY M
BOULDEN III, JOHN S
BOWHAN, BRETT R
BOWMAN, DAVID R
BOYD, DAVID O

BOYKO, THOMAS R
BOYLE, WILLIAM J
BREMER, JOHN D
BRESE, ROBERT F
BROTT, MATTHEW J
BROWN, DAVID S
BROWN, FRED L
BROWN, STEPHANIE H
BRYAN, WILLIAM N
BURROWS, CHARLES W
BUTTRESS, LARRY D
CADIEUX, GENA E
CALBOS, PHILIP T
CALLAHAN, SAMUEL N
CAMPAGNONE, MARI–JOSETTE N
CAMPBELL II, HUGH T
CANNON, SCOTT C
CAROSINO, ROBERT M
CARR, MICHAEL S
CERVENY, THELMA J
CHABAY, JOHN E
CHALK, STEVEN G
CHARBONEAU, STACY L
CHEN, YU–HAN NMN
CHOI, JOANNE Y
CHUNG, DAE Y
CLAPPER, DANIEL R
CLARK, DIANA D
CLINTON, RITA M
COHEN, DANIEL NMN
COLLAZO, YVETTE T
CONTI, JOHN J
COOPER, JAMES R
COOPER, SUZANNE BENNETT
CORBIN, ROBERT F
COREY, RAY J
CRAIG JR, JACKIE R
CRANDALL, DAVID H
CRAWFORD, GLEN D
CROUTHER, DESI A
CROWELL, BRADLEY R
CUGINI, ANTHONY V
CUMMINS, KELLY NICOLE
CUTLER, THOMAS RUSSELL
DAVENPORT, SHARI T
DAVIS, KIMBERLY A
DAVIS, PATRICK B
DEAROLPH, DOUGLAS J
DECKER, ANITA J
DEENEY, CHRISTOPHER NMN
DEHAVEN, DARREL S
DEHMER, PATRICIA M
DEHORATIIS JR, GUIDO NMN
DELHOTAL, KATHERINE CASEY
DELWICHE, GREGORY K
DETWILER, RALPH P
DIAMOND, BRUCE M
DICAPUA, MARCO S
DICKENSON, HOWARD E
DIFIGLIO, CARMEN NMN
DIKEAKOS, MARIA V
DIXON, ROBERT K
DOWELL, JONATHAN A
DRUMMOND, WILLIAM K
DURANT, CHARLES K
ECKROADE, WILLIAM A
EHLI, CATHY L
ELKIND, JONATHAN H
ELY, LOWELL V
ERHART, STEVEN C
ESCHENBERG, JOHN R
FERRARO, PATRICK M
FLETCHER, THOMAS W
FLOHR, CONNIE M
FLYNN, KAREN L
FRANCO JR., JOSE R
FRANKLIN, RITA R
FRANTZ, DAVID G
FREMONT, DOUGLAS E
FRESCO, MARY ANN E
FURRER, ROBIN R
FURSTENAU, RAYMOND V
FYGI, ERIC J
GAFFNEY, BARRY A
GALLAGHER, CHRISTIANA NMN
GAMAGE, SARAH L
GARCIA, ANNA M
GASPEROW, LESLEY A
GEERNAERT, GERALD L
GEISER, DAVID W
GELISKE, TERRY M
GELLES, CHRISTINE M
GENDRON, MARK O
GERRARD, JOHN E
GIBBS, ROBERT C
GIBSON JR, WILLIAM C
GILBERTSON, MARK A
GILLO, JEHANNE E
GOLAN, PAUL M
GOLDSMITH, ROBERT NMN
GOLUB, SAL JOSEPH
GOODRUM, WILLIAM S
GOODWIN, KARL E
GORDON, THEANNE E
GREENAUGH, KEVIN C
GREENWOOD, JOHNNIE D
GRIEGO, JUAN L
GROF–TISZA, LAJOS E
GROSE, AMY E
GRUENSPECHT, HOWARD K
GUEVARA, ARNOLD E
GUEVARA, KAREN C
HALE, ANDREW M
HALE, JOHN H
HALLMAN, TIMOTHY J
HANDWERKER, ALAN I
HANLON, PETER H
HANNIGAN, JAMES J
HARDWICK JR, RAYMOND J
HARMS, TIMOTHY C
HARP, BENTON J
HARRELL, JEFFREY P
HARRINGTON, PAUL G
HARRIS, ROBERT J
HARROD, WILLIAM J
HARVEY, STEPHEN J
HELD, EDWARD B
HENDERSON III, CLYDE H
HENNEBERGER, KAREN O
HENNEBERGER, MARK W
HERCZEG, JOHN W
HERRERA, C ROBERT D
HICKMAN, MICHAEL O
HINE, SCOTT E
HINTZE, DOUGLAS E
HITCHCOCK, DANIEL A
HOAG, DANIEL KEITH
HOGAN, KATHLEEN B
HOLECEK, MARK L
HOLLAND, RALPH E
HOLLETT, DOUGLAS W
HOLLRITH, JAMES W
HORTON, LINDA L
HOWARD, MICHAEL F
HOWELL JR, J T
HUIZENGA, DAVID G
HURLBUT, BRANDON K
JOHNS, CHRISTOPHER S
JOHNSON JR, THOMAS NMN
JOHNSON, DAVID F
JOHNSON, ROBERT SHANE
JOHNSON, SANDRA L
JONAS, DAVID S
JONES, GREGORY A
JONES, MARCUS E
JONES, WAYNE NMN
JUJ, HARDEV S
KAEMPF, DOUGLAS E
KAPLAN, STAN M
KAUFFMAN, RICHARD L
KEARNEY, JAMES H
KELLY, HENRY C
KELLY, JOHN E
KELLY, LARRY C
KENCHINGTON, HENRY S
KENDELL, JAMES M
KETCHAM, TIMOTHY E
KHAN, TARIQ M
KIGHT, GENE H
KIM, DONG K
KIMBERLING, LINDA S
KIRCHHOFF, STEPHEN A
KLARA, SCOTT M
KLAUSING, KATHLEEN A
KLING, JON NMN
KNOELL, THOMAS C
KNOLL, WILLIAM S
KOLB, INGRID A C
KOURY, JOHN F
KROL, JOSEPH J
KUNG, HUIJOU HARRIET
KUSNEZOV, DIMITRI F
LAGDON JR, RICHARD H
LAWRENCE, ANDREW C
LAWRENCE, STEVEN J
LEATHLEY, KIMBERLY A
LECKEY, THOMAS J
LEE, TERRI TRAN
LEGG, KENNETH E
LEHMAN, DANIEL R
LEIFHEIT, KEVIN R
LEISTIKOW, DANIEL A
LEMPKE, MICHAEL K
LENHARD, JOSEPH A
LERSTEN, CYNTHIA A
LEVITAN, WILLIAM M
LEWIS III, CHARLES B
LEWIS, ROGER A
LINGAN, ROBERT M
LIVENGOOD, JOANNA M
LLUY, PAUL A
LOCKWOOD, ANDREA K
LOWE, OWEN W
LOWERY, FRANK JOSEPH MICHA
LOYD, RICHARD NMN
LUCAS, JOHN T
LUSHETSKY, JOHN M

LYNCH, TIMOTHY G
MACINTYRE, DOUGLAS M
MAINZER, ELLIOT E
MARCINOWSKI III, FRANCIS N
MARKOVITZ, ALISON J
MARLAY, ROBERT C
MARMOLEJOS, POLI A
MARTIN, JARED L
MCARTHUR, BILLY R
MCBREARTY, JOSEPH A
MCCONNELL, JAMES J
MCCORMICK, MATTHEW S
MCGINNIS, EDWARD G
MCGUIRE, PATRICK W
MCKEE, BARBARA N
MCKENZIE, JOHN M
MCRAE, JAMES BENNETT
MEACHAM, A AVON
MEEKS, TIMOTHY J
MELAMED, ELEANOR NMN
MELENDEZ, CARMELO NMN
MELLINGTON, STEPHEN A
MENDELSOHN, CATHERINE R
MILLIKEN, JOANN NMN
MINVIELLE, THOMAS M
MIOTLA, DENNIS M
MOE, DARRICK C
MOLLOT, DARREN J
MONETTE, DEBORAH D
MONTOYA, ANTHONY H
MOODY III, DAVID C
MOORE, JOHNNY O
MOORER, RICHARD F
MOREDOCK, J EUN
MORTENSON, VICTOR A
MOURY, MATTHEW B
MUELLER, TROY J
MURPHIE, WILLIAM E
MURPHY, JAMES B
MUSTIN, TRACY P
NAPLES, ELMER M
NAPOLITANO, SAMUEL A
NASSIF, ROBERT J
NAVIN, JEFFREY M
NICHOLS, DON F
NICOLL, ERIC G
NWACHUKU, FRANCES I
O'BRIEN, JAMES B
O'CONNOR, STEPHEN C
O'CONNOR, THOMAS J
ODER, JOSEPH M
O'KONSKI, PETER J
OLENCZ, JOSEPH NMN
OLIVER, LEANN M
OLIVER, STEPHEN R
OSBORN II, ROBERT J
OSHEIM, ELIZABETH L
OWENDOFF, JAMES M
PAVETTO, CARL S
PAYNE, JANIE L
PEARSON, VIRGINIA A
PEEK, MICHAEL A
PENRY, JUDITH M
PHAN, THOMAS H
PODONSKY, GLENN S
PORTER, STEVEN A
POWELL, CYNTHIA ANN
PROCARIO, MICHAEL P
PROVENCHER, RICHARD B
PURUCKER, ROXANNE E
RAINES, ROBERT B
RASAR, KIMBERLY D
RHODERICK, JAY E
RICHARDS, AUNDRA M
RICHARDSON, SUSAN S
RISSER, ROLAND J
ROACH, RANDY A
RODGERS, DAVID E
RODGERS, STEPHEN J
ROEGE, WILLIAM H
ROHLFING, ERIC A
ROY, MELL J
SALMON, JEFFREY T
SAMUELSON, SCOTT L
SATYAPAL, SUNITA NMN
SCHAAL, ALFRED MICHAEL
SCHEINMAN, ADAM M
SCHOENBAUER, MARTIN J
SCHREIBER, BERTA L
SCHUNEMAN, PATRICIA J
SCOTT, RANDAL S
SCOTT, ROBERT W
SEIDLER, PAUL E
SENA, RICHARD F
SHEELY, KENNETH B
SHEPPARD, CATHERINE M
SHOOP, DOUG S
SHORT, STEPHANIE A
SILVERSTEIN, BRIAN L
SIMONSON, STEVEN C
SKUBEL, STEPHEN C
SMITH, CHRISTOPHER A
SMITH, KEVIN W
SMITH, THOMAS Z
SMITH–KEVERN, REBECCA F
SNIDER, ERIC S
SNYDER, ROGER E
SPEARS, TERREL J
SPERLING, GILBERT P
STAKER, THOMAS R
STEARRETT, BARBARA H
STENSETH, WILLIAM LYNN
STEPHENSON, APRIL G
STONE, BARBARA R
STREIT, LISA D
STUCKY, JEAN SEIBERT
SURASH, JOHN E
SWEETNAM, GLEN E
SYKES, MERLE L
SYNAKOWSKI, EDMUND J
TALBOT JR, GERALD L
THOMPSON, MICHAEL A
THRESS JR, DONALD F
TILDEN, JAY A
TOCZKO, JAMES E
TOMER, BRADLEY J
TRAUTMAN, STEPHEN J
TRIAY, INES R
TURNER, CHRISTOPHER MARK
TURNER, SHELLEY P
TURNURE, JAMES T
TYBOROWSKI, TERESA ANN
TYNER, TERESA M
UNRUH, TIMOTHY D
URIE, MATTHEW C
VALDEZ, WILLIAM J
VAN DAM, JAMES W
VANGENDEREN, HEIDI NMN
VAVOSO, THOMAS G
VEGA, GILBERT NMN
VENUTO, KENNETH T
VILLAR, JOSE A
WADDELL, JOSEPH F
WAISLEY, SANDRA L
WARD, GARY K
WARNICK, WALTER L
WARREN, BRADLEY S
WATKINS, EDWARD F
WEATHERWAX, SHARLENE C
WEIS, MICHAEL J
WELLING, DAVID CRAIG
WESTON–DAWKES, ANDREW P
WHITNEY, JAMES M
WILBER, DEBORAH A
WILCHER, LARRY D
WILLIAMS, ALICE C
WILLIAMS, RHYS M
WILLIAMS, THOMAS D
WILSON JR, THOMAS NMN
WOOD, JAMES F
WORLEY, MICHAEL N
WORTHINGTON, JON C
WORTHINGTON, PATRICIA R
WRIGHT, STEPHEN J
WYKA JR, THEODORE A
YEH, DAVID Y
YOSHIDA, PHYLLIS G
ZABRANSKY, DAVID K
ZAMORSKI, MICHAEL J
ZEH, CHARLES M
ZIEMIANSKI, EDWARD J

Issued in Washington, DC, October 18, 2012.

**Sarah J. Bonilla,**

*Acting Chief Human Capital Officer, Office of the Chief Human Capital Officer.*

[FR Doc. 2012–26189 Filed 10–23–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Senior Executive Service; Performance Review Board

**AGENCY:** U.S. Department of Energy.

**ACTION:** Designation of Performance Review Board Chair.

**SUMMARY:** This notice provides the Performance Review Board Chair designee for the Department of Energy.

**DATES:** This appointment is effective as of September 30, 2012.

Susan F. Beard

Issued in Washington, DC, October 18, 2012.

**Sarah J. Bonilla,**

*Acting Chief Human Capital Officer, Office of the Chief Human Capital Officer.*

[FR Doc. 2012–26188 Filed 10–23–12; 8:45 am]

**BILLING CODE 6450–01–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 (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register**.

**DATES:**

November 14, 2012: 1:30 p.m.–5:30 p.m.

November 15, 2012: 9:00 a.m.–4:30 p.m.

**ADDRESSES:** L'Enfant Plaza Hotel, 480 L'Enfant Plaza SW., Washington, DC 20024.

**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
- Annual Committee Recommendations
- Update on the Biomass Research and Development Initiative
- USDA/DOE Project Presentations
- Update on Joint DPA Initiative

*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 every effort 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: *http://biomassboard.gov/committee/meetings.html.*

Issued at Washington, DC on October 18, 2012.

**LaTanya R. Butler,**

*Acting Deputy Committee Management Officer.*

[FR Doc. 2012–26190 Filed 10–23–12; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14332–000]**

### Historic Harrisville, Inc.; Notice of Application Accepted for Filing With the Commission, Intent To Waive Scoping, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, Soliciting Comments, Terms and Conditions, and Recommendations, and Establishing an Expedited Schedule for Processing

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 14332–000.

c. *Date Filed:* December 5, 2011.

d. *Applicant:* Historic Harrisville, Inc.

e. *Name of Project:* Cheshire Mills Hydroelectric Project.

f. *Location:* On Nubanusit Brook, in the Town of Harrisville, Cheshire County, New Hampshire. The project would not occupy lands of the United States.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Ms. Linda Willett, Historic Harrisville, Inc., P.O. Box 79, 69 Main Street, Harrisville, NH 03450, (603) 827–3722.

i. *FERC Contact:* Brandon Cherry, (202) 502–8328 or *brandon.cherry@ferc.gov.*

j. Deadline for filing motions to intervene and protests, comments, terms and conditions, and recommendations: Due to the small size and particular location of this project and the close coordination with state and federal agencies during the preparation of the application, the 60-day timeframe in 18 CFR 4.34(b) is shortened. Instead, motions to intervene and protests, comments, terms and conditions, and recommendations will be due 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll free at 1–866–208–3676; or, for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The proposed Cheshire Mills Hydroelectric Project would consist of: (1) The existing 94-foot-long, 29-foot-high quarried-stone Cheshire Mills Dam with a 38-foot-long, 27-foot-high spillway section; (2) an existing 0.2-acre impoundment with a normal maximum water surface elevation of 1,282.85 feet mean sea level; (3) an existing intake structure with a 24-foot-high, 5-foot-wide trashrack that would be modified to have 1-inch clear bar spacing, and a 4-foot-high, 4-foot-wide sluice gate; (4) an existing 128-foot-long, 42-inch-

diameter steel penstock; (5) an existing powerhouse containing a rebuilt turbine and a new generator with an installed capacity of 90 kilowatts; (6) an existing discharge portal in the bottom of the powerhouse; (7) a new 50-foot-long, 208-volt transmission line located in the mill connecting the generator to an existing distribution system; and (8) appurtenant facilities. The proposed project is estimated to generate an average of 213,000 kilowatt-hours annually.

m. Due to the project works already existing and the limited scope of proposed modifications to the project site described above, the applicant's close coordination with federal and state agencies during the preparation of the application, completed studies during pre-filing consultation, and agency-recommended preliminary terms and conditions, we intend to waive scoping and expedite the exemption process. Based on a review of the application and resource agency consultation letters, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in the EA were adequately identified during the pre-filing period, which included a public meeting and site visits, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, recreation and land use, aesthetic, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, or terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. Procedural Schedule: The application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Notice of the availability of the EA. | March 2013. |

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26134 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13739–002]**

### Lock+ Hydro Friends Fund XLII, LLC; Notice of Waiver, in Part, of Prefiling Consultation Required Under Section 4.38(C) of the Commission's Regulations

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major Original License.

b. *Project No.:* 13739–002.

c. *Date Filed:* September 17, 2012.

d. *Applicant:* Lock+ Hydro Friends Fund XLII, LLC.

e. *Name of Project:* Braddock Locks and Dam Hydroelectric Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Braddock Locks and Dam on the Monongahela River, in Allegheny County, Pennsylvania. The project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Mark R. Stover, Lock+™ Hydro Friends Fund XLII, c/o Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 310, Westmont, IL 60559; (877) 556–6566 ext. 711; *email—mark@hgenergy.com.*

i. *FERC Contact:* John Mudre at (202) 502–8902; or email at *john.mudre@ferc.gov.*

j. The application is not ready for environmental analysis at this time.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Braddock Locks and Dam and the Braddock Pool, and would consist of the following new facilities: (1) A new powerhouse with five turbine-generators having a total installed capacity of 3,750 kilowatts; (2) a new approximately 3,450-foot-long electric transmission line; (3) a switchyard and control room; and (4) appurtenant facilities. The average annual generation is estimated to be 25,020 megawatt-hours.

The proposed project would deploy hydropower turbines within a patented ''Large Frame Module'' (LFM) that would be deployed on the south (river left) side of the dam, opposite the location of the existing navigational locks and at the upstream face of the existing left closure weir. The proposed modular, low environmental impact powerhouse would be approximately 60.4 feet long, 16.6 feet wide, and 40 feet high, and constructed of structural-grade steel. The powerhouse will bear on a concrete foundation on rock that is anchored to the existing left closure weir. A trash rack with 6-inch openings would be placed at the powerhouse intake to increase safety and protect the turbines from large debris.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Waiver of Pre-filing Consultation: In its license application, filed on September 17, 2012, the applicant stated that it had been engaged in direct, substantive consultation with the entities that have expressed interest in the proposed project, including key federal and state agencies involved in the review of the proposed project. The applicant further states that in August, 2012, it forwarded an informal draft of the license application and associated study reports to the interested agencies, and subsequently met with the agencies to discuss the documents in detail. The applicant's license application included copies of correspondence from the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, and the Pennsylvania Department of Environmental Protection expressing support for proceeding directly to a final license application.

Therefore, we intend to accept the consultation that has occurred on this project during the pre-filing period and we intend to waive the pre-filing consultation requirements under section 4.38(c) pertaining to distribution and consultation on the draft license application.

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26136 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–3–000]**

### Tennessee Gas Pipeline Company, L.L.C.; Notice of Application

Take notice that on October 10, 2012, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in the above captioned docket an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for a certificate of public convenience and necessity authorizing Tennessee to construct, install, modify, operate, and maintain certain compressor facilities at three existing compressor stations in northeastern Pennsylvania, and to abandon certain compression facilities all part of its Rose Lake Expansion Project. The Rose Lake Expansion Project is designed to increase pipeline capacity by approximately 230,000 dekatherms per day of firm natural gas transportation service into northeast U.S. markets, all as more fully set forth in the application which is on file with the Commission and open to public inspection. 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.

Any questions concerning this application may be directed to Todd Piczak, Assistant General Counsel, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, phone: (713) 420–3822, fax: (713) 420–1601, email: *todd_piczak@kindermorgan.com,* or Thomas Joyce, Manager, Rates and Regulatory Affairs, Tennessee Gas Pipeline Company, L.L.C., 1001 Louisiana Street, Houston, Texas 77002, phone: (713) 420–3299, fax: (713) 420–1605, email: *tom_joyce@kindermorgan.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 7 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, 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.

*Comment Date:* November 7, 2012.

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26138 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 14367–001]**

### Don W. Gilbert Hydro Power, LLC; Notice of Application Accepted for Filing With the Commission; Intent To Waive Scoping; Soliciting Motions To Intervene and Protests; Ready for Environmental Analysis; and Soliciting Comments, Terms and Conditions, Recommendations, and Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* 14367–001.

c. *Date filed:* May 30, 2012.

d. *Applicant:* Don W. Gilbert Hydro Power, LLC.

e. *Name of Project:* Gilbert Hydroelectric Project.

f. *Location:* The project would utilize unnamed springs near the Bear River, eight miles southwest of Grace, Caribou County, Idaho. The project would not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r). (2006).

h. *Applicant Contact:* Don W. Gilbert and DeAnn G. Somonich, Don W. Gilbert Hydro Power, LLC, 1805 Grace Power Plant Road, Grace, Idaho 83241. Phone: (801) 725–1754.

i. *FERC Contact:* Kelly Wolcott, (202) 502–6480 or *kelly.wolcott@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, requests for cooperating agency status, comments, terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. *The Gilbert Project would consist of the following new features:* (1) A 8-foot-long, 3-foot-wide, 3-foot-deep drop inlet structure; (2) a 2-foot-diameter, 700-foot-long partially buried steel or plastic penstock; (3) a powerhouse containing two 45-kilowatt (kW) turbine/generator units for a total installed capacity of 90 kW; (4) a tailrace to convey flows from the powerhouse to the Bear River; (5) a 150-foot-long, 480-kilovolt transmission line; and (6) appurtenant facilities. The project is estimated to generate an average of 550 megawatthours annually. The project would be located on lands owned by the applicant.

m. Due to the applicant's close coordination with federal and state agencies during the preparation of the application, completed studies, and agency comments, we intend to waive scoping. Based on a review of the application, resource agency consultation letters, and comments filed to date, Commission staff intends to prepare a single environmental assessment (EA). Commission staff determined that the issues that need to be addressed in its EA have been adequately identified during the pre-filing period, which included a public meeting and site visit, and no new issues are likely to be identified through additional scoping. The EA will consider assessing the potential effects of project construction and operation on geology and soils, aquatic, terrestrial, threatened and endangered species, and cultural and historic resources.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified intervention deadline date, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified intervention deadline date. Applications for preliminary permits will not be accepted in response to this notice.

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an

unequivocal statement of intent to submit a development application. A notice of intent must be served on the applicant(s) named in this public notice.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) Bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

p. *Procedural schedule:* We intend to accept the consultation that has occurred on this project during the pre-filing period as satisfying our requirements for the standard three-stage consultation process under 18 CFR 4.38 and for the National Environmental Policy Act scoping and the application will be processed according to the following procedural schedule. Revisions to the schedule may be made as appropriate.

| Milestone | Target date |
|---|---|
| Comments, recommendations, and terms and conditions due. | December 17, 2012. |
| Reply comments due .. | January 30, 2013. |
| Notice of the availability of the EA. | April 15, 2013. |

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26133 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–16–000.

*Applicants:* Chisholm View Wind Project, LLC.

*Description:* Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Chisholm View Wind Project, LLC.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5221.

*Comments Due:* 5 p.m. ET 11/5/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13–90–000.

*Applicants:* Public Service Electric and Gas Company, PJM Interconnection, L.L.C.

*Description:* PJM TOs—Revisions to the PJM Tariff to Modify Cost Allocation to be effective 2/1/2013.

*Filed Date:* 10/11/12.

*Accession Number:* 20121011–5112.

*Comments Due:* 5 p.m. ET 11/9/12.

*Docket Numbers:* ER13–132–000.

*Applicants:* Southwestern Public Service Company.

*Description:* 2012–10–16–SPS-Sherman 3–CA–657–0 0 0 to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5026.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–133–000.

*Applicants:* Sycamore Cogeneration Company, Southern California Edison Company.

*Description:* Application of Sycamore Cogeneration Company and Southern California Edison Company for affiliate transaction.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5049.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–134–000.

*Applicants:* GP Big Island, LLC.

*Description:* GP Big Island, LLC submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5092.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–135–000.

*Applicants:* Brunswick Cellulose LLC.

*Description:* Brunswick Cellulose LLC submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5093.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–136–000.

*Applicants:* Georgia-Pacific Brewton LLC.

*Description:* Georgia-Pacific Brewton LLC submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5094.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–137–000.

*Applicants:* Georgia-Pacific Cedar Springs LLC.

*Description:* Georgia-Pacific Cedar Springs LLC submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5095.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–138–000.

*Applicants:* Georgia-Pacific Consumer Operations LLC.

*Description:* Georgia-Pacific Consumer Operations LLC, Palatka submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5096.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–139–000.

*Applicants:* Lockhart Power Company.

*Description:* Lockhart Power Company submits Notice of Cancellation of its OATT.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5101.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–140–000.

*Applicants:* Georgia-Pacific Consumer Operations LLC.

*Description:* Georgia-Pacific Consumer Operations LLC, Port Hudson submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5102.

*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–141–000.

*Applicants:* Georgia-Pacific Consumer Products LP.

*Description:* Georgia-Pacific Consumer Products LP, Naheola submits tariff filing per 35.1: Georgia-Pacific Entities to be effective 10/17/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5103.

*Comments Due:* 5 p.m. ET 11/6/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 16, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26106 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–14–000.

*Applicants:* Prairie Rose Wind, LLC, Prairie Rose Transmission, LLC.

*Description:* Joint Application for Authorization under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of Prairie Rose Wind, LLC, et al.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5203.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* EC13–15–000.

*Applicants:* Limon Wind, LLC, Limon Wind II, LLC.

*Description:* Limon Wind, LLC and Limon Wind II, LLC Application for Approval under Section 203 of the Federal Power Act and Request for Expedited Action.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5207.

*Comments Due:* 5 p.m. ET 11/5/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER13–63–000.

*Applicants:* Lockhart Power Company.

*Description:* Lockhart Power Company submits Order No. 1000 Compliance Filing.

*Filed Date:* 10/10/12.

*Accession Number:* 20121010–5109.

*Comments Due:* 5 p.m. ET 11/9/12.

*Docket Numbers:* ER13–73–000.

*Applicants:* Electric Energy Inc.

*Description:* Electric Energy Inc. submits Petition for Waiver of Requirements of Order No. 1000.

*Filed Date:* 10/10/12.

*Accession Number:* 20121010–5188.

*Comments Due:* 5 p.m. ET 11/9/12.

*Docket Numbers:* ER13–109–000; ER13–110–000; ER13–111–000.

*Applicants:* Peetz Logan Interconnect, LLC, Sagebrush, a California partnership, Sky River LLC.

*Description:* Peetz Logan Interconnect, LLC, Sagebrush, a California partnership and Sky River LLC's submits Petition for Waiver of Requirements of Order No. 1000.

*Filed Date:* 10/11/12.

*Accession Number:* 20121011–5215.

*Comments Due:* 5 p.m. ET 11/9/12.

*Docket Numbers:* ER13–121–000.

*Applicants:* ExxonMobil Baton Rouge Complex.

*Description:* Exxon Mobil Generators to be effective 10/16/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5005.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–122–000.

*Applicants:* ExxonMobil Beaumont Complex.

*Description:* Exxon Mobil Generators to be effective 10/16/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5006.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–123–000.

*Applicants:* ExxonMobil LaBarge Shute Creek Treating.

*Description:* Exxon Mobil Generators to be effective 10/16/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5009.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–124–000.

*Applicants:* PJM Interconnection,

*Description:* Original Service Agreement No. 3396; Queue No. V4–009 to be effective 9/14/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5053.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–125–000.

*Applicants:* Midwest Independent Transmission System Operator, Inc.

*Description:* SA 2468 Sugar Creek Substitute Original GIA to be effective 10/16/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5081.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–126–000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Queue Position #T107—Original Service Agreement No. 3409 to be effective 10/10/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5095.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–128–000.

*Applicants:* Tampa Electric Company.

*Description:* Amendment to Rate Schedule 37 with Seminole Electric Cooperative to be effective 12/15/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5137.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–129–000.

*Applicants:* Noble Americas Energy Solutions LLC.

*Description:* Baseline MBR Tariff to be effective 10/16/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5138.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–130–000.

*Applicants:* ITC Midwest LLC.

*Description:* Filing of Executed Agreement In Compliance With ER12–1736–000 with Modification to be effective 7/10/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5143.

*Comments Due:* 5 p.m. ET 11/5/12.

*Docket Numbers:* ER13–131–000.

*Applicants:* Great Bay Energy IV, LLC.

*Description:* Application for MBR Authorization and Related Approvals to be effective 10/16/2012.

*Filed Date:* 10/15/12.

*Accession Number:* 20121015–5146.

*Comments Due:* 5 p.m. ET 11/5/12.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES13–1–000.
*Applicants:* Oklahoma Gas and Electric Company.
*Description:* Application for authority to issue short-term debt securities of Oklahoma Gas and Electric Company.
*Filed Date:* 10/15/12.
*Accession Number:* 20121015–5167.
*Comments Due:* 5 p.m. ET 11/5/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 16, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26110 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC13–17–000.
*Applicants:* Midland Cogeneration Venture Limited Partnership, Sparta Acquisition Corporation.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, Expedited Action and Shortened Comment Period of Midland Cogeneration Venture LP and Sparta Acquisition Corporation.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5144.
*Comments Due:* 5 p.m. ET 11/6/12.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER12–678–003.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* VLR Compliance Amendment to be effective 9/1/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5117.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–101–001.
*Applicants:* Midwest Independent Transmission System Operator, Inc.
*Description:* ATCLLC Amendment to OATT Order 1000 Compliance to be effective 10/11/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5116.
*Comments Due:* 5 p.m. ET 11/9/12.

*Docket Numbers:* ER13–142–000.
*Applicants:* Georgia-Pacific Consumer Products LP.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5104.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–143–000.
*Applicants:* Georgia-Pacific LLC, Crossett.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5106.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–144–000.
*Applicants:* Georgia-Pacific Monticello LLC.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5108.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–145–000.
*Applicants:* Leaf River Cellulose, LLC.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5109.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–146–000.
*Applicants:* Georgia-Pacific Toledo LLC.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5110.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–147–000
*Applicants:* Georgia-Pacific Consumer Products LP.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5111.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–148–000.
*Applicants:* Georgia-Pacific Consumer Products LP.
*Description:* Georgia-Pacific Entities to be effective 10/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5112.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–149–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* OATT & OA re IMM Process Improvements to be effective 12/17/2012.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5120.
*Comments Due:* 5 p.m. ET 11/6/12.

*Docket Numbers:* ER13–150–000.
*Applicants:* Northern Indiana Public Service Company, Midwest Independent Transmission System Operator, Inc.
*Description:* 10–16–12 NIPSCO Attachment O and GG to be effective 1/1/2013.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5121.
*Comments Due:* 5 p.m. ET 11/6/12.

Take notice that the Commission received the following qualifying facility filings:

*Docket Numbers:* QF13–41–000.
*Applicants:* Recovered Energy Investors I, LLC.
*Description:* Form 556—Notice of Self-Certification for Qualifying Cogeneration Facility Status of Recovered Energy Investors I, LLC.
*Filed Date:* 10/16/12.
*Accession Number:* 20121016–5060.
*Comments Due:* None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR § 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26184 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* RP13–160–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Amendment Filing—Tenaska Negotiated Rate Agreement to be effective 10/16/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5057.

*Comments Due:* 5 p.m. ET 10/29/12.

*Docket Numbers:* RP13–161–000.

*Applicants:* Natural Gas Pipeline Company of America.

*Description:* Amendment Filing—Tenaska Negotiated Rate Agreement to be effective 10/16/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5058.

*Comments Due:* 5 p.m. ET 10/29/12.

*Docket Numbers:* RP13–162–000.

*Applicants:* Iroquois Gas Transmission System, L.P.

*Description:* 10/16/12 Negotiated Rates—JP Morgan Ventures (RTS) 6025–35, –36 & –37 to be effective 11/1/2012.

*Filed Date:* 10/16/12.

*Accession Number:* 20121016–5080.

*Comment Date:* 5 p.m. ET 10/29/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26120 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–70–000]**

### Texas Dispatchable Wind 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Texas Dispatchable Wind 1 LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is November 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26107 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–81–000]**

### Frontier Utilities New York LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Frontier Utilities New York LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is November 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26108 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–113–000]**

### Sunbury Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Sunbury Energy, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is November 6, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 17, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26109 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–45–000]**

### Dynamo Power LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Dynamo Power LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26179 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–34–000]**

### Ingenco Holdings, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Ingenco Holdings, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888

First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26178 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–29–000]**

### BITH Solar 1, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BITH Solar 1, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26176 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–131–000]**

### Great Bay Energy IV, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Great Bay Energy IV, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26175 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–28–000]**

### Chesapeake Renewable Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 18, 2012.

This is a supplemental notice in the above-referenced proceeding of Chesapeake Renewable Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26174 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–33–000]**

### Collegiate Clean Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Collegiate Clean Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26177 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–129–000]**

### Noble Americas Energy Solutions LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Noble Americas Energy Solutions LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to

intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26183 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–48–000]**

### BITHENERGY, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of BITHENERGY, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26181 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER13–55–000]**

### Homer City Generation, L.P.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Homer City Generation, L.P.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 7, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC

Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 18, 2012.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2012–26182 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP13–1–000]**

### WBI Energy Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on October 4, 2012 WBI Energy Transmission, Inc (WBI Energy), 1250 West Century Avenue, Bismark, North Dakota, 58503, filed in Docket No. CP13–1–000, a Prior Notice request pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon storage facilities at its Baker Storage Reservoir in Fallon County, Montana. Specifically, WBI Energy proposes to abandon one natural gas storage well (Well 23) and its associated 4-inch diameter well line measuring approximately 125 feet (Well Line 23). Well 23 has not been utilized since November 2011 due to sub-surface damage and unsuccessful repair attempts. WBI Energy has determined that plugging and abandoning the well is the best course of action, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, WBI Energy Transmission, Inc., P.O. Box 5601, Bismark, North Dakota, 58506, or call (701) 530–1560, or by email: *keith.tiggelaar@wbienergy.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26137 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the PJM Interconnection, L.L.C. (PJM):

*Midwest ISO–PJM Interregional Coordination Workshop*

October 24, 2012, 8:00 a.m.–3:00 p.m., Local Time.

*PJM Regional Transmission Planning Task Force/PJM Interconnection Process Senior Task Force*

November 16, 2012, 9:30 a.m.–3:00 p.m., Local Time;

December 17, 2012, 9:30 a.m.–3:00 p.m., Local Time.

The above-referenced meetings will be held over conference call or at:

The PJM Conference & Training Center, Norristown, PA.

or

Midwest ISO, Carmel, IN.

The above-referenced meetings are open to stakeholders.

Further information may be found at *www.pjm.com.*

The discussions at the meetings described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*

Docket No. EL07–56, *Allegheny Electric Cooperative, Inc., et a., v PJM Interconnection, L.L.C.*

Docket No. EL07–58, *Organization of PJM States, Inc., et al., v. PJM Interconnection, L.L.C.*

Docket No. EL08–14, *Black Oak Energy LLC, et al., v. FERC*

Docket No. EL10–52, *Central Transmission, LLC v. PJM Interconnection, L.L.C.*

Docket No. EL12–45, *PJM Interconnection, L.L.C.*

Docket No. EL12–50, *First Energy Solutions Corporation et al v. PJM Interconnection, L.L.C.*

Docket No. EL12–54, *Viridity Energy, Inc. v. PJM Interconnection, L.L.C.*

Docket No. EL12–69, *Primary Power LLC v. PJM Interconnection, L.L.C.*

Docket No. EL12–8, *DC Energy, L.L.C. and DC Energy Mid-Atlantic, L.L.C. vs. PJM Interconnection, L.L.C.*

Docket No. AD12–1 and ER11–4081, *Midwest Independent Transmission System Operator, Inc.*

Docket No. AD12–16, *Capacity Deliverability Across the Midwest Independent Transmission System Operator, Inc./PJM Interconnection, L.L.C. Seam*

Docket No. EL13–10, *North American Natural Resources, Inc. v. PJM Interconnection, L.L.C. et. al.*

Docket No. ER08–194–000, *et al., Duquesne Light Company et al.*

Docket No. ER09–1063, *PJM Interconnection, L.L.C.*

Docket No. ER09–1148, *PPL Electric Utilities Corporation*

Docket No. ER09–1256, *Potomac-Appalachian Transmission Highline, L.L.C.*

Docket Nos. ER09–1589 and EL10–6, *FirstEnergy Service Company*

Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*
Docket No. ER10–549, *PJM Interconnection, L.L.C.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket Nos. ER11–2814 and ER11–2815, *PJM Interconnection, L.L.C. and American Transmission Systems, Inc.*
Docket No. ER11–2875 and EL11–20, *PJM Interconnection, L.L.C.*
Docket No. ER11–4106, *PJM Interconnection, L.L.C.*
Docket No. ER11–4628, *PJM Interconnection, L.L.C.*
Docket No. ER12–1173, *PJM Interconnection, L.L.C., et. al.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER12–92, *PJM Interconnection, L.L.C., et. al*
Docket No. ER12–1204, *PJM Interconnection, L.L.C.*
Docket No. ER12–1761, *PJM Interconnection, L.L.C.*
Docket No. ER12–2080, *GenOn Power Midwest, LP*
Docket No. ER12–2260, *New York Independent System Operator, Inc*
Docket No. ER12–2262, *PJM Interconnection, L.L.C.*
Docket No. ER12–2274, *Public Service Electric and Gas Company*
Docket No. ER12–2391, *PJM Interconnection, L.L.C.*
Docket No. ER12–2399, *PJM Interconnection, L.L.C.*
Docket No. ER12–2417, *PJM Interconnection, L.L.C.*
Docket No. ER12–2440, *PJM Interconnection, L.L.C.*
Docket No. ER12–2442, *PJM Interconnection, L.L.C.*
Docket No. ER12–2469, *PJM Interconnection, L.L.C.*
Docket No. ER12–2486, *PJM Interconnection, L.L.C.*
Docket No. ER12–2518, *PJM Interconnection, L.L.C.*
Docket No. ER12–2527, *PJM Interconnection, L.L.C.*
Docket No. ER12–2550, *PJM Interconnection, L.L.C.*
Docket No. ER12–2574, *PJM Interconnection, L.L.C.*
Docket No. ER12–2594, *PJM Interconnection, L.L.C.*
Docket No. ER12–2599, *PJM Interconnection, L.L.C.*
Docket No. ER12–2604, *PJM Interconnection, L.L.C.*
Docket No. ER12–2606, *PJM Interconnection, L.L.C.*
Docket No. ER12–2610, *PJM Interconnection, L.L.C.*
Docket No. ER12–2616, *PJM Interconnection, L.L.C.*
Docket No. ER12–2624, *PJM Interconnection, L.L.C.*
Docket No. ER12–2661, *PJM Interconnection, L.L.C.*
Docket No. ER12–2663, *PJM Interconnection, L.L.C.*
Docket No. ER12–2664, *PJM Interconnection, L.L.C.*
Docket No. ER12–2671, *PJM Interconnection, L.L.C.*
Docket No. ER12–2688, *PJM Interconnection, L.L.C.*
Docket No. ER12–2815, *PJM Interconnection, L.L.C.*
Docket No. ER12–469, *PJM Interconnection, L.L.C.*
Docket No. ER12–513, *PJM Interconnection, L.L.C.*
Docket No. ER12–718, *New York Independent System Operator, Inc.*
Docket No. ER12–91, *PJM Interconnection, L.L.C.*
Docket No. ER12–92, *PJM Interconnection, L.L.C.*
Docket No. ER12–469, *PJM Interconnection, L.L.C.,*
Docket Nos. ER11–2183 and EL11–32, *American Electric Power Service Corporation*
Docket No. ER12–2085, *PJM Interconnection, L.L.C.*
Docket No. ER12–2707, *PJM Interconnection, L.L.C.*
Docket No. ER12–2708, *PJM Interconnection, L.L.C.*
Docket No. ER13–27, *PJM Interconnection, L.L.C.*
Docket No. ER13–51, *PJM Interconnection, L.L.C.*
Docket No. ER13–52, *PJM Interconnection, L.L.C.*
Docket No. ER13–53, *PJM Interconnection, L.L.C.*
Docket No. ER13–66, *PJM Interconnection, L.L.C.*
Docket No. ER13–74, *PJM Interconnection, L.L.C.*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*
Docket No. ER13–116, *PJM Interconnection, L.L.C.*
Docket No. ER13–124, *PJM Interconnection, L.L.C.*
Docket No. ER13–126, *PJM Interconnection, L.L.C.*

For more information, contact Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26140 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the transmission planning activities of the Midwest Independent Transmission System Operator, Inc. (MISO):

**MISO–PJM Order 1000 Interregional Coordination Workshop—October 24, 2012**

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

The above-referenced meeting is open to the public.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER10–1791, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2700, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–4081, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–4514, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–2777, *Midwest Independent Transmission System Operator, Inc. and Ameren Illinois Company*
Docket No. ER12–427, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–480, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–678, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–715, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1265, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1266, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1586, *Southwest Power Pool, Inc.*

Docket No. ER12–1835, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1928, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2129, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2216, *Midwest Independent Transmission System Operator, Inc. and Ameren Services Company*
Docket No. ER12–2302, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2380, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–2390, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–89, *MidAmerican Energy Company and Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–101, *American Transmission Company LLC and Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–30, *E.ON Climate & Renewables North America, LLC* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–53, *Shetek Wind Inc., Jeffers South LLC and Allco Renewable Energy Limited* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL11–56, *FirstEnergy Service Company* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL12–24, *Pioneer Transmission LLC* v. *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL12–28, *Xcel Energy Services Inc.* v. *American Transmission Company, LLC*
Docket No. EL12–35, *Midwest Independent Transmission System Operator, Inc.*
Docket No. OA08–53, *Midwest Independent Transmission System Operator, Inc.*

For more information, contact Jason Strong, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 502–6124 or *jason.strong@ferc.gov.*

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26139 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2351–017]**

### Public Service Company of Colorado; Notice of Technical Conference

Take notice that a technical conference will be held to discuss the Agreement-in-Principle between the Public Service Company of Colorado, the U.S. Forest Service, and the Colorado Division of Parks and Wildlife filed on September 24, 2012, for the Cabin Creek Pumped Storage Hydroelectric Project No. 2351.

This conference will be held on Wednesday, November 7, 2012, beginning at 9:00 a.m. (MST) via teleconference.

All local, state, and federal agencies, Indian tribes, and other interested parties are invited to participate. There will be no transcript of the conference. Please contact David Turner at (202) 502–6091 or *david.turner@ferc.gov* by November 1, 2012, to RSVP and for call-in information.

Dated: October 17, 2012.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. 2012–26135 Filed 10–23–12; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2012–0804; FRL–9366–9]**

### Certain New Chemicals; Receipt and Status Information

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

**ACTION:** Notice.

**SUMMARY:** The Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (*i.e.,* a chemical not on the TSCA Chemical Substances Inventory (TSCA Inventory)) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. In addition under TSCA, EPA is required to publish in the **Federal Register** a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of notices of commencement (NOC) to manufacture those chemicals. This document, which covers the period from September 10, 2012 to September 30, 2012, and provides the required notice and status report, consists of the PMNs pending or expired, and the NOC to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

**DATES:** Comments identified by the specific PMN number or TME number, must be received on or before November 23, 2012.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0804, and the specific PMN number or TME number for the chemical related to your comment, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

**FOR FURTHER INFORMATION CONTACT:** *For technical information contact:* Bernice Mudd, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8951; fax number: (202) 564–8955; email address: *mudd.bernice@epa.gov.*

*For general information contact:* The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the PMNs addressed in this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

## II. Why is EPA taking this action?

EPA classifies a chemical substance as either an ''existing'' chemical or a ''new'' chemical. Any chemical substance that is not on EPA's TSCA Inventory is classified as a ''new chemical,'' while those that are on the TSCA Inventory are classified as an ''existing chemical.'' For more information about the TSCA Inventory go to: *http://www.epa.gov/opptintr/newchems/pubs/inventory.htm.* Anyone who plans to manufacture or import a new chemical substance for a non-exempt commercial purpose is required by TSCA section 5 to provide EPA with a PMN, before initiating the activity. Section 5(h)(1) of TSCA authorizes EPA to allow persons, upon application, to manufacture (includes import) or process a new chemical substance, or a chemical substance subject to a significant new use rule (SNUR) issued under TSCA section 5(a), for ''test marketing'' purposes, which is referred to as a test marketing exemption, or TME. For more information about the requirements applicable to a new chemical go to: *http://www.epa.gov/oppt/newchems.*

Under TSCA sections 5(d)(2) and 5(d)(3), EPA is required to publish in the **Federal Register** a notice of receipt of a PMN or an application for a TME and to publish in the **Federal Register** periodic status reports on the new chemicals under review and the receipt of NOCs to manufacture those chemicals. This status report, which covers the period from September 10, 2012 to September 30, 2012, consists of the PMNs pending or expired, and the NOCs to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

## III. Receipt and Status Reports

In Table I. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: The EPA case number assigned to the PMN, the date the PMN was received by EPA, the projected end date for EPA's review of the PMN, the submitting manufacturer/importer, the potential uses identified by the manufacturer/importer in the PMN, and the chemical identity.

TABLE I—40 PMNS RECEIVED FROM 9/10/12 TO 9/30/12

| Case no. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–12–0545 | 9/7/2012 | 12/5/2012 | CBI | (G) Lubricant additive | (G) Aromatic amido-amine-modified aliphatic hydrocarbon resin. |
| P–12–0546 | 9/7/2012 | 12/5/2012 | CBI | (G) Lubricant additive | (G) Aromatic amido-amine-modified aliphatic hydrocarbon resin. |
| P–12–0547 | 9/12/2012 | 12/10/2012 | CBI | (S) Emulsifier for use in the manufacture of air fresheners. | (G) Fatty acid polyglycerin ester. |
| P–12–0548 | 9/10/2012 | 12/8/2012 | CBI | (G) Dielectric fluid | (G) Aryl-substituted alkane. |
| P–12–0549 | 9/13/2012 | 12/11/2012 | CBI | (G) Binder fibers | (G) Modified polyester. |
| P–12–0550 | 9/14/2012 | 12/12/2012 | International Flavors & Fragrances, Inc. | (S) Fragrance ingredient for use in fragrances for soaps, detergents, cleaners and other household products. | (S) Butanal, 4-(heptyloxy)-3-methyl-. |
| P–12–0551 | 9/14/2012 | 12/12/2012 | CBI | (S) Feedstock for fractionation process. | (G) Aromatic hydrocarbon mixture. |
| P–12–0552 | 9/14/2012 | 12/12/2012 | CBI | (G) Coating additive | (G) Siloxanes and silicones, alkyl, substituted heteromonocycle. |
| P–12–0553 | 9/14/2012 | 12/12/2012 | CBI | (S) Intermediate for use in the manufacture of polymers. | (G) Depolymerized waste plastics. |
| P–12–0554 | 9/14/2012 | 12/12/2012 | CBI | (S) Emulsifier for use in the manufacture of air fresheners. | (G) Fatty acid polyglycerin ester. |
| P–12–0555 | 9/14/2012 | 12/12/2012 | CBI | (G) Textile coating | (G) Acrylate terpolymer. |
| P–12–0556 | 9/14/2012 | 12/12/2012 | Green carbon | (S) Rubber compound reinforcement agent (in tires, rubber mats, etc.). | (S) Tires, wastes, pyrolyzed, carbon black fraction. |
| P–12–0557 | 9/14/2012 | 12/12/2012 | Green carbon | (S) Naptha used high octane gas & cleaning fluids; kerosene used for jet fuels; distillate fuel oil used for off-highway diesel engine and power generation; vacuum gas oil used for gasoline. | (S) Tires, wastes, pyrolyzed, $C_{8-25}$ oil fraction. |
| P–12–0558 | 9/14/2012 | 12/12/2012 | Green carbon | (S) Naptha used in high octane gas & cleaning fluids; kerosene used for jet fuels; distillate fuel oil used for off-highway diesel engines and power generation; vacuum gas oil used for gasoline. | (S) Tires, wastes, pyrolyzed, $C_{21-33}$ oil fraction. |
| P–12–0559 | 9/14/2012 | 12/12/2012 | CBI | (G) Open, non-dispersive use | (G) Acrylic silane polymer. |
| P–12–0560 | 9/17/2012 | 12/15/2012 | Honda of America Mfg., Inc. | (S) Feedstock to provide mineral content for cement manufacturing. | (S) Slimes and sludges, aluminum and iron casting, wastewater treatment, solid waste. |
| P–12–0561 | 9/17/2012 | 12/15/2012 | CBI | (G) Garment printing pre-treatment. | (G) Poly(urethane urea). |
| P–12–0562 | 9/17/2012 | 12/15/2012 | Eastman Chemical Company. | (G) Solvent | (G) Aliphatic ester of a modified carboxylic acid. |
| P–12–0563 | 9/17/2012 | 12/15/2012 | CBI | (G) Processing aid for triacylglycerol-based oil refining. | (S) Lipase. |
| P–12–0564 | 9/18/2012 | 12/16/2012 | CBI | (G) Pigment dispersant | (G) 2-Propenoic acid 2-methyl, alkyl ester, polymer with heteromonocycle, substituted carbomonocycle, substituted alkyl propenoate, alkyl propenoate, alkyl propenoate, tert-bu benzenecarboperoxoate-initiated. |
| P–12–0565 | 9/18/2012 | 12/16/2012 | CBI | (G) Adhesive and sealant component. | (G) Aromatic polyester. |
| P–12–0566 | 9/19/2012 | 12/17/2012 | Firmenich Incorporated. | (S) Aroma for use in fragrance mixtures, which in turn are used in perfumes. | (S) 2-Propen-1-ol, 2-methyl-3-4(-methylphenyl)-, (2e)-. |
| P–12–0567 | 9/19/2012 | 12/17/2012 | CBI | (G) Additive | (G) Polyethylene glycol, polymer with diisocyanate, alkanol-blocked. |

TABLE I—40 PMNS RECEIVED FROM 9/10/12 TO 9/30/12—Continued

| Case no. | Received date | Projected notice end date | Manufacturer/importer | Use | Chemical |
|---|---|---|---|---|---|
| P–12–0568 | 9/20/2012 | 12/18/2012 | Colonial Chemical, Inc. | (S) Intermediate for surfactant production. | (S) 3-chloro-2-hydroxypropyl)dimethyl octadecyl ammonium chloride. |
| P–12–0569 | 9/21/2012 | 12/19/2012 | Colonial Chemical, Inc. | (S) Intermediate for surfactant production. | (S) 1-(bis(2-hydroxyethyl)amino)-3-chloro-2-propanol. |
| P–12–0570 | 9/21/2012 | 12/19/2012 | International Flavors & Fragrances, Inc. | (S) Fragrance ingredient for use in fragrances for soaps, detergents, cleaners and other household products. | (S) Bicyclo[2.2.1]hept-5-ene-2-carboxylic acid, ethyl ester. |
| P–12–0571 | 9/25/2012 | 12/23/2012 | CBI | (S) Pigment for coatings | (G) Halogenated diketopyrrolopyrrol derivative. |
| P–12–0572 | 9/25/2012 | 12/23/2012 | CBI | (G) Reactive amine for enhancing pigment dispersions. | (G) Aromatic amine with cyclo amino carbonyls. |
| P–12–0573 | 9/25/2012 | 12/23/2012 | CBI | (G) Reactive amine for enhancing pigment dispersions. | (G) Amine substituted quinoacridine product. |
| P–12–0574 | 9/25/2012 | 12/23/2012 | DIC International (USA), LLC. | (G) Colorant for industrial inks and coatings. | (G) Carbopolycycle-bis(diazonium), dihalo, chloride (1:2), reaction products with metal chloride, calcium carbonate, *N*-(2,4-dialkylphenyl)-oxoalkanamide, potassium 4-[dioxoalkylamino] substituted benzene (1:1) and sodium hydroxide. |
| P–12–0575 | 9/26/2012 | 12/24/2012 | CBI | (G) Concrete/masonry treatment | (G) Alkyl-modified cyclosiloxanes. |
| P–12–0576 | 9/25/2012 | 12/23/2012 | CBI | (G) Provide conductive properties to reinforcements used in composites. | (G) Generic carbon nanostructures. |
| P–12–0577 | 9/26/2012 | 12/24/2012 | CBI | (G) Industrial feedstock chemical. | (G) Glycerides, $C_{14-18}$, $C_{16-18}$ unsaturated, from fermentation. |
| P–12–0578 | 9/27/2012 | 12/25/2012 | CBI | (G) Pigment dispersant | (G) Vegetable oil fatty acids, reaction products with substituted amine, compounds with substituted polyethylene glycol anhydride ester alkyl ethers. |
| P–12–0579 | 9/27/2012 | 12/25/2012 | CBI | (G) Performance stabilizer | (G) Disubstituted alaninamide. |
| P–12–0580 | 9/27/2012 | 12/25/2012 | Dow Chemical Company. | (G) Component of formulated adhesive. | (G) Polyurethane acrylate. |
| P–12–0581 | 9/27/2012 | 12/25/2012 | CBI | (S) Sulfurized fatty acid derivative used as an additive for high-pressure metal cutting/drilling applications. | (G) Sulfurized fatty acid derivative. |
| P–12–0582 | 9/27/2012 | 12/25/2012 | CBI | (G) Manufacture of rubber products; fillers, putties; plastics additive; plastic additive; component for lubricants and metal working fluids. | (S) Fatty acids, $C_{14-22}$, 2-ethylhexyl esters, epoxidized. |
| P–12–0583 | 9/28/2012 | 12/26/2012 | Indulor America, LP | (G) Fluorescent whitening agent for dyeing paper. | (G) Sulfonated stilbene derivative. |
| P–12–0584 | 9/28/2012 | 12/26/2012 | CBI | (G) Intermediate-destructive use | (G) Alkyl phosphonate. |

In Table II. of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the NOCs received by EPA during this period: The EPA case number assigned to the NOC, the date the NOC was received by EPA, the projected end date for EPA's review of the NOC, and chemical identity.

TABLE II—21 NOCS RECEIVED FROM 9/10/12 TO 9/30/12

| Case No. | Received date | Commencement notice end date | Chemical |
|---|---|---|---|
| P–05–0841 | 9/17/2012 | 8/29/2012 | (G) Polycarbonate polyurethane. |
| P–09–0280 | 9/13/2012 | 9/5/2012 | (G) Styrene-maleic anhydride copolymer, reaction product with amino compounds. |

TABLE II—21 NOCS RECEIVED FROM 9/10/12 TO 9/30/12—Continued

| Case No. | Received date | Commencement notice end date | Chemical |
|---|---|---|---|
| P–09–0566 | 9/23/2012 | 9/13/2012 | (G) Polysiloxane epoxy polymer. |
| P–10–0450 | 9/23/2012 | 9/6/2012 | (G) Acrylic silane polymer. |
| P–11–0287 | 9/23/2012 | 9/7/2012 | (G) Acrylic silane polymer. |
| P–12–0092 | 9/12/2012 | 9/3/2012 | (G) Alkyl acrylate, polymer with alkyl acrylate, alkyl methacrylates, styrene and alkyl acid, peroxide-initiated. |
| P–12–0223 | 9/14/2012 | 8/23/2012 | (G) Glycol ether. |
| P–12–0322 | 9/14/2012 | 9/10/2012 | (G) Alkenoic acid, polymer with alkyl acrylate, peroxide-initiated, compound with amine salt. |
| P–12–0341 | 9/18/2012 | 9/17/2012 | (G) Octadecanoic acid, 12-hydroxy-, polymer with formaldehyde-aromatic amine reaction products. |
| P–12–0349 | 9/24/2012 | 9/19/2012 | (G) Alkyl thiol, manufacture of, by-products from, dstn. lights. |
| P–12–0350 | 9/24/2012 | 9/19/2012 | (G) Alkyl thiol, manufacture of, by-products from, distn. residues. |
| P–12–0352 | 9/25/2012 | 9/21/2012 | (G) Styrenated salicylic acid. |
| P–12–0361 | 9/25/2012 | 9/14/2012 | (G) Benzene, 2,4-diisocyanato-1-alkyl-, homopolymer, 1-alkanol- and 1h-imidazole-1-propanamine- and 2-oxepanone-tetrahydro-2h-pyran-2-one polymer [2-(2-butoxymethylethoxy)methylethoxy]methylethyl ester-blocked. |
| P–12–0364 | 9/25/2012 | 9/24/2012 | (S) Fatty acids, $C_{8–18}$ and $C_{18}$-unsaturated, reaction products with isomerized oleic acid homopolymer, hydrogenated. |
| P–12–0365 | 9/25/2012 | 9/24/2012 | (S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer, hydrogenated. |
| P–12–0368 | 9/25/2012 | 9/24/2012 | (S) Fatty acids, $C_{8–18}$ and $C_{18}$-unsaturated, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester, hydrogenated. |
| P–12–0369 | 9/25/2012 | 9/24/2012 | (S) Fatty acids, coco, reaction products with isomerized oleic acid homopolymer 2-ethylhexyl ester, hydrogenated. |
| P–12–0371 | 9/28/2012 | 8/27/2012 | (G) Modified isothiocyanate compound. |
| P–12–0373 | 9/14/2012 | 9/10/2012 | (G) 1,4-butanediol, polymer with substituted alkane and substituted methylene biscarbomonocycle 2-hydroxyalkyl acrylate-blocked. |
| P–12–0415 | 9/24/2012 | 9/19/2012 | (G) Soybean oil, polymer with adipic acid, benzoic acid, difuntional glycols, glycerol, pentaerythritol, phthalic anhydride, terephthalic acid. |
| P–12–0423 | 9/21/2012 | 9/19/2012 | (G) Polyitaconic acid, sodium salt. |

If you are interested in information that is not included in these tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

**List of Subjects**

Environmental protection, Chemicals, Hazardous substances, Imports, Notice of commencement, Premanufacturer, Reporting and recordkeeping requirements, Test marketing exemptions.

Dated: October 15, 2010.

**Chandler Sirmons,**

*Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.*

[FR Doc. 2012–26211 Filed 10–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2012–0735; FRL–9362–8]**

## Pesticide Experimental Use Permit; Receipt of Application; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of an application 524–EUP–RNL from Monsanto Company requesting an experimental use permit (EUP) for the herbicides glyphosate and dicamba (M1751 Herbicide). The Agency has determined that the permit may be of regional and national significance. Therefore, because of the potential significance, EPA is seeking comments on this application.

**DATES:** Comments must be received on or before November 23, 2012.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2012–0735, by one of the following methods:

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

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Erik Kraft, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9358; email address: *kraft.erik@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this action apply to me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action.

*B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

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

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

## II. What action is the agency taking?

Under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct experimental field tests on 10 acres or more of land or 1 acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

*Submitter:* Monsanto Company, 1300 I Street NW., Suite 450 East, Washington, DC 20005, (524–EUP–RNL).

*Pesticide Chemicals/Product:* Glyphosate and Dicamba/M1751 Herbicide.

*Summary of Request:* Application for an EUP to conduct large trials during the 2013 crop season with a formulation based on dicamba and glyphosate. Requested uses to test include dicamba tolerant crops (soybean and cotton), including glyphosate resistance traits, and non-dicamba tolerant crops (soybean, cotton, and corn), including glyphosate resistance traits, and a non-crop use. Pounds of product to be used is 121,424 pounds to treat 7,660 acres, from February 2013–May 2014.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application.

Informed by the Agency's risk assessments as well as the public responses to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register** following review of the application and any comments and data received in response to this **Federal Register** Notice.

### List of Subjects

Environmental protection, Experimental use permits.

Dated: October 11, 2012.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2012–25849 Filed 10–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–9737–5]**

## Notice of Administrative Settlement Agreement for Recovery of Past Response Costs Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

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

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), notice is hereby given that a proposed administrative settlement agreement for recovery of past response costs (''Proposed Agreement'') associated with Hamburg Mill Creek Superfund Site, Berks County, Pennsylvania was executed by the Environmental Protection Agency (''EPA'') and is now subject to public comment, after which EPA may modify or withdraw its consent if comments received disclose facts or considerations that indicate that the Proposed Agreement is inappropriate, improper, or inadequate. The Proposed Agreement would resolve potential EPA claims under Section 107(a) of CERCLA, against Wells Fargo Bank, N.A. (''Settling Party''). The Proposed Agreement would require Settling Party to reimburse EPA $30,000.00 for past response costs incurred by EPA for the Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the Proposed Agreement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

**DATES:** Comments must be submitted on or before November 23, 2012.

**ADDRESSES:** The Proposed Agreement and additional background information relating to the Proposed Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the Proposed Agreement may be obtained from Jefferie E. Garcia (3RC42), Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Hamburg Mill Creek Superfund Site,

Proposed Administrative Settlement Agreement for Recovery of Past Response Costs'' and ''EPA Docket No. CERCLA–03–2013–0004–CR,'' and should be forwarded to Jefferie E. Garcia at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jefferie E. Garcia (3RC42), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2697; *garcia.jefferie@epa.gov.*

Dated: October 17, 2012.

**Ronald Borsellino,**

*Director, Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III.*

[FR Doc. 2012–26209 Filed 10–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2012–0823; FRL–9368–1]**

## Pesticide Program Dialogue Committee; Request for Nominations to the Pesticide Program Dialogue Committee

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

**ACTION:** Notice.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs is inviting nominations from a diverse range of qualified candidates to be considered for appointment to the Pesticide Program Dialogue Committee (PPDC). EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups. Vacancies are expected to be filled by early spring 2013. Additional sources may be utilized in the solicitation of nominees.

**DATES:** Nominations must be emailed or postmarked no later than November 9, 2012.

**ADDRESSES:** Nominations should be emailed or submitted in writing to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; email address: *fehrenbach.margie@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A . Does this action apply to me?*

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How can I get copies of this document and other related information?*

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0823, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

### II. Background

The Office of Pesticide Programs (OPP) is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for EPA's PPDC was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed October 28, 2011, for another 2-year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/tribal governments; the general public; academia; and public health organizations.

The PPDC meets face-to-face twice a year, generally in the spring and the fall. Additionally, members may be asked to serve on work groups to develop recommendations to address specific policy issues. The average workload for members is approximately 4 to 6 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

### III. How To Submit Nominations

Any interested person or organization may nominate qualified persons to be considered for appointment to this advisory committee. Individuals may self-nominate. Nominations may be submitted in electronic format (preferred) or mailed to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

To be considered, all nominations should include:

- Current contact information for the nominee, including the nominee's name, organization (and position within that organization), current business address, email address, and daytime telephone number.
- Brief statement describing the nominee's interest in serving on the PPDC.
- Résumé and a short biography (no more than two paragraphs) describing the professional and educational qualifications of the nominee, including

a list of relevant activities, and any current or previous service on advisory committees.

• Letter[s] of recommendation from a third party supporting the nomination. The letter should describe how the nominee's experience and knowledge will bring value to the work of the PPDC.

Other sources, in addition to this **Federal Register** notice, may also be utilized in the solicitation of nominees.

**List of Subjects**

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered species, Foods, Pesticide labels, Pesticides and pests, Public health, Spray drift.

Dated: October 18, 2012.

**Steven Bradbury,**

*Director, Office of Pesticide Programs.*

[FR Doc. 2012–26215 Filed 10–23–12; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### FDIC Advisory Committee on Community Banking; Notice of Meeting

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of open meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the FDIC Advisory Committee on Community Banking, which will be held in Washington, DC. The Advisory Committee will provide advice and recommendations on a broad range of policy issues that have particular impact on small community banks throughout the United States and the local communities they serve, with a focus on rural areas.

**DATES:** Thursday, November 8, 2012, from 8:30 a.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held in the FDIC Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Committee Management Officer of the FDIC, at (202) 898–7043.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* The agenda will include a discussion of current issues affecting community banking. The agenda is subject to change. Any changes to the agenda will be announced at the beginning of the meeting.

*Type of Meeting:* The meeting will be open to the public, limited only by the space available on a first-come, first-served basis. For security reasons, members of the public will be subject to security screening procedures and must present a valid photo identification to enter the building. The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY) at least two days before the meeting to make necessary arrangements. Written statements may be filed with the committee before or after the meeting. This Community Banking Advisory Committee meeting will be Webcast live via the Internet at *http://www.vodium.com/goto/fdic/communitybanking.asp.* This service is free and available to anyone with the following systems requirements: *http://www.vodium.com/home/sysreq.html.* Adobe Flash Player is required to view these presentations. The latest version of Adobe Flash Player can be downloaded at *http://www.adobe.com/shockwave/download/download.cgi?P1_Prod_Version=ShockwaveFlash.* Installation questions or troubleshooting help can be found at the same link. For optimal viewing, a high speed internet connection is recommended. The Community Banking meeting videos are made available on-demand approximately two weeks after the event.

Dated: October 18, 2012.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Committee Management Officer.*

[FR Doc. 2012–26123 Filed 10–23–12; 8:45 am]

**BILLING CODE 6714–01–P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011488–004.

*Title:* CSAV/NYKCool Space Charter Agreement.

*Parties:* CSAV Sud Americana de Vapores S.A. and NYKCool AB.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street NW.; Suite 900; Washington, DC 20036.

*Synopsis:* The amendment would revise and expand the space chartering authority under the agreement, expand the geographic scope of the agreement, and restate the agreement to reflect these changes throughout.

*Agreement Nos.:* 201122–002.

*Title:* Pacific Maritime Services Cooperative Working Agreement.

*Parties:* COSCO Terminals America, Inc.; SSA Containers, Inc., and SSA Ventures, Inc.

*Filing Party:* David F. Smith, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

*Synopsis:* The amendment would add Terminal Link California and Pacific Maritime Services as parties to the agreement, and make some corresponding changes to the agreement.

*Agreement No.:* 201162–009.

*Title:* NYSA–ILA Assessment Agreement.

*Parties:* International Longshoremen's Association and New York Shipping Association.

*Filing Parties:* Donato Caruso, Esq.; The Lambos Firm; 303 South Broadway, Suite 410; Tarrytown, NY 10591 and Andre Mazzola, Esq.; Marrinan & Mazzola Mardon, P.C.; 26 Broadway, 17th Floor; New York, NY 10004.

*Synopsis:* The amendment revises the agreement to adopt a specific assessment for Mafis, which commenced on October 1, 2012.

By Order of the Federal Maritime Commission.

Dated: October 19, 2012.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2012–26224 Filed 10–23–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

The Commission gives notice that the following applicants have filed an application for an Ocean Transportation Intermediary (OTI) license as a Non-Vessel-Operating Common Carrier (NVO) and/or Ocean Freight Forwarder (OFF) pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101). Notice is also given of the filing of applications to amend an existing OTI license or the Qualifying Individual (QI) for a licensee.

Interested persons may contact the Office of Ocean Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573, by telephone at (202) 523–5843 or by email at *OTI@fmc.gov*.

Aboard Cargo Service, Inc. (NVO & OFF), 1952 NW 93rd Avenue, Doral, FL 33172. Officer: Roberto A. Pereira, President (QI). Application Type: New NVO & OFF License.

Caribbean Forwarding LLC (NVO & OFF), 2070 NW 79th Avenue, #204, Doral, FL 33122. Officers: Luis G. Leal-Perez, Manager (QI), Doris Rodriguez, Manager. Application Type: QI Change.

Direct Parcel Service, Corp. dba DPS Cargo (NVO & OFF), 7701 NW 46th Street, Doral, FL 33166. Officers: Amado E. Jimenez, Vice President (QI), Veronica Morales, Director. Application Type: QI Change.

Dongbu Express U.S.A. Inc. (NVO & OFF), 19191 S. Vermont Avenue, #610, Torrance, CA 90502. Officers: Maria Lee, Vice President (QI), Joosup Jung, CEO. Application Type: New NVO & OFF License.

E.T.H. Cargo Services Inc. (OFF), Av. Galicia Q 891, Carolina, PR 00983. Officers: Wolfgang Herzig, President (QI), Claudia B. Herzig, Secretary. Application Type: New OFF License.

Greymar International Freight LLC (NVO & OFF), 8579 NW 72nd Street, Miami, FL 33166. Officers: Greta E. Suarez, Manager (QI), Hector E. Escobar, Manager/Member. Application Type: New NVO & OFF License.

Hospitality Logistics International LLC (NVO & OFF), 4201 Congress Street, Suite 120, Charlotte, NC 28209. Officers: John P. Clancey, Managing Member (QI), Megan C. Murphy, Member. Application Type: New NVO & OFF License.

KCE Logistics Inc. (NVO), 1982 NW 82nd Avenue, Miami, FL 33126. Officers: Seung J. Yang, President (QI), Laura Reyes, Secretary. Application Type: QI Change.

Latin Gate OTI, Inc. (NVO & OFF), 13831 SW 59th Street, #103, Miami, FL 33183. Officers: Miguel A. Sierra, Vice President (QI), Nilda Sierra, President. Application Type: New NVO & OFF License.

Mainfreight, Inc. (NVO & OFF), 1400 Glenn Curtiss Street, Carson, CA 90746. Officers: Thomas Donahue, III, Vice President (QI), John Hepworth, President. Application Type: Add Trade Name of Mainline.

ODS—Orient Shipping & Logistics, LLC (NVO & OFF), 3785 NW 82nd Avenue, Doral, FL 33166. Officers: Silvia Rubio, Vice President (QI), Sven-Olaf Mulzahn, Member. Application Type: New NVO & OFF License.

Premier Van Lines International Inc. (NVO), 2509 S. Power Road, Suite 207, Mesa, AZ 85209. Officer: James A. Haddow, President (QI). Application Type: New NVO License.

Ryder Global Services, LLC (NVO & OFF), 11690 NW. 105th Street, Law 4W, Miami, FL 33178. Officers: Chris Merritt, Vice President (QI), John H. Williford, President. Application Type: New NVO & OFF License.

Victoria Line, LLC (NVO & OFF), 2000 NW. 84th Avenue, Miami, FL 33122. Officers: Alberto J. Marino, Sr., Managing Member (QI), Jorge R. DeTuya, Member. Application Type: New NVO & OFF License.

World Cargo Logistics Limited Liability Company (NVO & OFF), 22 Cottage Street, Belleville, NJ 07109. Officer: Anthony DellaValle, Member (QI). Application Type: New NVO & OFF License

By the Commission.

Dated: October 5, 2012.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. 2012–26222 Filed 10–23–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Reissuances

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been reissued pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101).

*License No.:* 003977N.
*Name:* A Active Freezone Cargo, Inc.
*Address:* 2315 NW 107th Avenue, Suite 1M2, Box #55, Miami, FL 33172.
*Date Reissued:* September 1, 2012.

*License No.:* 017864N.
*Name:* Navivan Corp.
*Address:* 200 Crofton Road, Suite 2, Bldg., 10–B, Kenner, LA 70062.
*Date Reissued:* August 15, 2012.

*License No.:* 020088N.
*Name:* Hal-Mari International Logistics, Inc.
*Address:* 9122 Telephone Road, Houston, TX 77075.
*Date Reissued:* September 6, 2012.

*License No.:* 018156N.
*Name:* Cargo Alliance Inc.
*Address:* 583 Monterey Pass Road, Suite C, Monterey Park, CA 91754.
*Date Reissued:* September 5, 2012.

*License No.:* 019372F.
*Name:* Hal-Mari International Logistics, Inc.
*Address:* 9122 Telephone Road, Houston, TX 77075.
*Date Reissued:* September 6, 2012.

*License No.:* 023500N.
*Name:* IMAC International Corp.
*Address:* 527 Albert Street, East Meadow, NY 11554.
*Date Reissued:* September 10, 2012.

**James A. Nussbaumer,**

*Deputy Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–26225 Filed 10–23–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Revocations

The Commission gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. 40101) effective on the date shown.

*License No.:* 3184F.
*Name:* Alliance International Forwarders, Inc.
*Address:* 7155 Old Katy Road, Suite 100 South, Houston, TX 77024.
*Date Revoked:* September 6, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 003977F.
*Name:* A Active Freezone Cargo, Inc.
*Address:* 2315 NW 107th Avenue, Suite 1M2, Box #55, Miami, FL 33172.
*Date Revoked:* September 1, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 4571F.
*Name:* Logistics, Inc.
*Address:* 313 West Arundel Road, Baltimore, MD 21225.
*Date Revoked:* September 21, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 011737N.
*Name:* All Nat, Inc.
*Address:* 1205 W. North Carrier Pkwy., Grand Prairie, TX 75050.
*Date Revoked:* September 14, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 12079N.
*Name:* LTS Shipping Corp.
*Address:* 7155 Old Katy Road, Suite 100 South, Houston, TX 77024.
*Date Revoked:* September 6, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 015342F.
*Name:* Harold Kass-World Wide Moving, Inc. dba HK Worldwide Moving, Inc.
*Address:* 3641 S. Washtenaw Avenue, Chicago, IL 60632.

*Date Revoked:* September 22, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 016012F.
*Name:* Samari Global Trade, Inc.
*Address:* 1310 Beach Avenue, Bronx, NY 10472.
*Date Revoked:* September 10, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 017864F.
*Name:* Navivan Corp.
*Address:* 200 Crofton Road, Suite 2, Bldg. 10–B, Kenner, LA 70062.
*Date Revoked:* September 6, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 017881N.
*Name:* Seair International Inc.
*Address:* 147–39 175th Street, Suite 201, Jamaica, NY 11434.
*Date Revoked:* September 8, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 018156F.
*Name:* Cargo Alliance Inc.
*Address:* 583 Monterey Pass Road, Suite C, Monterey Park, CA 91754.
*Date Revoked:* September 5, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 018841N.
*Name:* Canaan Int'l Freight, Inc.
*Address:* 179–02 150th Avenue, Jamaica, NY 11434.
*Date Revoked:* September 19, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 019327N.
*Name:* David A. Knott dba Dak Logistics Services.
*Address:* 131–E Sunset Avenue, Suite 210, Suisun City, CA 94585.
*Date Revoked:* September 28, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 020151NF.
*Name:* United Global Logistics, LLC.
*Address:* 1139 East Jersey Street, Suite 417, Elizabeth, NJ 07201.
*Date Revoked:* September 10, 2012.
*Reason:* Failed to maintain valid bonds.

*License No.:* 020872N.
*Name:* Smart Freight Corp.
*Address:* 430 West Merrick Road, Suite 26, Valley Stream, NY 11580.
*Date Revoked:* September 21, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 020991N.
*Name:* Cargo Alliance Logistics Inc. dba Change Group Logistics.
*Address:* 111 John Street, 19th Floor, New York, NY 10038.
*Date Revoked:* September 22, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 021098F.
*Name:* MG Forwarding, LLC.
*Address:* 2919 SW 17th Street, Miami, FL 33145.
*Date Revoked:* October 1, 2012.
*Reason:* Voluntary surrender of license.

*License No.:* 021953F.
*Name:* Express Shipping Company of Illinois.
*Address:* 670 E. Northwest Highway, 2nd Floor, Arlington Heights, IL 60004.
*Date Revoked:* September 2, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 022119F.
*Name:* Rom Enterprise, Inc. dba Monark Worldwide.
*Address:* 22122 Sherman Way, Suite 203, Canoga Park, CA 91303.
*Date Revoked:* September 22, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 022878F.
*Name:* A–1 Fargo Van and Storage, Inc.
*Address:* 7700 SW 100th Street, Miami, FL 33156.
*Date Revoked:* September 22, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 023316N.
*Name:* Morgan USA Logistics Inc.
*Address:* 145–40 157th Street, Suite F–1, Jamaica, NY 11434.
*Date Revoked:* September 14, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 023320N.
*Name:* Translink International, Inc.
*Address:* 2591 Highway 17, Suite 203, Richmond Hill, GA 31324.
*Date Revoked:* September 5, 2012.
*Reason:* Failed to maintain a valid bond.

*License No.:* 022384NF.
*Name:* Seacrest Logistics Inc.
*Address:* 1500 S. Dairy Ashford Road, Suite 451, Houston, TX 77077.
*Date Revoked:* September 3, 2012.
*Reason:* Failed to maintain valid bonds.

*License No.:* 023500F.
*Name:* IMAC International Corp.
*Address:* 527 Albert Street, East Meadow, NY 11554.
*Date Revoked:* September 10, 2012.
*Reason:* Failed to maintain a valid bond.

**James A. Nussbaumer,**

*Deputy Director, Bureau of Certification and Licensing.*

[FR Doc. 2012–26219 Filed 10–23–12; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 8, 2012.

**A. Federal Reserve Bank of Richmond** (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Tamra Wright Thomas,* Winston Salem, North Carolina; to acquire voting shares of Surrey Bancorp, Mount Airy, and thereby indirectly acquire voting shares of Surrey Bank & Trust, both in Mount Airy, North Carolina.

**B. Federal Reserve Bank of Kansas City** (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The E.L. Burch Irrevocable Trust of 2012,* together with its trustees, Kyle Burch, both of Parkville, Missouri, and Michele Jones, Overland Park, Kansas; to acquire voting shares of Platte County Bancshares, Inc., and thereby indirectly acquire voting shares of Platte Valley Bank of Missouri, both in Platte City, Missouri.

Board of Governors of the Federal Reserve System, October 19, 2012.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2012–26196 Filed 10–23–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank

holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 19, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Cattail Bancshares, Inc.,* Atwater, Minnesota; to acquire 100 percent of the voting shares of Citizens State Bank of Waverly, Inc., Waverly, Minnesota.

2. *Centra Ventures, Inc.,* Foley, Minnesota; to acquire 100 percent of the voting shares of Richmond Bank Holding Company, and thereby indirectly acquire voting shares of State Bank of Richmond, both in Richmond, Minnesota.

Board of Governors of the Federal Reserve System, October 19, 2012.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2012–26194 Filed 10–23–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 8, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. Orange County Bancorp, Inc.,* Middletown, New York; to acquire 100 percent of the voting shares of HV Capital Management, Inc., and indirectly acquire voting shares of Hudson Valley Investment Advisors, LLC, both in Goshen, New York, and thereby engage in investment advisory activities, pursuant to section 225.28(b)(6)(i).

Board of Governors of the Federal Reserve System, October 19, 2012.

**Robert deV. Frierson,**

*Secretary of the Board.*

[FR Doc. 2012–26195 Filed 10–23–12; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC seeks public comments on its proposal to extend through February 28, 2016, the current OMB clearance for information collection requirements contained in its Mail or Telephone Order Merchandise Trade Regulation Rule (''MTOR'' or ''Rule''). That clearance expires on February 28, 2013.

**DATES:** Comments must be received by December 24, 2012.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be addressed to Jock Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2984.

**SUPPLEMENTARY INFORMATION:**

#### Proposed Information Collection Activities

Under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520, federal agencies must get OMB approval for each collection of information they conduct, sponsor, or require. ''Collection of information'' means agency requests or requirements to submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the Federal Trade Commission (''FTC'') is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the information collection requirements associated with the Commission's rules and regulations under the Mail or Telephone Order Merchandise Trade Regulation Rule (''MTOR''), 16 CFR Part 435 (OMB Control Number 3084–0106).

The FTC invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond. All comments must be received on or before December 24, 2012.

The MTOR was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship merchandise ordered by mail on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry

were also being experienced by consumers who ordered merchandise over the telephone. Accordingly, the Commission amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by telefax or by computer through the use of a modem (e.g., Internet sales), and the Rule was then renamed the ''Mail or Telephone Order Merchandise Rule.''

Generally, the MTOR requires a merchant to: (1) Have a reasonable basis for any express or implied shipment representation made in soliciting the sale (if no express time period is promised, the implied shipment representation is 30 days); (2) notify the consumer and obtain the consumer's consent to any delay in shipment; and (3) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.[1]

The notice provisions in the Rule require a merchant who is unable to ship within the promised shipment time or 30 days to notify the consumer of a revised date and his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the MTOR requires the merchant to make a refund and the consumer has paid by credit card, the Rule also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action that will result in a charge.

*Burden Statement:*

*Estimated total annual hours burden:* 1,764,390 hours.

In its 2009–2010 PRA-related **Federal Register** Notices [2] and corresponding submission to OMB, FTC staff estimated that established companies each spend an average of 50 hours per year on compliance with the Rule, and that new industry entrants spend an average of 230 hours (an industry estimate) for compliance measures associated with start-up.[3] Thus, the total estimated hours burden was calculated by multiplying the estimated number of established companies × 50 hours, multiplying the estimated number of new entrants × 230 hours, and adding the two products.

No substantive provisions in the Rule have been amended or changed since staff's prior submission to OMB.[4] Thus, the Rule's disclosure requirements remain the same. Moreover, no public comments were received regarding the above-noted estimates; thus, staff will apply them to the current PRA burden analysis.

Since the prior submission to OMB, however, the number of businesses engaged in the sale of merchandise by mail or by telephone has changed. Data from the U.S. Census Bureau [5] indicates that between 2000 and 2008 the number of businesses subject to the MTOR grew from 11,800 to 21,900, or an average increase of 1,263 new businesses a year [(21,900 businesses in 2008 − 11,800 businesses in 2000) ÷ 8 years].[6] Assuming this growth rate continued in 2009 through 2012, and continues in 2013 through 2016, the average number of established businesses during the three-year period for which OMB clearance is sought for the Rule would be 29,478: [7]

| Year | Established businesses | New entrants |
|---|---|---|
| 2013 ..... | 28,215 | 1,263 |
| 2014 ..... | 29,478 | 1,263 |
| 2015 ..... | 30,741 | 1,263 |
| Average .... | 29,478 | 1,263 |

In an average year during the three-year OMB clearance period, staff estimates that established businesses and new entrants will devote 1,858,000 hours, rounded to the nearest thousand, to comply with the MTOR [(29,478 established businesses × 50 hours) + (1,263 new entrants × 230 hours) = 1,764,390].

The estimated PRA burden per merchant to comply with the MTOR is likely overstated. The mail-order industry has been subject to the basic provisions of the Rule since 1976 and the telephone-order industry since 1994. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Moreover, arguably much of the estimated time burden for disclosure-related compliance would be incurred even absent the Rule. Industry trade associations and individual witnesses have consistently taken the position that compliance with the MTOR is widely regarded by direct marketers as being good business practice. Providing consumers with notice about the status of their orders fosters consumer loyalty and encourages repeat purchases, which are important to direct marketers' success. Accordingly, the Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations regarding timely shipment, notification of delay, and prompt and full refunds. Thus, it appears that much of the time and expense associated with Rule compliance may not constitute ''burden'' under the PRA.[8]

*Estimated labor costs:* $31,830,000 (rounded to the nearest thousand).

FTC staff derived labor costs by applying appropriate hourly cost figures to the burden hours described above. According to the most recent data available from the Bureau of Labor and Statistics,[9] the mean hourly income for

[1] The MTOR does not impose a recordkeeping requirements *per se.* 16 CFR 435.1(d) provides that, in an action for noncompliance, the absence of records that establish that a respondent-seller uses systems and procedures to assure compliance will create a rebuttable presumption that the seller was not compliant, but the MTOR does not require a compliant seller to maintain any records. Merchants customarily keep records regarding their systems and procedures in the ordinary course of business, however; consequently, their retention of these documents does not constitute a ''collection of information'' under OMB's regulations that implement the PRA. *See* 5 CFR 1320.3(b)(2).

[2] 74 FR 53500 (Oct. 19, 2009); 75 FR 2142 (Jan. 14, 2010).

[3] Most of the estimated start-up time relates to the development and installation of computer systems geared to more efficiently handle customer orders.

[4] As part of the systematic review of all Commission rules, on September 30, 2011, the FTC published a **Federal Register** Notice concluding that the Rule continued to benefit consumers and would be retained. 76 FR 60715. For clarity, the Commission reorganized the Rule by alphabetizing the definitions at the beginning of the Rule. That amendment did not impose any additional ''collection of information'' requirements.

[5] *See* Table 1048, ''Retail Trade—Establishments, Employees, and Payroll,'' U.S. Census Bureau, ''County Business Patterns,'' July 2009 (*www.census.gov/compendia/statab/2012/tables/12s1048.xls*).

[6] Conceptually, this might understate the number of new entrants in that it does not factor in the possibility that established businesses from an earlier year's comparison might have exited the market preceding the later year of measurement. Given the virtually unlimited diversity of retail establishments, it is very unlikely that there is a reliable external measure of such exit; nonetheless, as in the past, the Commission invites public comment that might better inform these estimates.

[7] As noted above, the existing OMB clearance for the Rule expires on January 31, 2013, and the FTC is seeking to extend the clearance through January 31, 2016.

[8] Conceivably, in the three years since the FTC's most recent clearance request to OMB for this Rule, many businesses have upgraded the information management systems needed to comply with the Rule and to track orders more effectively. These upgrades, however, were primarily prompted by the industry's need to deal with growing consumer demand for merchandise (resulting, in part, from increased public acceptance of making purchases over the telephone and, more recently, the Internet). Accordingly, most companies now provide updated order information of the kind required by the Rule in their ordinary course of business. Under the OMB regulation implementing the PRA, burden is defined to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[9] *See* Table 1, National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2011, at *http://www.bls.gov/news.release/pdf/ocwage.pdf.*

workers in sales and related occupations was $18.04/hr. The bulk of the burden of complying with the MTOR is borne by clerical personnel along with assistance from sales personnel. Staff believes that the mean hourly income for workers in sales and related occupations is an appropriate measure of a direct marketer's average labor cost to comply with the Rule. Thus, the total annual labor cost to new and established businesses for MTOR compliance during the three-year period for which OMB approval is sought would be approximately $31,830,000 (1,764,390 hours × $18.04/hr.), rounded to the nearest thousand. Relative to direct industry sales, this total is negligible.[10]

*Estimated annual non-labor cost burden:* $0 or minimal.

The applicable requirements impose minimal start-up costs, as businesses subject to the Rule generally have or obtain necessary equipment for other business purposes, i.e., inventory and order management, and customer relations. For the same reason, staff anticipates printing and copying costs to be minimal, especially given that telephone order merchants have increasingly turned to electronic communications to notify consumers of delay and to provide cancellation options. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the Rule.

**Request for Comments**

You can file a comment online or on paper. Write ''Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is * * * privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, the Commission encourages you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/MTORpra,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Mail or Telephone Order Merchandise Trade Regulation Rule: FTC File No. R511929'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 24, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. 2012–26168 Filed 10–23–12; 8:45 am]

**BILLING CODE 6750–01–P**

[10] Considering that sales for ''electronic shopping and mail-order houses'' grew from $80 billion in 1998 to $235.0 billion in 2009 (according to Table 1055 in the 2012 Statistical Abstracts; found on 12s1055–1.xls available at *http://www.census.gov/compendia/statab/cats/wholesale_retail_trade/online_retail_sales.html*), staff estimates the annual mail or telephone sales to consumers in the three-year period for which OMB clearance is sought will average $305 billion. Thus, the projected average labor cost for MTOR compliance by existing and new businesses for that period would amount to 0.01% of sales.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Designation of a Class of Employees for Addition to the Special Exposure Cohort

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HHS gives notice of a decision to designate a class of employees from the Ventron Corporation, in Beverly, Massachusetts, as an addition to the Special Exposure Cohort (SEC) under the Energy Employees Occupational Illness Compensation Program Act of 2000. On October 12, 2012, the Secretary of HHS designated the following class of employees as an addition to the SEC:

All Atomic Weapons Employees who worked for the Ventron Corporation at its facility in Beverly, Massachusetts, from November 1, 1942, through December 31, 1948, for a number of work days aggregating at least 250 work days, occurring either solely under this employment, or in combination with work days within the parameters established for one or more other classes of employees included in the Special Exposure Cohort.

This designation will become effective on November 11, 2012, unless Congress provides otherwise prior to the effective date. After this effective date, HHS will publish a notice in the **Federal Register** reporting the addition of this class to the SEC or the result of any provision by Congress regarding the decision by HHS to add the class to the SEC.

**FOR FURTHER INFORMATION CONTACT:** Stuart L. Hinnefeld, Director, Division

of Compensation Analysis and Support, NIOSH, 4676 Columbia Parkway, MS C–46, Cincinnati, OH 45226, Telephone 1–877–222–7570. Information requests can also be submitted by email to *DCAS@CDC.GOV.*

**John Howard,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 2012–26172 Filed 10–23–12; 8:45 am]

**BILLING CODE 4163–19–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee on Childhood Lead Poisoning Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned committee:

**Times and Dates**

9:00 a.m.–4:00 p.m., November 14, 2012
8:45 a.m.–4:30 p.m., November 15, 2012
9:15 a.m.–12:00 p.m., November 16, 2012

*Place:* CDC, Chamblee Campus, Building 106, 1st Floor, Conference Rooms 1A/B, 4770 Buford Highway, NE., Atlanta, Georgia 30341.

**Status**

This meeting is open to the public, limited only by the space available. The meeting room accommodates approximately 75 people. Opportunities will be provided during the meeting for oral comments.

**Purpose**

The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

**Matters To Be Discussed**

Agenda items will include the following: Childhood Lead Poisoning Prevention Update—Status of our 35 Programs; evaluation of services for children in Chicago; scientific program presentation costs and benefits of smoke free policies in public housing; Laboratory Workgroup updates; Educational Intervention Workgroup presentation; Agency updates and Response to ACCLPP Recommendations; Federal agency updates; HUD Guidelines (Second Edition); Lead-based paint/hazards standard review; Spot Test Kit update and international work.

Agenda items are subject to change as priorities dictate.

*Supplemental Information:* The public comment period is scheduled on Wednesday, November 14, 2012, from 3:45 p.m.–4:00 p.m.; on Thursday, November 15, 2012, from 4:15 p.m.–4:30 p.m.; and on Friday, November 16, 2012, from 11:45 a.m.–12:00 p.m.

**Contact Person for More Information**

Sandra Malcom, Committee Management Specialist, NCEH/ATSDR, CDC, 4770 Buford Highway, Mail Stop F–61, Chamblee, Georgia 30345, Telephone: (770) 488–0575, Fax: (770) 488–3377, Email: *smalcom@cdc.gov*. The deadline for notification of attendance is November 9, 2012.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: October 17, 2012.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 2012–26274 Filed 10–23–12; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[CMS–3275–N]**

### Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—January 30, 2013

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, January 30, 2013. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on beta amyloid positron emission tomography in dementia and neurodegenerative disease. This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

**DATES:** *Meeting Date:* The public meeting will be held on Wednesday, January 30, 2013 from 7:30 a.m. until 4:30 p.m., Eastern Standard Time (EST).

*Deadline for Submission of Written Comments:* Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m., EST, Monday, December 17, 2012. Once submitted, all comments are final.

*Deadlines for Speaker Registration and Presentation Materials:* The deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5:00 p.m., EST on Monday, December 17, 2012. Speakers may register by phone or via email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

*Deadline for All Other Attendees Registration:* Individuals may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. EST, Wednesday, January 23, 2013.

We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/*.

*Deadline for Submitting a Request for Special Accommodations:* Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5:00 p.m., EST Friday, January 11, 2013.

**ADDRESSES:** *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

*Submission of Presentations and Comments:* Presentation materials and written comments that will be presented at the meeting must be submitted via

email to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via email at *Maria.Ellis@cms.hhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780). This notice announces the Wednesday, January 30, 2013, public meeting of the Committee. During this meeting, the Committee will discuss beta amyloid positron emission tomography in dementia and neurodegenerative disease. Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. CMS will no longer be providing paper copies of the handouts for the meeting. Electronic copies of all the meeting materials will be on the CMS Web site no later than 2 business days before the meeting. We encourage the participation of appropriate organizations with expertise in beta amyloid positron emission tomography in dementia and neurodegenerative disease.

## II. Meeting Format

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, CMS may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by December 20, 2012. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

## III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and email address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified that the seating capacity has been reached.

## IV. Security, Building, and Parking Guidelines

This meeting will be held in a federal government building; therefore, federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

**Note:** Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting.

All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

**Authority:** 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 17, 2012.

**Patrick Conway,**

*CMS Chief Medical Officer and Director, Center for Clinical Standards and Quality, Centers for Medicare & Medicaid Services.*

[FR Doc. 2012–26124 Filed 10–23–12; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Native Employment Works (NEW) Program Plan Guidance and Report Requirements.

*OMB No.:* 0970–0174.

*Description:* The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance provides instructions for preparing a NEW program plan and explains the process for plan submission every third year. The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

*Respondents:* Federally recognized Indian Tribes and Tribal organizations that are NEW program grantees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| NEW program plan guidance | *26 | 1 | 29 | 754 |
| NEW program report | **48 | 1 | 15 | 720 |

Estimated Total Annual Burden Hours: 1,474.

*79 grantees divided by 3 (because grantees submit the NEW plan once every 3 years) = 26.

**We estimate that 48 of the 79 NEW grantees will not include their NEW programs in P.L. 102–477 projects and therefore will submit the NEW program report to HHS.

**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, Email: *OIRA_SUBMISSION@OMB.EOP.GOV.* Attn: Desk Officer for the Administration for Children and Families.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 2012–26197 Filed 10–23–12; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2012–D–0585]**

### Guidance for Industry: Necessity of the Use of Food Product Categories in Food Facility Registrations and Updates to Food Product Categories; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or we) is announcing the availability of a guidance for industry entitled ''Necessity of the Use of Food Product Categories in Food Facility Registrations and Updates to Food Product Categories.'' FDA has developed this guidance in response to amendments made by the FDA Food Safety Modernization Act (FSMA) to the Federal Food, Drug, and Cosmetic Act (FD&C Act). This guidance contains FDA's determination that information about food product categories in food facility registrations is necessary for a quick, accurate, and focused response to a food safety related issue or incident, an actual or potential bioterrorist incident, or other food-related emergency. The guidance also identifies the additional food product categories included as mandatory fields in food facility registrations, as determined appropriate by FDA.

**DATES:** Submit either electronic or written comments on FDA guidances at any time.

**ADDRESSES:** Submit written requests for single copies of the guidance to Office of Compliance, Division of Field Programs and Guidance, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Amy Barringer, Center for Food Safety and Applied Nutrition (HFS–615), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1988.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

We are announcing the availability of a guidance for industry entitled ''Necessity of the Use of Food Product Categories in Food Facility Registrations and Updates to Food Product Categories.'' FDA has developed this guidance in response to amendments made by section 102 of FSMA (Pub. L. 111–353) to section 415(a)(2) of the FD&C Act (21 U.S.C. 350d(a)(2)).

FSMA, enacted on January 4, 2011, amended the food facility registration requirements of section 415 of the FD&C Act. Section 415(a)(2) of the FD&C Act, as amended by section 102 of FSMA, provides in relevant part that, when determined necessary by FDA through guidance, a registrant is required to submit a registration to FDA containing information necessary to notify FDA of the general food category (as identified in § 170.3 (21 CFR 170.3) or any other food categories, as determined appropriate by FDA, including by guidance) of any food manufactured, processed, packed, or held at such facility. This guidance contains FDA's determination that information about food product categories as identified in § 170.3 and the other food product categories is necessary for a quick, accurate, and focused response to a food safety related issue or incident, an actual or potential bioterrorist incident, or other food-related emergency. The guidance also identifies the additional food product categories included as mandatory fields in food facility registrations, as determined appropriate by FDA under section 102 of FSMA.

In the **Federal Register** of August 15, 2012 (77 FR 48990), we made available a draft guidance entitled ''Guidance for Industry: Necessity of the Use of Food

Categories in Food Facility Registrations and Updates to Food Categories'' and gave interested parties an opportunity to submit comments to us by September 14, 2012, for us to consider before beginning work on the final version of the guidance. We received several comments on the draft guidance. We reviewed and evaluated these comments and have modified the final guidance where appropriate. Changes to the guidance include amending a typographical error in the fishery/seafood product categories. We also added the word ''nutritional'' to the pet supplements category in the food for animal consumption food product categories to clarify that the category applies to ''pet nutritional supplements.'' The guidance announced in this notice finalizes the draft guidance dated August 2012.

As noted previously, section 415(a)(2) of the FD&C Act provides, in relevant part, that a food facility must submit to FDA a registration containing information about the general food category (as identified in § 170.3 or any other food category as determined appropriate by FDA, including ''by guidance'') of a food manufactured/processed, packed or held at such facility, if we determine ''through guidance'' that such information is necessary. Because of Congress's explicit statutory authorization in section 415(a)(2) of the FD&C Act to effectuate binding requirements based on actions by guidance, this document is not subject to the usual restrictions in FDA's good guidance practice (GGP) regulations, such as the requirements that guidances not establish legally enforceable responsibilities and that they prominently display a statement of the document's nonbinding effect. *See* 21 CFR 10.115(d)(i).

To comply with the GGP regulations and make sure that regulated entities and the public understand that guidance documents are nonbinding, FDA guidances ordinarily contain standard language explaining that guidances should be viewed only as recommendations unless specific regulatory or statutory requirements are cited, and our guidances also ordinarily include the following standard paragraph:

''This guidance represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance. If you cannot identify the appropriate FDA staff, call the appropriate number listed on the title page of this guidance.''

We are not including this standard language in this guidance because it is not an accurate description of the effect of this guidance. This guidance contains findings that serve as the predicates for binding requirements on industry. As stated in ''Guidance for Industry on Necessity of the Use of Food Product Categories in Registration of Food Facilities'' (2003), which was issued under section 415 of the FD&C Act, as added by section 305 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188), we found that inclusion of the food categories in § 170.3 in food facility registrations is necessary for a quick, accurate, and focused response to an actual or potential bioterrorist incident or other food-related emergency. Based in part on this finding, FDA's regulations for the registration of food facilities in 21 CFR part 1, subpart H currently require that a food facility submit a registration to FDA containing information on applicable food product categories as identified in § 170.3 for food manufactured/processed, packed, or held at such facility. As provided in section 102 of FSMA, this guidance contains FDA's finding that inclusion of other food categories in food facility registrations is also necessary to facilitate such rapid communications. In addition, this guidance sets forth the other food product categories to be included in food facility registrations determined to be appropriate by FDA for the purposes of food facility registration. Insofar as this guidance modifies food product categories for food facility registration under section 415 of the FD&C Act, it has binding effect. For these reasons, we are not including the standard guidance paragraph in this guidance.

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in §§ 1.230 through 1.235 have been approved under OMB Control No. 0910–0502.

## III. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

## IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/FoodGuidances* or *http://www.regulations.gov*. Use the FDA Web site listed in the previous sentence to find the most current version of the guidance.

Dated: October 18, 2012.

**Leslie Kux,**

*Assistant Commissioner for Policy.*

[FR Doc. 2012–26239 Filed 10–23–12; 8:45 am]

**BILLING CODE 4160–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No FDA–2012–N–0001]**

### Drug Safety and Risk Management Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Drug Safety and Risk Management Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the Agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on December 12, 2012, from 8 a.m. to 5:30 p.m. and on December 13, 2012, from 8 a.m. to 3:30 p.m.

*Location:* FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors

to the White Oak Campus must enter through Building 1.

*Contact Person:* Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg, 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *DSaRM@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

*Agenda:* The Food and Drug Administration Amendments Act of 2007 requires FDA to bring, at least annually, one or more drugs with Risk Evaluation and Mitigation Strategies (REMS) with Elements to Assure Safe Use (ETASU) before CDER's Drug Safety and Risk Management Advisory Committee (DSaRM). The Agency plans to present information on the risk management of teratogens, some of which have REMS with ETASU.

On December 12, 2012, the committee will meet to discuss the various strategies used by the Agency to define and address teratogenic risk, including requiring REMS with ETASU. The discussion will include an evaluation of the different strategies and the decision framework for selecting risk management strategies for teratogens. The committee will discuss whether the risk management strategies, including REMS with ETASU, assure safe use, are not unduly burdensome to patient access to the drug, and to the extent practicable, minimize the burden to the health care delivery system.

On December 13, 2012, the committee will discuss two common risk management tools used to minimize the risk of teratogens—contraception and pregnancy testing. The committee will discuss considerations for standardizing recommendations for use of these two tools.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 28, 2012. Oral presentations from the public will be scheduled between approximately 1:40 p.m. to 2:10 p.m. on December 12, 2012, and between approximately 12:45 p.m. to 1:15 p.m. on December 13, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before November 19, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by November 20, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA 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 Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: October 16, 2012.

**Jill Hartzler Warner,**

*Acting Associate Commissioner for Special Medical Programs.*

[FR Doc. 2012–26162 Filed 10–23–12; 8:45 am]

**BILLING CODE 4160–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request: The Jackson Heart Study (JHS)

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* The Jackson Heart Study: Annual Follow-up with Third Party Respondents. *Type of Information Collection Request:* Revision of a currently approved collection (OMB NO. 0925–0491). *Need and Use of Information Collection:* This project involves annual follow-up by telephone of participants in the JHS study, review of their medical records, and interviews with doctors and family to identify disease occurrence. Interviewers will contact doctors and hospitals to ascertain participants' cardiovascular events. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in African American men and women. Recruitment of 5,500 JHS participants began in September 2000 and was completed in March 2004. 5,302 participants completed a baseline Exam 1 that included demographics, psychosocial inventories, medical history, anthropometry, resting and ambulatory blood pressure, phlebotomy and 24-hour urine collection, ECG, echocardiography, and pulmonary function. JHS Exam 2 began September 26 2005, followed by a more comprehensive Exam 3 that began in February 2009. The two new exams include some repeated measures from Exam 1 and several new components, including distribution of self-monitoring blood pressure devices. The continuation of the study allows continued assessment of subclinical coronary disease, left ventricular

dysfunction, progression of carotid atherosclerosis and left ventricular hypertrophy, and responses to stress, racism, and discrimination as well as new components such as renal disease, body fat distribution and body composition, and metabolic consequences of obesity. The JHS Community Health Advisor Networks (CHANs) comprise another component of the study. The JHS data shows high prevalences of risk factors: 73% of recruited participants are hypertensive, 29% are diabetic, 56% are obese (BMI > 30kg/m2), and 30% have the metabolic syndrome. Exploration of the impact on and interaction of high risk factor levels with other measures of clinical and subclinical disease will help identify unique approaches through epidemiology and prevention research to reduce the disproportionate burden of CVD in African-Americans. . The JHS CHANs play an important role to address CVD prevention by providing training to community members to spread health promotion and prevention messages within the Jackson community. The JHS Community Health Advisors (CHAs) are trained and certified to organize and conduct various outreach activities in five Jackson-area communities. Data on the JHS CHAs will be collected. *Frequency of Response:* One-time. *Affected Public:* Individuals or households; Businesses or other for profit; not-for-profit institutions. *Type of Respondents:* Middle aged and elderly adults; doctors and staff of hospitals and nursing homes. The annual reporting burden is as follows: *Estimated Number of Respondents:* 478; *Estimated Number of Responses per Respondent:* 1.0; *Average Burden Hours Per Response: 2.47);* and *Estimated Total Annual Burden Hours Requested:* 1253. The annualized cost to respondents is estimated at $24,206. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF ANNUAL HOUR BURDEN

| Type of respondents | Number of respondents | Frequency of responses | Average time per response | Annual hour burden |
|---|---|---|---|---|
| Families | 200 | 1 | 1/6 | 33⅓ |
| Physicians | 200 | 1 | 15/60 | 50 |
| Communities: | | | | |
| Bolton | 16 | 10 | 90/60 | 240 |
| Canton | 14 | 10 | 90/60 | 210 |
| Clinton | 13 | 10 | 90/60 | 195 |
| Jackson | 15 | 10 | 90/60 | 225 |
| Rankin | 20 | 10 | 90/60 | 300 |
| Total | 478 | ..... | ..... | 1253 ⅓ |

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Cheryl Nelson, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number 301- 435–0451 or Email your request, including your address to: *NelsonC@nhlbi.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: October 18, 2012.

**Lynn Susulske,**

*NHLBI Project Clearance Liaison, National Institutes of Health.*

**Michael Lauer,**

*Director, DCVS, National Institutes of Health.*

[FR Doc. 2012–26226 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Best Pharmaceuticals for Children Act (BPCA) Priority List of Needs in Pediatric Therapeutics

**AGENCY:** National Institutes of Health, the *Eunice Kennedy Shriver* National Institute of Child Health and Human Development.

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH) hereby announces the Best Pharmaceuticals for Children Act (BPCA) Priority List of Needs in Pediatric Therapeutics for 2012. The BPCA seeks to improve the level of information on the safe and effective use of pharmaceuticals used to treat children. It requires that the NIH identify the drugs of highest priority for study in pediatric populations and publish a list of drugs/needs in pediatric therapeutics. This notice fulfills the requirement to publish that list.

**SUPPLEMENTARY INFORMATION:** The pediatric medical community, the public health community, and government agencies have recognized multiple gaps in knowledge regarding the use of therapeutics in children, including the correct dose, appropriate indications, side effects, and safety concerns of pharmaceuticals in the short- and long-term. These gaps have frequently resulted in inadequate labeling for pediatric use and in widespread off-label use of prescription drugs in children. Off-label use of a drug substantially limits the ability to gain clinical information of the drug product, such as appropriate dosing of a drug, changes in drug metabolism and response during growth and development, and important short- and long-term effects. Contributing factors to extensive off-label product use include limited access to patient populations for study, lack of knowledge related to the ethical conduct of clinical trials in

children, the absence of sufficient evidence-based information about medication use in children, and a general lack of long-term safety data on the medications that are used. All of these factors contribute to the lack of adequately collected pharmacokinetic, pharmacodynamic, safety, and efficacy data in children and can increase a child's risk for unknown and/or adverse effects.

The *Eunice Kennedy Shriver* National Institute of Child Health and Human Development (NICHD), the Food and Drug Administration (FDA), other federal agencies, and various non-profit and commercial organizations have taken steps to address the knowledge gaps that exist in pediatric therapeutics.

**The 2002 BPCA Legislation**

The initial BPCA legislation reauthorized an incentive program for on-patent drugs that met certain criteria that were first authorized in the FDA Modernization Act (FDAMA). The BPCA also contains provisions for off-patent drugs and general support for pediatric product development that were not included in the FDAMA. The legislation, as it applies to the NIH, authorizes a research program through the Department of Health and Human Services (HHS), with implementation through the NIH, specifically by the NICHD. The NICHD is responsible for the development of: (1) A priority list of needs in pediatric therapeutics, in consultation with the FDA and experts in pediatrics; (2) sponsorship of relevant pediatric clinical trials; and 3) submission of resulting clinical trial data to FDA for pediatric labeling changes.

**The Updated BPCA Legislation of 2007**

Title V of Public Law 110–85, the Best Pharmaceuticals for Children Act of 2007, was enacted on September 27, 2007, as part of the Food and Drug Administration Amendments Act of 2007. This legislation, which reauthorizes the BPCA (Section 409I of the Public Health Service Act), extends the 6-month patent exclusivity provision for currently on-patent drugs being studied for pediatric use, and also extends and expands the NIH research program that was established in the earlier law. The priority list procedure was revised to emphasize knowledge gaps in therapeutic areas in contrast to knowledge gaps about specific drug products.

**Update on BPCA Prioritization**

The BPCA requires that the NIH, in consultation with the Food and Drug Administration and experts in pediatric research, identify the drugs and therapeutic areas of highest priority for study in pediatric populations. Part of fulfilling the NIH's authority and responsibility outlined in the BPCA legislation is to establish a program for pediatric drug testing and development and to publish a list of drugs/needs in pediatric therapeutics. The BPCA Priority List consists of key therapeutic needs in the medical treatment of children and adolescents; it is organized by therapeutic area, which can be a group of conditions, a subgroup of the population, or a setting of care. The first priority list of off-patent drugs needing further study under the 2002 BPCA legislation was published in January 2003 in the **Federal Register** (FR Vol. 68, No. 13; Tuesday, January 21, 2003: 2789–2790). The most recent priority list was published April 1, 2011; all **Federal Register** notices can be found on the BPCA Web site: *http://bpca.nichd.nih.gov/prioritization/status.cfm.* NIH is required by BPCA to update the priority list every three years. This publication serves as an update to the BPCA priority list of needs in pediatric therapeutics.

The Obstetric and Pediatric Pharmacology Branch of the NICHD has developed a prioritization process for determination of the needs in pediatric therapeutics. There are two main phases in the prioritization process. Phase I entails identifying therapeutic areas, which are general categories of conditions, diseases, settings of care, or populations with multiple therapeutic needs. Phase II involves determining more specific pediatric needs, including research associated with a particular drug, biologic, or device. Please visit the BPCA Web site for more details (*http://bpca.nichd.nih.gov/prioritization/priority_list.cfm*). Factors incorporated in the process include the following:

- Availability of information concerning the safe and effective use of a drug in the pediatric population and the need for additional information;
- Potential health benefits in the pediatric population resulting from new studies;
- Possible need for reformulation of existing products;
- Therapeutic gaps in pediatrics that may include developmental pharmacology, pharmacogenetic determinants of drug response, metabolism of drugs and biologics in children, and pediatric clinical trials;
- Particular pediatric diseases, disorders, or conditions where more complex knowledge and testing of therapeutics, including drugs and biologics, may be beneficial in pediatric populations; and
- The adequacy of necessary infrastructure to conduct pediatric pharmacological research, including research networks and trained pediatric investigators.

The NICHD evaluates the current list of needs in pediatric therapeutics regularly to determine target areas for the coming calendar year. The NICHD sponsored the BPCA Annual Prioritization Meeting, held December 9–10, 2011, with stakeholders from the NIH, the FDA, and the American Academy of Pediatrics (AAP), as well as other pediatric organizations, societies, and patient advocates. The meeting allowed all stakeholders to review the present progress from ongoing research, to discuss lessons learned since the implementation of the BPCA legislation, and to discuss the proposed therapeutic areas from the 2011 recommendations for future study under the BPCA. Meeting minutes can be found on the BPCA Web site: *http://bpca.nichd.nih.gov/prioritization/meeting_summary.cfm.*

Below is an updated list of therapeutic areas and drugs that have been prioritized for study since the inception of the BPCA, which includes new areas of prioritization from the 2010 outreach nominations, recommendations from the 2011 working groups, and a summary of the NICHD's plans and progress in all of these areas. The NICHD also solicits input from the pediatric medical community on additional gaps in pediatric therapeutics for future consideration. All nominations should be submitted to Dr. Perdita Taylor-Zapata at the contact information below.

**Priority List of Needs in Pediatric Therapeutics 2012**

In accordance with the BPCA legislation, the list outlines priority needs in pediatric therapeutics for multiple therapeutic areas listed below. The complete list can be found on the BPCA Web site at the following address: *http://bpca.nichd.nih.gov.*

- *Table 1: Infectious Disease Priorities*
- *Table 2: Cardiovascular Disease Priorities*
- *Table 3: Respiratory Disease Priorities*
- *Table 4: Intensive Care Priorities*
- *Table 5: Bio-defense Research Priorities*
- *Table 6: Pediatric Cancer Priorities*
- *Table 7: Psychiatric Disorder Priorities*
- *Table 8: Neurological Disease Priorities*
- *Table 9: Neonatal Research Priorities*
- *Table 10: Adolescent Research Priorities*

- *Table 11: Hematologic Disease Priorities*
- *Table 12: Endocrine Disease Priorities and Diseases with Limited Alternative Therapies*
- *Table 13: Dermatologic Disease Priorities*
- *Table 14: Gastrointestinal Disease Priorities*
- *Table 15: Renal Disease Priorities*
- *Table 16: Rheumatologic Disease Priorities*
- *Table 17: Special Considerations.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Perdita Taylor-Zapata via email at *taylorpe@mail.nih.gov;* by phone at 301–496–9584; or by fax at 301–480–2897.

Dated: October 17, 2012.

**Francis S. Collins,**

*Director, National Institutes of Health.*

[FR Doc. 2012–26214 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors for Basic Sciences National Cancer Institute; BSC Basic Sciences Meeting.

*Date:* November 14, 2012.

*Time:* 9:00 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Florence E. Farber, Ph.D., Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov*.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 18, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–26097 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Musculoskeletal Rehabilitation.

*Date:* November 1–2, 2012.

*Time:* 9:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

*Contact Person:* Rajiv Kumar, Ph.D., Chief, MOSS IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Member Conflict: Cancer Therapeutics.

*Date:* November 7, 2012.

*Time:* 12:00 p.m. to 1:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Syed M Quadri, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6210, MSC 7804, Bethesda, MD 20892, 301–435–1211, *quadris@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Cardiovascular and Respiratory AREA Review.

*Date:* November 13–15, 2012.

*Time:* 8:00 a.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (Virtual Meeting).

*Contact Person:* Kimm Hamann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118A, MSC 7814, Bethesda, MD 20892, 301–435–5575, *hamannkj@csr.nih.gov.*

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; SBSR/SBDD Conflicts.

*Date:* November 13, 2012.

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Jo Pelham, BA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786, *pelhamj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–26099 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group; Neurological Sciences and Disorders K.

*Date:* November 8–9, 2012

*Time:* 8:00 a.m. to 1:00 p.m.

*Agenda:* To review and evaluate grant applications

*Place:* Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Phase III Clinical Trials SEP.

*Date:* November 8, 2012.

*Time:* 4:00 p.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Churchill Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009.

*Contact Person:* Shanta Rajaram, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: October 18, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–26096 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Biomedical Imaging and Engineering AREA Review.

*Date:* October 18, 2012

*Time:* 2:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 18, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–26104 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging Notice of 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 on Aging Special Emphasis Panel; Juvenile Protective Factors.

*Date:* December 4, 2012.

*Time:* 12:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892.

*Contact Person:* Jeannette L. Johnson, Ph.D., Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: October 18, 2012.

**Melanie J. Gray,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–26102 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Amended Notice of Workshop

Notice is hereby given of a change in the Strategic Planning Workshop that will be convened by the Interagency Autism Coordinating Committee (IACC) and was published in the **Federal Register** on October 18, 2012, 77 FR 64117.

The Workshop is scheduled for October 29–30, 2012, and will now include sessions for public comment on both days on the material presented

during the Workshop. Those wishing to provide oral public comment in person at the Workshop must sign up for oral comment at the check-in desk on the day of the Workshop. Due to scheduling constraints, oral comments will be limited to two minutes per person and will be on a first-come, first-served basis. If slots for the oral public comment sessions are full, each individual and/or organization will only be allowed to provide oral comment during one of the Workshop days in order to provide an opportunity for as many individuals/organizations as possible to participate. Those persons who are not able to make oral comments due to the time constraints, and those preferring to comment in written form, may submit their written comments pertaining to the material presented at the Workshop via email to *IACCpublicinquiries@mail.nih.gov* through Friday, November 2nd. All written comments will become part of the public record.

More information about the Workshop may be found on the web at: *http://iacc.hhs.gov/events/*.

Dated: October 18, 2012.

**Carolyn A. Baum,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2012–26098 Filed 10–23–12; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4080–DR; Docket ID FEMA–2012–0002]**

### Louisiana; Amendment No. 14 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4080–DR), dated August 29, 2012, and related determinations.

**DATES:** *Effective Date:* October 9, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 29, 2012.

The parish of West Baton Rouge for Individual Assistance (already designated for Public Assistance [Category A and B], including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–26207 Filed 10–23–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–4080–DR; Docket ID FEMA–2012–0002]**

### Louisiana; Amendment No. 16 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4080–DR), dated August 29, 2012, and related determinations.

**DATES:** *Effective Date:* October 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of August 29, 2012.

The parish of Pointe Coupee for Individual Assistance (already designated for Public Assistance, including direct federal assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

**W. Craig Fugate,**

*Administrator, Federal Emergency Management Agency.*

[FR Doc. 2012–26208 Filed 10–23–12; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Air Cargo Advance Screening (ACAS) Pilot Program

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

**ACTION:** General notice.

**SUMMARY:** This document announces that U.S. Customs and Border Protection (CBP) is formalizing and expanding an Air Cargo Advance Screening (ACAS) pilot program which revises the time frame for transmission by pilot participants of a subset of mandatory advance electronic information for air cargo. CBP regulations implementing the Trade Act of 2002 require advance information for air cargo to be submitted no later than the time of departure of the aircraft for the United States (from specified locations) or four hours prior to arrival in the United States for all other locations. The ACAS pilot is a voluntary test in which participants agree to submit a subset of the required data elements (ACAS data) at the earliest point practicable prior to loading of the cargo onto the aircraft destined to or transiting through the United States. This notice provides a description of the ACAS pilot, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

**DATES:** CBP is accepting applications from new ACAS pilot participants until

November 23, 2012. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

**ADDRESSES:** Written comments concerning program, policy, and technical issues should be submitted via email to *CBPCCS@cbpdhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Regina Park, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *regina.park@dhs.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), requires CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP.

On December 5, 2003, CBP published a final rule in the **Federal Register** (68 FR 68140) to effectuate the provisions of the Trade Act. In particular, a new § 122.48a (19 CFR 122.48a) was added to the title 19 regulations to implement requirements for cargo brought into the United States by air. As provided in 19 CFR 122.48a, for any inbound aircraft required to enter under 19 CFR 122.41 that will have commercial cargo aboard, CBP must electronically receive certain information regarding that cargo through a CBP-approved EDI system no later than the time of the departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than 4 hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

In October 2010, the global counter-terrorism community disrupted a potential terrorist attack when concealed explosive devices were discovered in cargo on board aircraft destined for the United States. CBP can better prevent such attacks and strengthen air cargo supply chain security if the required time frame for the presentation of advance electronic cargo information is, in all cases, before the air cargo is loaded and early enough so that CBP has sufficient time to identify, target, and mitigate high-risk cargo. Therefore, CBP and the Transportation Security Administration (TSA) have collaborated with the private sector to identify strategies to strengthen air cargo supply chain security, including developing a mechanism to collect cargo information at the earliest point practicable in the supply chain.

As a result of this collaboration, in December 2010, four express consignment air courier companies (''express couriers'') volunteered to provide CBP with a subset of the data elements required by 19 CFR 122.48a as early as possible before cargo is loaded onto an aircraft so that the requisite targeting could occur in the pre-loading air cargo environment, thus establishing the ACAS pilot. Since then, three passenger carriers, one-all cargo carrier, and one freight forwarder have joined the ACAS pilot and are operational. As of the summer of 2012, an additional twelve passenger carriers, two all-cargo carriers, and fifteen freight forwarders are in the process of testing or development to become operational ACAS pilot participants or have actively expressed an interest in doing so. CBP is in ongoing communication with stakeholders from all stages of the air cargo supply chain in an effort to enhance ACAS effectiveness and functionality from an industry perspective. In response to a request from stakeholders, on July 27, 2012, CBP published ''Air Cargo Advance Screening Pilot Frequently Asked Questions'' at *http://www.cbp.gov/xp/cgov/trade/cargo_security/cargocontrol/acasp_faq.xml.*

CBP is now formalizing and expanding the pilot to include other eligible participants in the air cargo environment, including other express couriers, passenger carriers, all-cargo carriers, and freight forwarders.

## Authority

CBP has statutory authority to collect advance electronic cargo information pursuant to the Trade Act, and has implemented this authority in 19 CFR 122.48a. CBP has set forth the procedure for conducting test programs, such as the ACAS pilot, in 19 CFR 101.9.

## Advance Electronic Air Cargo Information Required by 19 CFR 122.48a

Under 19 CFR 122.48a, the following advance electronic information is required to be transmitted to CBP for air cargo:

(1) Air waybill number(s) (master and house, as applicable)
(2) Trip/flight number
(3) Carrier/ICAO code
(4) Airport of arrival
(5) Airport of origin
(6) Scheduled date of arrival
(7) Total quantity based on the smallest external packing unit
(8) Total weight
(9) Precise cargo description
(10) Shipper name and address
(11) Consignee name and address
(12) Consolidation identifier (conditional)
(13) Split shipment indicator (conditional)
(14) Permit to proceed information (conditional)
(15) Identifier of other party which is to submit additional air waybill information (conditional)
(16) In-bond information (conditional)
(17) Local transfer facility (conditional)

Paragraph (d) of 19 CFR 122.48a specifies, based on the type of shipment, what information the air carrier must transmit to CBP and what information other eligible filers may transmit to CBP. For non-consolidated shipments, the air carrier must transmit to CBP the above cargo information for the air waybill record. For consolidated shipments, the air carrier must transmit to CBP the above cargo information that is applicable to the master air waybill, and the air carrier must transmit a subset of the above information for all associated house air waybills, unless another eligible filer transmits this information to CBP. For split shipments, the air carrier must submit an additional subset of this information for each house air waybill.

As noted above, for any inbound aircraft required to enter under 19 CFR 122.41 that will have commercial cargo aboard, CBP must electronically receive the above information regarding that cargo through a CBP-approved EDI system no later than the time of the departure of the aircraft for the United States from any foreign port or place in North America, including locations in Mexico, Central America, South America (from north of the Equator only), the Caribbean, and Bermuda; or no later than 4 hours prior to the arrival of the aircraft in the United States for aircraft departing for the United States from any other foreign area.

## Description of ACAS Pilot

### *Submission of ACAS Data*

Participants in the ACAS pilot agree to provide a subset of the required 19 CFR 122.48a data elements (ACAS data) at the earliest point practicable before

the cargo is loaded onto the aircraft destined to or transiting through the United States. Currently, the ACAS data consists of:

(1) Air waybill number
(2) Total quantity based on the smallest external packing unit
(3) Total weight
(4) Cargo description
(5) Shipper name and address
(6) Consignee name and address

The ACAS data is used to target high-risk air cargo. These six data elements were chosen because they are available to air carriers and other participants early in the lifecycle of a cargo transaction and allow the ACAS risk assessment and workflow to be completed early enough in the supply chain to enhance security while minimizing disruption to the flow of goods. The collection of the ACAS data is covered under OMB Control Number 1651–0001, in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). If CBP decides to add other 19 CFR 122.48a data elements to the ACAS data, this will be announced in the **Federal Register**.

In the ACAS pilot, participants agree to submit the ACAS data to CBP through a CBP-approved EDI system. While the CBP-approved EDI under 19 CFR 122.48a is Air AMS, ACAS data may be transmitted to CBP as specified below in the section on eligibility requirements. CBP and TSA [1] are co-located at the National Targeting Center (NTC) and facilitate cooperative targeting and identification of high-risk air cargo based on this ACAS data. Any air cargo identified as high-risk will receive holds until the identified threat is mitigated through the provision of additional clarifying information related to the shipment, and/or adherence to the appropriate existing TSA screening protocols, as well as CBP/TSA Do Not Load protocols, depending on the direction provided by the NTC. Details related to these procedures are considered Sensitive Security Information (SSI), and will be made available to approved ACAS pilot participants as necessary.

*Eligibility Requirements*

CBP is seeking participation from stakeholders in the air cargo environment, including express couriers, passenger carriers, all-cargo carriers, and freight forwarders. There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties with sufficient information technology infrastructure and support, as described below. Prospective ACAS pilot participants will need to assess whether they can fulfill the following eligibility requirements:

- ACAS pilot participants will need to have the technical capability to electronically submit data to CBP and receive hold messaging responses via one of the following:
  - An existing point to point connection with CBP;
  - A connection to CBP through a trade service provider (SITA, ARINC, Descartes, etc.);
  - A secure VPN connection with CBP that the ACAS pilot participant is willing to set up.
- ACAS pilot participants who do not have an existing connection with CBP, or who are modifying their connection type, will need to sign an Interconnection Security Agreement (ISA) or amend their existing ISA, if necessary, and adhere to security policies defined in the DHS 4300a security guide. Participants using an existing CBP connection covered by a valid and up to date ISA will have already met these requirements.
- ACAS pilot participants will need to establish operational security protocols that correspond to CBP hold messages that require the participant to take responsive action and respond to CBP confirming that the requested action was taken, that is, to mitigate, according to TSA screening protocols, any threat which is identified by the NTC; respond promptly with complete and accurate information when contacted by the NTC with questions regarding the data submitted; and follow any Do Not Load instructions.

*Application Process and Acceptance*

Those interested in participating in the ACAS pilot should submit an email to *CBPCCS@cbp.dhs.gov,* stating their interest and their qualifications based on the above eligibility requirements. The email should also include a point of contact. The email will serve as an electronic signature of intent. Applications will be accepted until November 23, 2012 and will be processed in the order in which they are received.

Pilot participants will receive technical, operational, and policy guidance through all stages of pilot participation—from planning to implementation—on the necessary steps for the transmission of ACAS data. Therefore, the number of applicants CBP will accept will depend on CBP's technical, fiscal, and personnel capacity to provide the necessary guidance. Once applications are processed, those selected as ACAS pilot participants will be notified by CBP by email.

*Conditions of Participation*

ACAS pilot participants are to provide the ACAS data to CBP at the earliest point practicable prior to loading of cargo onto the aircraft ultimately destined for or transiting through the United States. In addition to the submission of the ACAS data to CBP, ACAS pilot participants are to: (1) Mitigate, according to TSA screening protocols, any threat which is identified by the NTC; (2) respond promptly with complete and accurate information when contacted by the NTC with questions regarding the data submitted; (3) follow any Do Not Load instructions; and (4) partake in regular teleconferences or meetings established by CBP, when necessary, to ensure any issues or challenges regarding the pilot are communicated and addressed.

Participation in the ACAS pilot does not impose any legally binding obligations on either CBP or TSA or the participant. In addition, CBP does not intend to enforce or levy punitive measures if ACAS pilot participants are non-compliant with these conditions of participation of the pilot.

*Filing Options*

ACAS pilot participants will send and receive advance security filing data and related action messages for all air cargo to CBP. The ACAS pilot uses messages based on existing industry standard message formats (Cargo-IMP and CAMIR-Air). This will simplify the process for establishing a connection with and transmitting ACAS data to CBP and will increase the likelihood that participants are able to reuse existing system software. While the overall form of the ACAS pilot message formats is similar to the form of the Cargo-IMP and CAMIR-Air message formats on which it is based, the ACAS pilot message formats have slight differences in edits, timing, and new coded values, as needed to accommodate only the necessary data elements.

[1] TSA's involvement in the ACAS pilot is authorized under 49 U.S.C. 114(f) and (m), and 44901(g), as amended by the Implementing Recommendations of the 9/11 Commission Act, Public Law 110–53, 121 Stat. 266 (Aug. 3, 2007), and under authority of the Secretary of Homeland Security, as delegated to the Assistant Secretary of Homeland Security for TSA, under the Homeland Security Act of 2002, as amended (6 U.S.C. 112(b)).

Currently, three possible filing options have been identified:

• *Air Carrier Dual Filing*—The air carrier transmits the ACAS data prior to loading and performs any required TSA screening. The air carrier must subsequently transmit the advance electronic cargo information as required by 19 CFR 122.48a.

• *Progressive Filing*—The party electing to file the ACAS data transmits the House Air Waybill (AWB) ACAS data, in addition to the associated master air waybill number, directly to CBP as early as possible in the supply chain. The air carrier may also opt to send house, master, or simple bill data messages for the same shipment. The response message from CBP would reflect the current status of the shipment. The air carrier can also send ACAS data for the same shipment. If any requisite TSA screening is not or cannot be conducted by the freight forwarder, it is expected that the air carrier will perform the required TSA screening. The air carrier must subsequently transmit the advance electronic cargo information as required by 19 CFR 122.48a.

• *Single Filing*—The air carrier or eligible participant transmits all of the advance electronic cargo information as required by 19 CFR 122.48a prior to loading the cargo, and performs any required TSA screening. This transmission prior to loading will be used by CBP as the submission of both the ACAS data and the advance electronic cargo information required by 19 CFR 122.48a.

*Costs to ACAS Pilot Participants*

ACAS pilot participants are responsible for all costs incurred as a result of their participation in the pilot and such costs will vary, depending on their pre-existing infrastructures. Costs may include carrier communication requirements, such as submission and receipt of data, and the cost of implementing the necessary screening protocols.

*Benefits to ACAS Pilot Participants*

While the benefits to ACAS pilot participants will vary, several advantages of joining may include:

• Increases in security by leveraging DHS threat and other data to employ a risk-based approach to improve air cargo security through targeted screening;

• Gains in efficiencies by automating the identification of high risk cargo for enhanced screening before it is consolidated and loaded on aircraft;

• Establishment of mitigation protocols for high-risk shipments;

• The ability to provide input into CBP and TSA efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of ACAS;

• Ensuring a variety of business models are considered in the development and implementation of ACAS;

• Facilitation of corporate preparedness for future mandatory implementation of ACAS submission requirements; and

• Reduction in paper processes related to cargo screening requirements which may increase carrier efficiency.

*Regulatory and Statutory Requirements*

Participation in the ACAS pilot does not alter the participant's obligations to comply with applicable statutory and regulatory requirements, including 19 CFR 122.48a, and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the ACAS pilot does not exempt the participant from TSA security program requirements or any statutory sanctions in the event a controlled substance or other prohibited article is introduced into the United States on a conveyance owned and/or operated by the participant.

*Duration and Evaluation of the ACAS Pilot*

The ACAS pilot will run for six months from October 24, 2012. While the pilot is ongoing, the results will be evaluated and a determination will be made as to whether the pilot will be extended. If the pilot is extended, CBP will publish another notice in the **Federal Register**. When sufficient pilot analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of ACAS data before the cargo is loaded onto the aircraft for all international shipments either destined for or transiting through the United States. The results of the ACAS pilot will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Dated: October 17, 2012.

**David V. Aguilar,**

*Deputy Commissioner.*

[FR Doc. 2012–26031 Filed 10–23–12; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5610–N–17]**

## Notice of Proposed Information Collection for Public Comment; Public Housing Operating Subsidy—Appeals

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The revised information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

To stop the phase-in of the reduction in the amount of subsidy a PHA receives under the new operating fund formula, PHAs submit a ''stop-loss'' package to HUD demonstrating conversion to asset management. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

**DATES:** *Comments Due Date:* December 24, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this revised information collection. Comments should refer to the revised information collection by name/or OMB Control number and should be sent to: Colette Pollard., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4160, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email Ms. Pollard at *Colette_Pollard@hud.gov.* Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

**FOR FURTHER INFORMATION CONTACT:** Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Department will submit the revised

information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the revised collection of information to: (1) Evaluate whether the revised collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the revised collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Public Housing Operating Subsidy—Appeals.

*OMB Control Number:* 2577–0246.

*Description of the need for the information and proposed use:* Under the operating fund final rule, PHAs that elect to file an appeal of their subsidy amounts are required to meet the appeal requirements set forth in subpart G of the operating fund final rule. The final rule establishes five grounds for appeals in 24 CFR § 990.245 and they are the: (a) Streamlined appeal; (b) appeal of formula income for economic hardship; (c) appeal for specific local conditions; (d) appeal for changing market conditions; and (e) appeal to substitute actual project cost data. To appeal the amount of subsidy on any one of the permitted bases of appeal, PHAs submit an appeal request to HUD.

*Agency form number, if applicable:* N/A.

*Members of affected public:* PHAs, state or local government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* The estimated number of respondents is an annual average of 322 PHAs that submit an appeal of the amount of operating subsidy, for a total of 322 PHAs that submit annually. The average number for each PHA response varies by size of the PHA, with a total reporting burden of 5,168 hours; and an average of 12.6 hours per respondent for appeals.

*Status of the proposed information collection:* Revision of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: *October 18, 2012.*

**Merrie Nichols-Dixon,**

*Deputy Director, Office of Policy, Program and Legislative Initiatives.*

[FR Doc. 2012–26227 Filed 10–23–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5609–N–12]**

## Notice of Proposed Information Collection for Public Comment: Notice of Funding Availability for the Transformation Initiative: Rental Assistance Demonstration Research Grant Program

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comment Due Date:* December 24, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent electronically to *Paul.A.Joice@hud.gov* or in hard copy to: Paul Joice, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street SW., Room 8120, Washington, DC 20410–6000. Please use ''RAD PRA Comment'' in the subject line of any email.

**FOR FURTHER INFORMATION CONTACT:** Paul Joice at 202–402–4608 (this is not a toll-free number) or *Paul.A.Joice@hud.gov,* for copies of the proposed forms and other available documents. Please use ''RAD PRA Comment'' in the subject line of any email.

**SUPPLEMENTARY INFORMATION:** The Department of Housing and Urban Development will submit the proposed extension of information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. This Notice also lists the following information:

*Title of Proposal:* Notice of Funding Availability for the Transformation Initiative: Rental Assistance Demonstration Research Grant Program.

*OMB Control Number:* Pending.

*Description of the Need for the Information and Proposed Use:* The information is being collected to select applicants for award in a competitive grant program and to monitor performance of grantees to ensure they meet the goals and requirements of the grant program.

*Agency Form Numbers:* SF–424, SF–424 Supplemental, HUD–424–CB, SF–LLL, HUD–2880, HUD–2993, HUD–96010 and HUD–96011.

*Members of the Affected Public:* Eligible applicants include nationally recognized and accredited institutions of higher education, non-profit foundations, think tanks, research consortia or policy institutes, and for-profit organizations located in the U.S.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* Information pursuant to grant award will be submitted once a year. The following chart details the respondent burden on a quarterly and annual basis:

| | Number of respondents | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| Applicants | 10 | 10 | 60 | 600 |
| Quarterly Reports | 2 | 8 | 6 | 48 |
| Final Reports | 2 | 2 | 2 | 4 |
| Recordkeeping | 2 | 2 | 4 | 8 |
| Total | 26 | 22 | 72 | 660 |

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 17, 2012.

**Erika C. Poethig,**

*Assistant Secretary for Policy Development and Research.*

[FR Doc. 2012–26230 Filed 10–23–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5607–N–33]**

### Notice of Proposed Information Collection: Comment Request; FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Programs

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* December 24, 2012.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

**FOR FURTHER INFORMATION CONTACT:** Ivery W. Himes, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 x5628 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* FHA-Insured Mortgage Loan Servicing Involving the Loss Mitigation Programs.

*OMB Control Number, if applicable:* 2502–0589.

*Description of the need for the information and proposed use:* FHA insurance is an important source of mortgage credit for low and moderate-income borrowers and neighborhoods. Providing assistance, as needed, to enable families to cure their delinquencies and retain their homes stabilizes neighborhoods that might otherwise suffer from deterioration and problems associated with vacant and abandoned properties. Avoidance of foreclosure and the resultant costs also serve to further stabilize the mortgage insurance premiums charged by FHA and the Federal budget receipts generated from those premiums.

The information collection request for OMB review seeks to extend OMB 2502–0589, a currently established OMB collection, for an additional three years.

*Agency form numbers, if applicable:* HUD–1 Settlement Statement, HUD–27011 Single Family Application for Insurance Benefits, HUD–90035 Information/Disclosure, HUD–90041 Request for Variance, Pre-foreclosure sale procedure, HUD–90045 Approval to Participate, HUD–90051 Sale Contract Review, HUD–90052 Closing Worksheet, HUD–PA–426 How to Avoid Foreclosure.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 1,520,216, the number of respondents is 303,718, the number of responses is 1,169,033, the frequency of response is on occasion, and the burden hour per response is from 15 minutes to 4 hours depending upon the activity.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: *October 18, 2012.*

**Laura M. Marin,**

*Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.*

[FR Doc. 2012–26229 Filed 10–23–12; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–R–2012–N019: FXRS12610200000S3–123–FF02R06000]**

### Buffalo Lake National Wildlife Refuge, Randall County, TX; Comprehensive Conservation Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan (CCP) and an environmental assessment (EA) for the Buffalo Lake National Wildlife Refuge (Refuge, NWR), located approximately 30 miles southwest of Amarillo, Texas, for public review and comment. The

Draft CCP/EA describes our proposal for managing the refuge for the next 15 years.

**DATES:** To ensure consideration, please send your written comments by November 23, 2012. We will announce upcoming public meetings in local news media.

**ADDRESSES:** You may submit comments or requests for copies or more information by any of the following methods. You may request hard copies or a CD–ROM of the documents. Please contact Lynn Nymeyer, Refuge Manager, or Joseph Lujan, Natural Resource Planner.

*Email: Joseph_Lujan@fws.gov.* Include ''Buffalo Lake NWR draft CCP and EA'' in the subject line of the message.

*Fax:* Attn: Joseph Lujan, 505–248–6803.

*U.S. Mail:* Joseph Lujan, Natural Resource Planner, U.S. Fish and Wildlife Service, NWRS Division of Planning, P.O. Box 1306, Albuquerque, NM 87103.

*In-Person Drop-off, Viewing, or Pickup: In-Person Drop-off:* You may drop off comments during regular business hours (8 a.m. to 4:30 p.m.) at 500 Gold Street SW., 4th Floor Room 4305. Albuquerque, NM 87102.

**FOR FURTHER INFORMATION CONTACT:** Lynn Nymeyer, Refuge Manager, Buffalo Lake NWR, CCP—Project, P. O. Box 179, Umbarger, TX 79091; phone: 806–499–3382; fax: 806–499–3254.

**SUPPLEMENTARY INFORMATION:**

## Introduction

With this notice, we continue the CCP process for the Buffalo Lake NWR. We started this process through a notice in the **Federal Register** (63 FR 33693; June 19, 1998).

The Buffalo Lake NWR, which consists of over 7,677 acres, is located approximately 30 miles southwest of Amarillo, Texas. The primary purpose of the refuge is to protect wintering waterfowl and short-grass prairie habitat. The refuge was officially established on November 17, 1959, and continues to provide critical habitat for migratory waterfowl and grassland bird species.

## Background

*The CCP Process*

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (Refuge Administration Act), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for wildlife observation and photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Refuge Administration Act.

*Public Outreach*

Formal scoping began with publication of a notice of intent to prepare a comprehensive conservation plan and environmental assessment (EA) in the **Federal Register** on June 19, 1998 (63 FR 33693). Texas Parks and Wildlife Department (TPWD) was formally invited to participate in the development of the CCP. We received input from TPWD on September 16, 2004, and have continued to involve them throughout the planning process. Information sheets were sent to the public, and news releases were sent to a variety of media outlets. A public open house meeting was held December 15, 2009, at the refuge. Additional written comments were received prior to these open house meetings. A variety of stakeholders contributed feedback at the open house meetings and via written comments; we used the feedback in development of the CCP.

## CCP Alternatives We Are Considering

During the public scoping process with which we started work on this draft CCP, we, other governmental partners, Tribes, and the public, raised multiple issues. Our draft CCP addresses them. A full description of each alternative is in the EA. To address these issues, we developed and evaluated the following alternatives, summarized below.

| Alternatives | A—No-action alternative (current practices) | B—Improved habitat management and public use alternative | C—Optimal habitat management and public use (proposed action) alternative |
|---|---|---|---|
| **Habitat Management** | | | |
| Climate Change | No current management direction | Establish a baseline dataset for refuge resources. From this dataset, a decision-based research and monitoring program will be developed to track any potential impacts climate change may have on the refuge. | Same as Alternative B. |
| Habitat Fragmentation | Limit the amounts and types of all new infrastructures such as roads and trails on the refuge. | Same as Alternative A, plus the development of a Land Protection Plan of an additional 20,000 acres would guide land acquisition for the refuge and further conservation efforts in the area and reduce human encroachment on the refuge. | Same as Alternative B. |

| Alternatives | A—No-action alternative (current practices) | B—Improved habitat management and public use alternative | C—Optimal habitat management and public use (proposed action) alternative |
|---|---|---|---|
| Wind Energy Research | Conduct a diurnal avian activity survey and acoustic monitoring in order to track any changes in habitat and wildlife. | Same as Alternative A, plus actively track wind energy development projects in and around Randal County to assist the refuge in anticipating potential changes in habitat and wildlife. | Same as Alternative B. |
| Prairie Management and Restoration. | Use grazing and prescribed fire to promote and maintain prairie habitat. | Same as Alternative A, plus supplement current management with reseeding parts of the refuge with native short grasses. | Cease using grassland leasing for livestock grazing and permit native fauna species, whose populations would be permitted to increase under this alternative, to graze freely without competition on the refuge. The 7-year prescribed fire program as described in Alternative A would continue. |
| Invasive Flora Species | Remove invasive flora through chemical means. | Same as Alternative A, plus the refuge would utilize additional chemical treatment on invasive flora species through the use of aircraft application, followed by the mechanical removal of aboveground systems. | Same as Alternative B. |
| Moist Soil Management | Maintain 40-acre Moist Soil Unit .. | Same as Alternative A, plus the addition of three 40-acre moist soil units and the related pumping infrastructure. The water source, like the current moist soil units, will be a well from the Santa Rosa Aquifer with filters to insure no Ogallala water is used. | Developed sufficient moist soil units to maintain the level available to wildlife prior to the Ogallala Aquifer receding due to human activity and use. |
| Lakebed Management | Cooperatively farm 581 acres of the dry lakebed. | Reduce all farming activities to approximately half of current management; this would limit farming activities to no more than 300 acres. Additionally, previously farmed lands would be converted back to natural vegetation. | Remove all farming activity from the refuge and convert farming lands to native vegetation. |
| Water Quality | Continue to utilize the current water retention structure at Umbarger Dam. | Same as Alternative A, plus the installation of bio-filters and necessary groundwater pump infrastructure in order to remove coli forms from surface and ground water flowing from adjacent and nearby cattle operations. This infrastructure would be located on the Refuge. | Same as Alternative A. |
| **Wildlife Management** | | | |
| Native Fauna | Maintain current levels of prairie dogs, mule deer and white tailed deer. | Same as Alternative A | Same as Alternative A. |
| Invasive Fauna | Manage invasive fauna throughout the refuge. | Same as Alternative A | Same as Alternative A. |
| **Visitor Services Issues** | | | |
| Hunting | There is currently no hunting permitted on the refuge and a hunt plan has not been developed. | Introduce hunting to the refuge to assist in controlling invasive fauna species as well as control the populations of native fauna species. | Same as Alternative B. |
| Fishing | Currently, no fishing in the refuge | Construct a 6+/−acre public fishing pond near existing viewing blind by the lake bed and Stewart Marsh. | Same as Alternative B. |

| Alternatives | A—No-action alternative (current practices) | B—Improved habitat management and public use alternative | C—Optimal habitat management and public use (proposed action) alternative |
|---|---|---|---|
| Wildlife Observation and Photography. | Maintain hiking trails and the auto-tour route, observation decks, viewing blinds, and scenic overlooks. The refuge maintains two viewing blinds, one at Stewart Marsh and another overlooking the prairie dog town. | Same as Alternative A, plus the installation of six additional blinds, near moist soil units, prairie dog town, and Unit 12 (for deer). | Same as Alternative B. |
| Environmental Education and Interpretation. | The refuge hosts and annual education day for school children from surrounding communities. Refuge staff maintains an environmental education area for education/interpretation programs; both the education area and the staff are available upon request to provide environmental education and interpretation presentations. Maintain interpretation on the auto-tour route and self-guided hiking trails. | Same as Alternative A, plus increase the number of education days (as requested) to a maximum of one per month. The refuge would also develop and construct 20 interpretive panels. Expansion of existing auto tour route would open areas of the refuge that are closed to the public due to safety concerns. | Same as Alternative B. |
| Camping | The refuge currently permits primitive camping in a designated 25-site campground that has picnic tables and restroom facilities. | Same as Alternative A | Same as Alternative A. |
| **Facilities** | | | |
| Administrative Facilities | Maintain headquarters and Visitors Center. | Same as Alternative A, plus develop an Administrative Complex to include headquarters, Visitors Center, biological lab, and maintenance and storage facility. | Same as Alternative B, plus increase infrastructure to provide the refuge with sufficient water sources to mimic the amount as historically provided by the natural spring. This would provide the same habitat that was available to wildlife prior to the Ogallala Aquifer receding due to human activity and use. |
| Public Use Facilities | Limited public use facilities include photo blinds, four parking lots, six vault toilets. | Same as Alternative A, plus expand construction and maintenance of two additional hiking trails, one near the Prairie Dog town and the other through grassland prairie habitat near the campground. The refuge would also replace and/or rehabilitate the existing chemical toilet facilities adjacent to the campground with facilities that can remain open year round. | Same as Alternative B. |
| Quality and Safety of Refuge Roadways. | Maintain current road infrastructure. | Same as Alternative A, plus the rehabilitation of the entrance road from Farm to Market 168 to headquarters with a two lane paved road with adequate shoulders. Resurfacing of the remaining refuge roads with new caliche. | Same as Alternative B. |

**Public Availability of Documents**

In addition to using any methods in **ADDRESSES**, you can view or obtain documents at the following locations:

- Buffalo Lake NWR Headquarters Office, Umbarger, TX 79091, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.
- Our Web site: *http://www.fws.gov/southwest/refuges/Plan/publicinvolvement.html.*
- The following public libraries:

| Library | Address | Phone No. |
|---|---|---|
| Deaf Smith County Library | 211 East 4th Street, Herford, TX 79045 | 806–364–1206 |
| Canyon Public Library | 1501 3rd Avenue, Canyon, TX 79015 | 806–655–5015 |
| Amarillo Southwest Library | 6801 Southwest 45th Ave, Amarillo, TX 79109 | 806–359–2094 |

**Submitting Comments/Issues for Comment**

We consider comments substantive if they:

- Question, with reasonable basis, the accuracy of the information in the document;
- Question, with reasonable basis, the adequacy of the environmental assessment (EA);
- Present reasonable alternatives other than those presented in the EA; and/or
- Provide new or additional information relevant to the assessment.

**Next Steps**

After this comment period ends, we will analyze the comments and address them in the form of a final CCP and finding of no significant impact.

**Public Availability of Comments**

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 13, 2012.

**Joy E. Nicholopoulos,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 2012–26083 Filed 10–23–12; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–10396; 2200–1100–665]**

### Notice of Intent To Repatriate Cultural Items: American Museum of Natural History, New York, NY; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the American Museum of Natural History that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects the cultural affiliation determination reported in the Notice of Intent to Repatriate published in the **Federal Register** (77 FR 11567–11568, February 27, 2012).

In the **Federal Register** (77 FR 11568, February 27, 2012), paragraph nine is replaced with the following paragraph:

The cultural affiliation of the 34 cultural items is Hutsnuwu Tlingit, as indicated through museum records and consultation with representatives of Angoon Community Association, Kootznoowoo Incorporated, and Central Council Tlingit and Haida Indian Tribes of Alaska. Chaik Bay lies within the traditional territory of the Hutsnuwu Tlingit. These cultural items were claimed on behalf of the *Da_l'aweidi* clan.

In the **Federal Register** (77 FR 11568, February 27, 2012), paragraph 12 is replaced with the following:

- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Angoon Community Association and the Central Council Tlingit and Haida Indian Tribes of Alaska.

**Additional Requestors and Disposition**

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Nell Murphy, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024, telephone (212) 769–5837, before November 23, 2012. Repatriation of the unassociated funerary objects to the Angoon Community Association and Central Council Tlingit and Haida Indian Tribes of Alaska may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Angoon Community Association and Central Council Tlingit and Haida Indian Tribes of Alaska that this notice has been published.

Dated: October 16, 2012.

**Sherry Hutt,**

*Manager, National NAGPRA Program.*

[FR Doc. 2012–26223 Filed 10–23–12; 8:45 am]

**BILLING CODE 4312–50–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–894 (Second Review)]**

### Ammonium Nitrate From Ukraine; Notice of Commission Determination To Conduct a Full Five-year Review and Scheduling of a Full Five-year Review Concerning the Antidumping Duty Order on Ammonium Nitrate From Ukraine

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice of its determination to conduct, and scheduling of, a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on ammonium nitrate from Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective:* October 17, 2012.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Merrill (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the

Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Background.*—On October 17, 2012, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the review and public service list.*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

*Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff report.*—The prehearing staff report in the review will be placed in the nonpublic record on March 6, 2013, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing.*—The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on March 28, 2013, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 21, 2013. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 25, 2013, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written submissions.*—Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is March 15, 2013. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is April 8, 2013; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before April 8, 2013. On May 2, 2013, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 6, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

*Authority:* This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: October 18, 2012.

By order of the Commission.

**Lisa R. Barton,**

*Acting Secretary to the Commission.*

[FR Doc. 2012–26127 Filed 10–23–12; 8:45 am]

**BILLING CODE 7020–02–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice: (12–084)]**

### NASA Federal Advisory Committees

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Annual invitation for public nominations by U.S. citizens for service on NASA science advisory subcommittees.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration, and in accordance with the Memorandum for the Heads of Executive Departments and Agencies signed on December 17, 2010, signed by the Director of the Office of Science and Technology Policy (OSTP), Executive Office of the President, NASA announces its annual invitation for public nominations for service on NASA science advisory subcommittees. These science advisory subcommittees report to the Science Committee of the NASA Advisory Council (NAC). U.S. citizens may nominate individuals and

also submit self-nominations for consideration as potential members of NASA's science advisory subcommittees. NASA's science advisory subcommittees have member vacancies from time to time throughout the year, and NASA will consider nominations and self-nominations to fill such intermittent vacancies. NASA is committed to selecting members to serve on its science advisory subcommittees based on their individual expertise, knowledge, experience, and current/past contributions to the relevant subject area.

The following qualifications/experience are highly desirable in nominees, and should be clearly presented in their nomination letters:

- At least ten years (10) post-Ph.D. research experience including publications in the scientific field of the subcommittee they are nominated or comparable experience,
- Leadership in scientific and/or education and public outreach fields as evidenced by award of prizes, invitation to national and international meetings as speaker, organizer of scientific meetings/workshops, or comparable experience;
- Participation in NASA programs either as member of NASA mission science team, Research & Analysis program, membership on an advisory/working group or a review panel, or comparable experience;
- Good knowledge of NASA programs in the scientific field of the subcommittee they are applying for, including the latest NASA Science Plan (available as a link from *http://science.nasa.gov/about-us/science-strategy/*), or comparable experience;
- Knowledge of the latest Decadal Survey conducted by the National Research Council or other relevant advisory reports for the scientific field of the subcommittee.

Nominees from any category of organizations or institutions within the U.S. are welcome, including, but not limited to, educational, industrial, and not-for-profit organizations, Federally Funded Research and Development Centers (FFRDCs), University Affiliated Research Centers (UARCs), NASA Centers, the Jet Propulsion Laboratory (JPL), and other Government agencies. Nominees need not be presently affiliated with any organization or institution.

These are not full-time positions. Successful nominees will be required to attend meetings of the subcommittee approximately two to four times a year, either in person (NASA covers travel-related expenses for this non-compensated appointment) or via telecon/WebEx. Successful nominees who are not already U.S. Government employees will become Special Government Employees (SGEs). All successful nominees will be required to submit a confidential financial disclosure form and undergo a conflict of interest review and clearance by the NASA Office of the General Counsel before they are officially appointed.

**DATES:** The deadline for NASA receipt of all public nominations is November14, 2012.

**ADDRESSES:** Nominations and self-nominations from interested U.S. citizens must be sent to NASA in letter form, be signed, and must include the name of specific NASA science advisory subcommittee of interest for NASA consideration. Nominations and self-nomination letters are limited to specifying interest in only one (1) NASA science advisory subcommittee per year. The following additional information is required to be attached to each nomination and self-nomination letter (i.e., cover letter): (1) Professional resume (one-page maximum); (2) professional biography (one-page maximum). All public nomination packages must be submitted electronically via email to NASA; paper-based documents sent through postal mail (hard-copies) will not be accepted. **Note:** Nomination letters that are noncompliant with inclusion of the three (3) mandatory documents listed above will not receive further consideration by NASA.

Please submit the nomination as a single package containing cover letter and both required attachments electronically to the specific email address identified below for the science subcommittee of interest:

Astrophysics Subcommittee (APS)
—*aps-execsec@hq.nasa.gov*
Earth Science Subcommittee (ESS)
—*ess-execsec@hq.nasa.gov*
Heliophysics Subcommittee (HPS)
—*hps-execsec@hq.nasa.gov*
Planetary Protection Subcommittee (PPS)
—*pps-execsec@hq.nasa.gov*
Planetary Science Subcommittee (PSS)
—*pss-execsec@hq.nasa.gov*

**FOR FURTHER INFORMATION CONTACT:** To obtain further information on NASA's science advisory subcommittees, please visit the NAC Science Committee's subcommittee Web site noted below. For any questions, please contact Ms. Marian Norris, Advisory Committee Specialist, Strategic Integration & Management Division, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452.

**SUPPLEMENTARY INFORMATION:** NASA's five (5) current science advisory subcommittees are listed below. Additional information about these science subcommittees may be found at the NAC Science Committee's subcommittee Web site at *http://science.nasa.gov/science-committee/subcommittees/:*

- Astrophysics Subcommittee (APS)—The Astrophysics Subcommittee is a standing subcommittee of the NAC Science Committee supporting the advisory needs of the NASA Administrator, the Science Mission Directorate (SMD), SMD's Astrophysics Division, and other NASA Mission Directorates as required. The scope of the APS includes projects and observational and theoretical study of the origins, evolution, and destiny of the universe and the search for and study of Earth-like planets and habitable, extrasolar environments. In addition to scientific research, the scope encompasses considerations of the development of near-term enabling technologies, systems, and computing and information management capabilities, developments with the potential to provide long-term improvements in future operational systems, as well as training of the next generation of astronomers, and education and public outreach.
- Earth Science Subcommittee (ESS)—The Earth Science Subcommittee is a standing subcommittee of the NAC Science Committee supporting the advisory needs of the NASA Administrator, the Science Mission Directorate (SMD), SMD's Earth Science Division (ESD), and other NASA Mission Directorates as required. The scope of the ESS includes the advancement of scientific knowledge of the Earth system through space-based observation and the pioneering use of these observations in conjunction with process studies, data assimilation and modeling to provide the Nation with improved capability to: Predict climate variability, global change, and weather; mitigate and respond to natural hazards; and improve the scientific basis for policy decisions. In addition to observations and scientific research, the scope encompasses the development of computing and information management capabilities and other enabling technologies, including those with the potential to improve future operational satellite and ground systems.
- Heliophysics Subcommittee (HPS)—Heliophysics Subcommittee is a standing subcommittee of the NAC Science Committee supporting the

advisory needs of the NASA Administrator, the Science Mission Directorate (SMD), SMD's Heliophysics Division (HPD), and other NASA Mission Directorates as required. The scope of the HPS includes all aspects of heliophysics, including the dynamical behavior of the Sun and its heliosphere; the dynamical behavior of the space environments of the Earth and other solar system bodies; the multi-scale interaction between solar system plasmas and the interstellar medium; and energy transport throughout the solar system and its impact on the Earth and other solar system bodies. In addition to scientific research, the scope encompasses considerations of the development of enabling technologies, systems, and computing and information management capabilities, as well as developments with the potential to provide long-term improvements to future space weather operational systems.

• Planetary Protection Subcommittee (PPS)—Planetary Protection Subcommittee is a standing subcommittee of the NAC Science Committee supporting the advisory needs of the Administrator, the Science Mission Directorate (SMD), SMD's Planetary Science Division, NASA's Planetary Protection Officer and other NASA Mission Directorates as required. The scope of the PPS includes programs, policies, plans, hazard identification and risk assessment, and other matters pertinent to the Agency's responsibilities for biological planetary protection. This scope includes consideration of NASA planetary protection policy documents, implementation plans, and organization. The subcommittee will review and recommend appropriate planetary protection categorizations for all bodies of the solar system to which spacecraft will be sent. The scope also includes the development of near-term enabling technologies, systems, and capabilities, as well as developments with the potential to provide long-term improvements in future operational systems to support planetary protection. Outside the scope of the Subcommittee's responsibilities are issues that pertain solely to the quality and interpretation of scientific experiments and data in support of solar system exploration.

• Planetary Science Subcommittee (PSS)—Planetary Science Subcommittee is a standing subcommittee of the NAC Science Committee supporting the advisory needs of the NASA Administrator, the Science Mission Directorate (SMD), SMD's Planetary Science Division (PSD), and other NASA Mission Directorates as required. The scope of the PSS includes all aspects of planetary science, scientific exploration of the Moon and Mars, the robotic exploration of the solar system, astrobiology, space- and ground-based research, technology development, planning, and training required to support these science areas. In addition to scientific research, the scope encompasses considerations of the development of near-term enabling technologies, systems, and computing and information management capabilities, as well as developments with the potential to provide long-term improvements in future operational systems. Responsibility for biological planetary protection is outside the purview of the PSS and resides with the Planetary Protection Subcommittee (PPS).

**Patricia D. Rausch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 2012–26100 Filed 10–23–12; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Request for comment.

**SUMMARY:** The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public. NCUA is proposing a data collection change to the credit union Profile as well as the 5300 Call Report. NCUA is proposing to add a new account to the Contacts section of the Profile to identify the initial date of election or appointment of each official to help assess the longevity of credit union board members. Additionally, NCUA is planning to add a question to the Regulatory section of the Profile where credit unions will be required to certify their compliance with 12 CFR 701.4. On the 5300 Call Report, NCUA will revise the regulatory reporting requirements by eliminating the data collection on modified loans and target data collection efforts on loans meeting the definition of a troubled debt restructured loan under Generally Accepted Accounting Principles.

**DATES:** Comments will be accepted until November 28, 2012.

**ADDRESSES:** Interested parties are invited to submit written comments to the NCUA Contact and the OMB Reviewer listed below:

NCUA Contact: Tracy Crews, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, Email: *OCIOMail@ncua.gov.*

OMB Contact: Office of Management and Budget, ATTN: Desk Officer for the National Credit Union Administration, Office of Information and Regulatory Affairs, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information, a copy of the information collection request, or a copy of submitted comments should be directed to Tracy Crews at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6444.

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract and Request for Comments

NCUA is amending the currently approved collection for 3133–0004. Two specific forms are used, NCUA Form 5300 and NCUA Profile Form 4501A, also known as the Call Report and Profile, respectively. Section 741.6 of the NCUA Rules and Regulations requires all federally insured credit unions to submit a Call Report quarterly. 12 CFR 741.6. The information enables the NCUA to monitor credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund. NCUA uses the information collected from these Call Reports to fulfill its mission of supervising credit unions and the Federal Reserve Board uses it to monitor and control the nation's money supply and the system of financial institutions. Congress and various state legislatures use this information to monitor, regulate, and control credit unions and financial institutions. The changes made to the Profile and Call Report form for December 2012 will help the National Credit Union Administration assess the longevity of credit union board members and provide data to assess financial risks and loan practices of credit unions. There is a decrease of 4,515 hours from the last submission (2011). The decrease is noted as an adjustment of the number of credit unions completing Form 5300 from 7,264 federally insured credit

unions to 7,093. This decline is due strictly to credit union mergers and liquidations.

The NCUA requests that you send your comments on this collection to the location listed in the addresses section. Your comments should address: (a) The necessity of the information collection for the proper performance of NCUA, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility, and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents such as through the use of automated collection techniques or other forms of information technology. It is NCUA's policy to make all comments available to the public for review. 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.

**II. Data**

Proposal for the following collection of information:

*OMB Number:* 3133–0004.

*Form Number:* NCUA 5300.

*Type of Review:* Revision to the currently approved collection.

*Title:* Revisions to NCUA Call Reports.

*Description:* The financial and statistical information is essential to NCUA in carrying out its responsibility for the supervision of federally insured credit unions. The information also enables NCUA to monitor all federally insured credit unions whose share accounts are insured by the National Credit Union Share Insurance Fund (NCUSIF).

*Respondents:* All Credit Unions.

*Estimated No. of Respondents/ Recordkeepers:* 7,093.

*Estimated Burden Hours per Response:* 6.6 hours.

*Frequency of Response:* Quarterly.

*Estimated Total Annual Burden Hours:* 187,255.

*Estimated Total Annual Cost:* $5,495,934.

By the National Credit Union Administration Board on October 18, 2012.

**Mary Rupp,**

*Secretary of the Board.*

[FR Doc. 2012–26193 Filed 10–23–12; 8:45 am]

**BILLING CODE 7535–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2012–0251; Docket: 030–37817; License: 49–29301–01; EA–12–058]**

## DBI, Inc., Casper, WY; Confirmatory Order Modifying License (Effective Immediately)

**I**

DBI, Inc. (DBI or Licensee), is the holder of License No. 49–29301–01 issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to part 34 of Title 10 of the *Code of Federal Regulations* (10 CFR) on August 21, 2008. The license authorizes industrial radiographic operations at the licensee's site in Casper, Wyoming and at temporary jobsites, in accordance with conditions specified therein.

This Confirmatory Order (Order) is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on September 6, 2012, in Arlington, Texas.

**II**

From July 1, 2011, through July 17, 2012, the NRC conducted a safety and security inspection of the use of byproduct material for industrial radiographic operations conducted under DBI's NRC license. On July 25, 2011, the NRC Office of Investigations (OI), Region IV, began an investigation (OI Case No. 4–2011–060) to determine if the Licensee willfully failed to (1) provide a qualified radiographer to observe radiographic operations, and (2) to supervise a radiographer's assistant while conducting radiographic operations. The investigation by OI was concluded on March 14, 2012. By letter dated August 8, 2012, the NRC transmitted the results of the inspection and the investigation in NRC Inspection Report 030–37817/2011–001 and Investigation Report 4–2011–060 (Agencywide Dockets Access and Management System (ADAMS) Accession No. ML12221A362). Based on the results of the inspection and the evidence developed during the investigation, four apparent violations of NRC requirements were identified. The apparent violations involved the failure to: (1) Conduct a survey when approaching the radiography camera and guide tube; (2) have at least one other qualified individual present while performing radiography; (3) supervise the assistant radiographer; and (4) provide complete and accurate information to the Commission. In addition, the NRC is concerned that willfulness may be associated with the apparent failures to have at least one other qualified individual present while performing radiography, supervise the assistant radiographer, and provide complete and accurate information to the Commission.

By letter dated August 8, 2012, the NRC informed DBI that the NRC was considering escalated enforcement for the apparent violations. The NRC offered DBI the opportunity to request (1) a predecisional enforcement conference, or (2) ADR. In response, on August 15, 2012, DBI requested ADR to resolve the matter with the NRC.

On September 6, 2012, the NRC and DBI representatives met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. ADR is a process in which a neutral mediator with no decision-making authority assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

**III**

In response to the NRC's offer, DBI requested use of the NRC ADR process to resolve differences it had with the NRC. During that ADR session, a preliminary settlement agreement was reached. The elements of the agreement consisted of the following:

The NRC recognizes the corrective actions, associated with the apparent violations, that DBI has implemented or plans to implement, which include:

- Retraining the radiographer and the radiographer's assistant prior to allowing them to conduct radiographic operations.
- Distribution of an email to Operations Managers and Assistant Radiation Safety Officers (ARSO) concerning the safety violations. A verification sheet for recipients to sign and date, then return to the Corporate Radiation Safety Officer (RSO).
- Conducting an internal investigation to determine the root cause of the violations.
- Conducting unannounced field audits to help ensure that radiographers and assistant radiographers are implementing radiation safety requirements.
- Conducting extra (more than required by the NRC) periodic unannounced field audits.
- Permanently reassigning two individuals to serve as regional RSOs.
- Submitting for publication in an industry periodical, an article, from DBI's president documenting DBI's violations and the consequences for noncompliance.

During the ADR mediation session, an agreement in principle was reached in which DBI agreed to take the following additional actions:

A. DBI will enhance its training program for employees conducting radiographic operations (radiography or licensed activities). The goal of the changes is to conduct NRC-licensed activities safely and deter future deliberate violations by ensuring that employees, including company managers, understand the importance the NRC places on violations associated with deliberate misconduct and careless disregard. The program will consist of training for current employees conducting NRC-licensed activities and future employees conducting NRC-licensed activities. The program will also provide for annual refresher training. DBI will complete the following activities in support of the training program:

1. *Training Requirements for Current Employees*

• Within 30 days of the date of the Confirmatory Order, DBI will contract with an external contractor to develop training modules on the topics identified in Condition A.3 for its current employees, including company managers, who are engaged in NRC-licensed activities.

• At least 15 days before the time that DBI intends to execute the contract with the external contractor, DBI will submit, for NRC review and approval, the resume of the contractor recommended to develop the training modules.

• At least 15 days prior to the start of training, but no later than 30 days after executing the contract with the external training contractor, DBI will submit, for NRC review and approval, an outline of the topics to be covered during the training session(s). The training will include the topics identified in Condition A.3.

• The training for current employees will be conducted by the contractor and must be completed within 180 days of the NRC's approval of the outline of the course topics.

• DBI will assess the effectiveness of the training through written testing. Any employee that does not pass the test will receive remedial training, and will be retested within 15 days. Within 30 days of completing the training for all current employees, DBI will provide to the NRC: (1) a letter stating that the training as specified is complete, and (2) the results of the employee testing process. The letter will be sent to the NRC at: U.S. Nuclear Regulatory Commission, Region IV, Director, Division of Nuclear Materials Safety, 1600 East Lamar Blvd., Arlington, Texas 76011–4511.

2. *Training for Future Employees and Annual Refresher Training*

Within 270 days of the date of the Confirmatory Order, DBI will submit to the NRC for review and approval, the training program and associated procedure(s) that describe the initial training which must be provided to future employees who will be conducting NRC-licensed activities and the annual refresher training that will be conducted for those employees who are performing NRC-licensed activities. The submittal to the NRC will include: (1) An outline of the topics to be covered during the initial training and the annual refresher training sessions, (2) any procedure(s) that provides guidance on how the training program is conducted, (3) the details of the testing that will be conducted to evaluate the effectiveness of the training, and (4) the minimum qualifications of the trainer. The topics to be covered must include the topics discussed in Condition A.3 below.

3. *Training Program Requirements*

The contractor identified in Condition A.1 will also make enhancements to DBI's training program. The contractor will modify the training procedures for current and future employees, and annual refresher training to include the following:

• For current and future employees involved in NRC-licensed activities, and annual refresher training, the elements of willfulness discussed in Chapter 6 of the NRC Enforcement Manual, including examples of willful violations (careless disregard and deliberate misconduct), the fact that deliberate violations may be prosecuted criminally, the potential enforcement sanctions that the NRC may take against individuals who engage in deliberate misconduct (10 CFR 30.10), and examples of enforcement actions that the NRC has taken against individuals (publicly available on the NRC Web site).

• Training on how to conduct Cause Evaluations of radiography events and events involving significant violations. This training may be limited to DBI managers identified by the Licensee, who would be responsible for investigating and reviewing events and certain significant violations.

• For current and future employees involved in NRC-licensed activities, and annual refresher training, the requirements of 10 CFR 30.9, ''Completeness and Accuracy of Information,'' and 10 CFR 30.7, ''Employee Protection.''

• For current and future employees involved in NRC-licensed activities, instruction on the importance of understanding and following DBI's internal procedures and the regulatory requirements associated with radiographic operations. This instruction must include a discussion of past radiography events that have resulted in overexposures to individuals and the health effects from these events. The instruction must show that DBI's internal procedures and the NRC's regulatory requirements are designed to prevent overexposures and the associated health effects.

• For current and future employees involved in NRC-licensed activities, a discussion on the NRC's Safety Culture Policy Statement, and DBI management's support of the policy. DBI will provide a copy of NUREG/BR–0500, ''Safety Culture Policy Statement,'' (ADAMS Accession No. ML11165A021) to its employees.

• For all current and future employees involved in NRC-licensed activities, and annual refresher training, the requirements to: perform radiological surveys when approaching the radiography camera and the guide tube, as required by 10 CFR 34.49(b); have at least one other qualified individual present while performing radiography, as required by 10 CFR 34.41(a); and ensure that radiographers' assistants are properly supervised while performing radiographic operations, as required by 10 CFR 34.46(c).

4. *Recordkeeping Requirements*

DBI will maintain training records for 5 years. The records must include: the date of training, the name of the instructor, the attendees, and the test results. The records will be available for NRC review when requested.

B. Operating and Emergency Procedures

Within 270 days of the date of the Confirmatory Order, DBI will develop and submit to the NRC, for review and approval, a request for a license amendment including the following procedures:

1. A procedure that details how DBI management and the corporate RSO will provide oversight of DBI field office(s), including unannounced field audits.

2. A procedure for conducting field audits of radiographic operations performed in NRC jurisdiction. In addition to the audit requirements in 10 CFR 34.43(e), every radiographer conducting NRC-licensed activities will be audited, at intervals not to exceed 24 months, by an individual independent of the field office being audited. Audits must, if possible, be unannounced; and must include a review to establish that assistant radiographers are properly supervised, at least one other qualified individual is present while performing

radiography, and proper surveys are conducted when an individual approaches the radiographic camera and guide tube. Each individual involved in NRC-licensed activities must be audited at least three times per calendar year.

3. A procedure which describes DBI's cause evaluation program, (e.g. when and how to conduct cause evaluations, the various types of cause evaluations, training requirements for individuals performing cause evaluations, and how to document cause evaluations).

4. A procedure to ensure that audit records must be maintained for 5 years. The audit records will include the following information: the date of the audit, the name of the person conducting the audit, the name of individuals contacted by auditor, the audit findings, corrective actions, and follow-up (if any). The records will be available for NRC review when requested.

C. Within 30 days of the date of the Confirmatory Order, DBI will issue a company policy statement to its employees. The Policy Statement will provide DBI management's position on the importance of (1) maintaining security of licensed material, (2) the ethics of complying with regulatory requirements, (3) the awareness that deliberate violations are unacceptable, and (4) the need to ensure the primacy of safety over competing goals. DBI will provide a copy of its Policy Statement to the NRC at: U.S. Nuclear Regulatory Commission, Region IV, Director, Division of Nuclear Materials Safety, 1600 East Lamar Blvd., Arlington, Texas 76011–4511.

D. Within 30 days of the date of the Confirmatory Order, DBI must pay a civil penalty of $3,500. DBI will pay the civil penalty in accordance with NUREG/BR–0254, ''Payment Methods'' and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, a statement indicating when and by what method payment was made.

On October 3, 2012, DBI consented to issuing this Order with the commitments, as described in Section V below. DBI further agreed that this Order is to be effective upon issuance and that it has waived its right to a hearing.

**IV**

Since DBI has agreed to take additional actions to address NRC concerns, as set forth in Item III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that DBI's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that the DBI's commitments be confirmed by this Order. Based on the above and DBI's consent, this Confirmatory Order is immediately effective upon issuance.

**V**

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Parts 20, 30, 34, and 150 *it is hereby ordered, effective immediately, that:*

A. DBI will enhance its training program for employees conducting radiographic operations (radiography or licensed activities). The goal of the changes is to conduct NRC-licensed activities safely and deter future deliberate violations by ensuring that employees, including company managers, understand the importance the NRC places on violations associated with deliberate misconduct and careless disregard. The program will consist of training for current employees conducting NRC-licensed activities and future employees conducting NRC-licensed activities. The program will also provide for annual refresher training. DBI will complete the following activities in support of the training program:

1. *Training Requirements for Current Employees*

a. Within 30 days of the date of the Confirmatory Order, DBI will contract with an external contractor to develop training modules on the topics identified in Condition A.3 for its current employees, including company managers, who are involved in NRC-licensed activities.

b. At least 15 days before the time that DBI intends to execute the contract with the external contractor, DBI will submit, for NRC review and approval, the resume of the contractor recommended to develop the training modules.

c. At least 15 days prior to the start of training, but no later than 30 days after executing the contract with the external training contractor, DBI will submit for NRC review and approval, an outline of the topics to be covered during the training session(s). The training will include the topics identified in Condition A.3.

d. The training for current employees will be conducted by the contractor and must be completed within 180 days of the NRC's approval of the outline of the course topics.

e. DBI will assess the effectiveness of the training through written testing. Any employee that does not pass the test will receive remedial training, and will be retested within 15 days. Within 30 days of completing the training for all current employees, DBI will provide to the NRC: (1) A letter stating that the training as specified is complete, and (2) the results of the employee testing process. The letter will be sent to the NRC at: U.S. Nuclear Regulatory Commission, Region IV, Director, Division of Nuclear Materials Safety, 1600 East Lamar Blvd., Arlington, Texas 76011–4511.

2. *Training for Future Employees and Annual Refresher Training*

Within 270 days of the date of the Confirmatory Order, DBI will submit to the NRC for review and approval, a request for a license amendment including the training program and associated procedure(s) that describe the initial training which must be provided to future employees who will be conducting NRC-licensed activities and the annual refresher training that will be conducted for those employees who are performing NRC-licensed activities. The submittal to the NRC will include: (1) An outline of the topics to be covered during the initial training and the annual refresher training sessions, (2) any procedure(s) that provides guidance on how the training program is conducted, (3) the details of the testing that will be conducted to evaluate the effectiveness of the training, and (4) the minimum qualifications of the trainer. The topics to be covered must include the topics discussed in Condition A.3 below.

3. *Training Program Requirements*

The contractor identified in Condition A.1 will also make enhancements to DBI's training program. The contractor will modify the training procedures to include the following:

a. For current and future employees involved in NRC-licensed activities, initial and annual refresher training on the elements of willfulness discussed in the NRC Enforcement Manual, including examples of willful violations (careless disregard and deliberate misconduct), the fact that deliberate violations may be prosecuted criminally, the potential enforcement sanctions that the NRC may take against individuals who engage in deliberate misconduct (10 CFR 30.10), and examples of enforcement actions that the NRC has taken against individuals (publicly available on the NRC Web site).

b. Training on how to conduct Cause Evaluations of radiography events and events involving significant violations. This training may be limited to DBI managers identified by the Licensee, who would be responsible for investigating and reviewing events and certain significant violations.

c. For current and future employees involved in NRC-licensed activities, initial and annual refresher training on the requirements of 10 CFR 30.9, ''Completeness and Accuracy of Information,'' and 10 CFR 30.7, ''Employee Protection.''

d. For current and future employees involved in NRC-licensed activities, initial and annual refresher training on the importance of understanding and following DBI's internal procedures and the regulatory requirements associated with radiographic operations. This instruction must include a discussion of past radiography events that have resulted in overexposures to individuals and the health effects from these events. The instruction must show that DBI's internal procedures and the NRC's regulatory requirements are designed to prevent overexposures and the associated health effects.

e. For current and future employees involved in NRC-licensed activities, initial and annual refresher training on the NRC's Safety Culture Policy Statement, and DBI management's support of the policy. DBI will provide a copy of NUREG/BR–0500, ''Safety Culture Policy Statement,'' (ADAMS Accession No. ML11165A021) to its employees.

f. For all current and future employees involved in NRC-licensed activities, initial and annual refresher training on the requirements to: perform radiological surveys when approaching the radiography camera and the guide tube, as required by 10 CFR 34.49(b); have at least one other qualified individual present while performing radiography as required by 10 CFR 34.41(a); and ensure that radiographers assistants are properly supervised while conducting radiographic operations, as required by 10 CFR 34.46(c).

4. *Recordkeeping Requirements:*

DBI must maintain training records for 5 years. The records must include: the date of training, the name of the instructor, the attendees, and the test results. The records will be available for NRC review when requested.

B. Revise Operating and Emergency Procedures:

Within 270 days of the date of the Confirmatory Order, DBI will develop and submit to the NRC, for review and approval, a request for a license amendment including the following procedures:

1. A procedure that details how DBI management and the corporate RSO will provide oversight of DBI field office(s), including unannounced field audits.

2. A procedure for conducting field audits of radiographic operations performed in NRC jurisdiction. In addition to the audit requirements in 10 CFR 34.43(e), every radiographer conducting NRC-licensed activities will be audited, at intervals not to exceed 24 months, by an individual independent of the field office being audited. Audits must, if possible, be unannounced; and must include a review to establish that assistant radiographers are properly supervised, at least one other qualified individual present while performing radiography, and proper surveys are conducted when an individual approaches the radiographic camera and guide tube. Each individual involved in NRC-licensed activities must be audited at least three times per calendar year.

3. A procedure which describes DBI's cause evaluation program, (e.g. when and how to conduct cause evaluations, the various types of cause evaluations, training requirements for individuals performing cause evaluations, and how to document cause evaluations).

4. A procedure to ensure that audit records must be maintained for 5 years. The audit records will include the following information: the date of the audit, the name of the person conducting the audit, the name of individuals contacted by auditor, the audit findings, the corrective actions, and the follow-up (if any). The records will be available for NRC review when requested.

C. Within 30 days of the date of the Confirmatory Order, DBI will issue a company policy statement to its employees. The Policy Statement will provide DBI management's position on the importance of (1) maintaining security of NRC-licensed material, (2) the ethics of complying with regulatory requirements, (3) the awareness that deliberate violations are unacceptable, and (4) the need to ensure the primacy of safety over competing goals. DBI will provide a copy of its Policy Statement to the NRC at: U.S. Nuclear Regulatory Commission, Region IV, Director, Division of Nuclear Materials Safety, 1600 East Lamar Blvd., Arlington, Texas 76011–4511.

D. Within 30 days of the date of the Confirmatory Order, DBI must pay a civil penalty of $3,500. DBI will pay the civil penalty in accordance with NUREG/BR–0254, ''Payment Methods'' and by submitting to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region IV, a statement indicating when and by what method payment was made.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by DBI of good cause.

**VI**

Any person adversely affected by this Confirmatory Order, other than DBI, may request a hearing within 20 days of its publication in the **Federal Register**. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the

Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call to 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person (other than DBI) requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be final 20 days from the date this Confirmatory Order is published in the **Federal Register** without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

A request for hearing shall not stay the immediate effectiveness of this order.

For The Nuclear Regulatory Commission.

Dated this 11th day of October 2012.

**Elmo E. Collins,**

*Regional Administrator, NRC Region IV.*

[FR Doc. 2012–26204 Filed 10–23–12; 8:45 am]

**BILLING CODE 7590–01–P**

## POSTAL REGULATORY COMMISSION

**[Docket Nos. CP2013–4 and MC2013–4; Order No. 1504]**

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 45 to the competitive product list, along with a new contract. This notice informs the public of the filing, invite public comment, and takes other administrative steps.

**DATES:** *Comments are due:* October 25, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit

comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 45 to the competitive product list.[1] The Postal Service asserts that Priority Mail Contract 45 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–4.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–4.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day after the date that the Commission issues all regulatory approvals. *Id.* at 5. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013–4 and CP2013–4 to consider the Request pertaining to the proposed Priority Mail Contract 45 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 25, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

## III. Ordering Paragraphs

*It is ordered:*

1. The Commission establishes Docket Nos. MC2013–4 and CP2013–4 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 25, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2012–26115 Filed 10–23–12; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Request of the United States Postal Service to Add Priority Mail Contract 45 to the Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 17, 2012 (Request).

## POSTAL REGULATORY COMMISSION

**[Docket Nos. MC2013–5 and CP2013–5; Order No. 1505]**

## New Postal Product and Related Negotiated Service Agreement

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract & First-Class Package Service Contract 1 to the competitive product list, including a related contract. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* October 25, 2012.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. Notice of Filings
III. Supplemental Information
IV. Ordering Paragraphs

## I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail & First-Class Package Service Contract 1 to the competitive

product list.[1] The Postal Service asserts that Priority Mail & First-Class Package Service Contract 1 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–5.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–5.

*Request.* To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

*Related contract.* The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the first business day after the date that the Commission issues all regulatory approvals. *Id.* at 3. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

## II. Notice of Filings

The Commission establishes Docket Nos. MC2013–5 and CP2013–5 to consider the Request pertaining to the proposed Priority Mail & First-Class Package Service Contract 1 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than October 25, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov).*

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

## III. Supplemental Information

Contract Term I.E. indicates that the customer can request the use of Package Intercept service at a negotiated rate. The Postal Service's workpapers do not take into account the customer's ability to use Package Intercept service for a negotiated rate in demonstrating that the contract will cover its attributable cost.

Please provide revised supporting workpapers that demonstrate that the contract as a whole will cover its attributable cost taking into account the customer's ability to use Package Intercept service at a negotiated rate. Response to the supplemental information request is due no later than October 24, 2012.

## IV. Ordering Paragraphs

*It is ordered*:

1. The Commission establishes Docket Nos. MC2013–5 and CP2013–5 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than October 25, 2012.

4. Response to the supplemental information request is due no later than October 24, 2012.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

[FR Doc. 2012–26213 Filed 10–23–12; 8:45 am]

**BILLING CODE 7710–FW–P**

[1] Request of the United States Postal Service to Add Priority Mail & First-Class Package Service Contract 1 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, October 17, 2012 (Request).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 30235; 812–14012]**

## Trust for Professional Managers and Collins Capital Investments, LLC; Notice of Application

October 18, 2012.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f-2 under the Act, as well as from certain disclosure requirements.

**SUMMARY OF APPLICATION:** Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and that would grant relief from certain disclosure requirements.

**APPLICANTS:** Trust for Professional Managers (the ''Trust'') and Collins Capital Investments, LLC (the ''Advisor'') (collectively, ''Applicants'').

**FILING DATES:** The application was filed March 7, 2012, and amended on June 26, 2012 and October 18, 2012.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 13, 2012, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Elizabeth M. Murphy, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Joseph C. Neuberger, 615 East Michigan Street, Milwaukee, WI 53202; Kent A. Windhorst, Collins Capital Investments, LLC, 806 Douglas Road, Suite 570, Coral Gables, FL 33134.

**FOR FURTHER INFORMATION CONTACT:** Jaea F. Hahn, Senior Counsel, at (202) 551–6870 or Janet M. Grossnickle, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

*Applicants' Representations*:

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company. The Trust is organized as a series investment company and currently consists of 27 series, one of which is advised by the Advisor.[1] The Applicants are not requesting relief for any series other than those advised by the Advisor. The Advisor is a limited liability company organized under Delaware law. The Advisor is, and any future Advisor will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor serves as the investment adviser to each Series pursuant to an investment advisory agreement with the Trust (each an ''Advisory Agreement'' and collectively, the ''Advisory Agreements'').[2] Each Advisory Agreement was approved or will be approved by the board of trustees of the Trust (the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust, the Fund, or the Advisor (''Independent Trustees'') and by the shareholders of the relevant Fund in the manner required by sections 15(a) and 15(c) of the Act and rule 18f–2 under the Act.

2. Under the terms of each Advisory Agreement, the Advisor will provide the Funds with overall management services and as it deems appropriate, continuously review, supervise and administer each Fund's investment program, subject to the supervision of, and policies established by the Board. For the investment management services it will provide to each Fund, the Advisor will receive the fee specified in the Advisory Agreement from such Fund based on the average daily net assets of the Fund. The Advisory Agreement permits the Advisor, subject to the approval of the Board, to delegate certain responsibilities to one or more subadvisors (''Subadvisors''). The Advisor has entered into subadvisory agreements with various Subadvisors (''Subadvisory Agreements'') to provide investment advisory services to the Funds.[3] Each Subadvisor is, and any future Subadvisor will be, an investment adviser as defined in section 2(a)(20) of the Act as well as registered with the Commission as an ''investment adviser'' under the Advisers Act. The Advisor evaluates, allocates assets to and oversees the Subadvisors, and makes recommendations about their hiring, termination and replacement to the Board, at all times subject to the authority of the Board. The Advisor will compensate the Subadvisors out of the advisory fee paid by a Fund to the Advisor under the Advisory Agreement.

3. Applicants request an order to permit the Advisor, subject to Board approval, to select certain Subadvisors to manage all or a portion of the assets of a Fund or Funds pursuant to a Subadvisory Agreement and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any Subadvisor that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or of the Advisor, other than by reason of serving as a subadvisor to one or more of the Funds (''Affiliated Subadvisor'').

4. Applicants also request an order exempting the Funds from certain disclosure provisions described below that may require the Applicants to disclose fees paid by the Advisor or a Fund to each Subadvisor. Applicants seek an order to permit the Trust to disclose for a Fund (as both a dollar amount and as a percentage of the Fund's net assets): (a) The aggregate fees paid to the Advisor and any Affiliated Subadvisor; and (b) the aggregate fees paid to Subadvisors other than Affiliated Subadvisors (collectively, ''Aggregate Fee Disclosure''). Any Fund that employs an Affiliated Subadvisor will provide separate disclosure of any fees paid to the Affiliated Subadvisor.

*Applicants' Legal Analysis*:

1. Section 15(a) of the Act provides, in relevant part, that is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by a vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (''1934 Act''). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fees,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory

[1] Applicants are not requesting relief for any series other than those advised by the Advisor. Applicants request relief with respect to any existing and any future series of the Trust or any other registered open-end management company that: (a) Is advised by the Advisor or a person controlling, controlled by, or under common control with the Advisor or its successor (each, also an ''Advisor''); (b) uses the manager of managers structure described in the application; and (c) complies with the terms and conditions of the requested order (any such series, a ''Fund'' and collectively, the ''Funds''). The only existing registered open-end management investment company that currently intends to rely on the requested order is named as an Applicant, and the only series that currently intends to rely on the requested order as a Fund is the Collins Alternative Solutions Fund. For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. If the name of any Fund contains the name of a Subadvisor (as defined below), that name will be preceded by the name of the Advisor.

[2] Each future investment advisory agreement between an Advisor and a Fund is also included in the term ''Advisory Agreement''. The Advisor currently serves as investment advisor only to the Collins Alternative Solutions Fund, a series of the Trust, under the Advisory Agreement.

[3] As of the date of the amended application, the Advisor had entered into Subadvisory Agreements with Whitebox Advisors, LLC, Stadion Money Management, LLC, Pinebank Asset Management, LP, Battenkill Asset Management, Inc. and The Cambridge Strategy (Asset Management) Limited. None of the existing Subadvisors is affiliated with the Advisor.

fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its financial statement information about investment advisory fees.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor subject to the review and approval of the Board, to select the Subadvisors who are best suited to achieve the Fund's investment objectives. Applicants assert that, from the perspective of the shareholder, the role of the Subadvisors is substantially equivalent to that of the individual portfolio managers employed by traditional investment company advisory firms. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose unnecessary delays and expenses on the Funds and may preclude the Funds from acting promptly when the Advisor and Board consider it appropriate to hire Subadvisors or amend Subadvisory Agreements. Applicants note that the Advisory Agreements and any Subadvisory Agreements with Affiliated Subadvisors will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

7. If a new Subadvisor is retained in reliance on the requested order, the Funds will inform shareholders of the hiring of a new Subadvisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Subadvisor is hired for any Fund, that Fund will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[4] and (b) the Fund will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. Applicants assert that a proxy solicitation to approve the appointment of new Subadvisors would provide no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Moreover, as indicated above, the applicable Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Subadvisory Agreements.

8. Applicants assert that the requested disclosure relief will benefit shareholders of the Funds because it will improve the Advisor's ability to negotiate the fees paid to Subadvisors. Applicants state that the Advisor may be able to negotiate rates that are below a Subadvisor's ''posted'' amounts if the Advisor is not required to disclose the Subadvisors' fees to the public.

*Applicants' Conditions*:

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or, in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Fund's shares to the public.

2. The prospectus for each Fund will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Fund will hold itself out to the public as employing the manager of managers structure described in the application. The prospectus will prominently disclose that the Advisor has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisors and recommend their hiring, termination, and replacement.

3. Funds will inform shareholders of the hiring of a new Subadvisor within 90 days after the hiring of the new Subadvisor pursuant to the Modified Notice and Access Procedures.

4. The Advisor will not enter into a Subadvisory Agreement with any Affiliated Subadvisor without that agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination and selection of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. When a Subadvisor change is proposed for a Fund with an Affiliated Subadvisor, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders and does not involve a conflict of interest from which the Advisor or the Affiliated Subadvisor derives an inappropriate advantage.

7. Independent legal counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Trustees. The selection of such counsel will be within the discretion of the then existing Independent Trustees.

8. Each Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per-Fund basis. The information will reflect the impact on profitability of the hiring or termination of any Subadvisor during the applicable quarter.

9. Whenever a Subadvisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. The Advisor will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of the Fund's assets and, subject to review and approval of the Board, will (i) set each Fund's overall investment strategies; (ii) evaluate, select and recommend Subadvisors to manage all or part of a Fund's assets; (iii) when appropriate,

[4] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Exchange Act, and specifically will, among other things: (a) Summarize the relevant information regarding the new Subadvisor; (b) inform shareholders that the Multi-manager Information Statement is available on a Web site; (c) provide the Web site address; (d) state the time period during which the Multi-manager Information Statement will remain available on that Web site; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Funds. A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the requested order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed electronically with the Commission via the EDGAR system.

allocate and reallocate a Fund's assets among multiple Subadvisors; (iv) monitor and evaluate the performance of Subadvisors; and (v) implement procedures reasonably designed to ensure that the Subadvisors comply with each Fund's investment objective, policies and restrictions.

11. No trustee or officer of the Trust, or of a Fund, or director or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person) any interest in a Subadvisor, except for (a) ownership of interests in the Advisor or any entity that controls, is controlled by, or is under common control with the Advisor; or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Subadvisor or an entity that controls, is controlled by, or is under common control with a Subadvisor.

12. Each Fund will disclose in its registration statement the Aggregate Fee Disclosure.

13. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26163 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68065; File No. SR–NYSE–2012–52]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Sections 102.01 and 103.00 of the Exchange's Listed Company Manual To Permit the Consideration of Stockholders and Trading Volume in the Company's Home Country Market or Primary Trading Market Outside the United States, Provided Such Market is a Regulated Stock Exchange, When Determining the Qualification for Initial Listing Under Section 102.01 of a Company From Outside North America

October 18, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that October 5, 2012, New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I 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 Sections 102.01 and 103.00 of the Exchange's Listed Company Manual (the ''Manual'') to permit the consideration of stockholders and trading volume in the company's home country market or primary trading market outside the United States, provided such market is a regulated stock exchange, when determining the qualification for initial listing under Section 102.01 of a company from outside North America. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend Sections 102.01 and 103.00 of the Manual to permit the consideration of stockholders and trading volume in the company's home country market or primary trading market outside the United States, provided such market is a regulated stock exchange, when determining the qualification for initial listing under Section 102.01 of a company from outside North America.

Section 102.01A of the Manual sets forth the Exchange's minimum initial listing requirements with respect to distribution for companies seeking to list under the Exchange's ''domestic'' initial listing standards.[4] A note included in Section 102.01B provides that, when considering a listing application from a company organized under the laws of Canada, Mexico or the United States (''North America''), the Exchange will include all North American holders and North American trading volume in applying the minimum stockholder and trading volume requirements of Section 102.01A. By comparison, Section 103.00 specifies that, when a company from outside North America seeks to list under the domestic criteria in Section 102.01B, the Exchange will consider only stockholders and trading volume in the United States.

The Exchange proposes to amend Sections 102.01B and 103.00 to provide that, in connection with the listing of any issuer from outside North America, the Exchange will have the discretion, but will not be required, to consider holders and trading volume in the company's home country market or primary trading market outside the United States in determining whether a company is qualified for listing under Section 102.01, provided such market is a regulated stock exchange.[5] The proposed amended rule text specifies that, in exercising this discretion, the Exchange would consider all relevant factors including: (i) Whether the information was derived from a reliable source, preferably either a regulated securities market or a transfer agent that was subject to governmental regulation; (ii) whether there existed efficient

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] While Section 102.01 makes reference to ''domestic'' companies, Section 103.00 specifies that non-U.S. companies can qualify for listing under either the ''domestic'' standards set forth in Section 102.01 or the Alternate Listing Standards for foreign companies set forth in Section 103.

[5] Consistent with the existing text of Section 102.01B, in the case of a security that would list as an American Depositary Receipt (''ADR''), the Exchange would adjust share data so that the company's shareholders and trading volume would be analyzed on an ADR-equivalent basis. For example, assume that a Mexican company has ADRs trading in the United States and ordinary shares trading in Mexico, with each ADR representing 10 ordinary shares. If the company were to apply to list its U.S.-traded ADRs on the NYSE, the Exchange would divide the Mexican share volume by 10 in determining whether the combined ADR/share volume meets the requirements of the listing criteria. For Companies that have multiple series of shares or ADR's the Exchange will include the volume only in the specific ordinary shares and overlying ADRs that would be listed on the exchange.

mechanisms for the transfer of securities between the company's non-U.S. trading market and the United States; and (iii) the number of shareholders and the extent of trading in the company's securities in the United States prior to the listing.

The Exchange notes that it has been its experience that where there is a liquid market for a company's securities in its home country or primary trading market and where it is relatively easy to transfer securities between the home country or primary trading market and the United States, a liquid trading market can develop quickly on the Exchange even if there are relatively few U.S. holders at the time of original listing. Brazil is an example of a country whose companies sometimes list on the Exchange without a concurrent U.S. initial public offering and where a liquid trading market quickly develops in the United States.

Currently, the only option for listing qualification available to a company from outside North America which is unable to comply with the U.S.-only distribution requirements of Section 102.01B [6] [sic] is to qualify under the Alternate Listing Standards for foreign companies set forth in Section 103. The Alternate Listing Standards were adopted at a time when the listing of foreign companies on U.S. exchanges was still relatively uncommon. At that time, the Exchange's domestic listing standards required applicants to have 2,000 round lot holders in the United States, or, in the case of North American companies, within North America. As stated in Section 103.00, the Exchange recognized that the domestic distribution requirements then in effect were ''a major obstacle for many large non-U.S. companies which otherwise fulfill many times over the normal size and earnings requirements for listing on the Exchange.'' As the Alternate Listing Standards were designed for the listing of large foreign companies with a large shareholder base and an exchange listing in their home country, the 5,000 worldwide round lot holder requirement of Section 103.01 was not unduly burdensome. However, since the adoption of the Alternate Listing Standards there have been two significant changes. First, the NYSE amended its distribution standards in Section 102.01B [7] [sic] so that companies listing under the domestic standards typically now list on the basis of a 400 round lot holder requirement. Consequently, the disparity between the 5,000 round lot holder requirement of the Alternate Listing Standards and the current domestic distribution requirements is far greater than when the Alternate Listing Standards were initially adopted. Second, many of the foreign companies which now apply to list are significantly smaller than the large foreign companies for which the Alternate Listing Standards were designed. Consequently, the significant disparity between the domestic and international shareholder requirements is further highlighted by the fact that many of the smaller foreign companies now seeking to list on the Exchange have far fewer shareholders than was typical for the large companies for which the international distribution requirements were designed.

In addition to the difficulty many foreign listing applicants experience in meeting the distribution requirements under the Alternate Listing Standards, it has also been the Exchange's experience in recent years that many foreign companies that apply to list on the NYSE are able to meet the financial requirements to list under one or more of the domestic listing standards, but are not large enough to meet the market capitalization and financial requirements of the Alternate Listing Standards. The proposed amendments address this anomaly, as they would permit the listing of foreign companies which meet one of the domestic financial listing standards and which, while they would not meet any of the domestic distribution standards based solely on shareholders or trading volume in the United States, would be able to meet those requirements on the basis of their aggregate shareholder base and trading volume in both the United States and the company's home country market or primary trading market outside the United States, provided such market is a regulated stock exchange.

The Exchange notes that the Nasdaq Global Market requires applicants for initial listing to have 400 round lot holders, but do not specify that this requirement can only be met on the basis of holders in the United States.[8] Consequently, the Nasdaq Global Market has the discretion to qualify companies on the basis of their worldwide holders. The Exchange also notes that its distribution standards as amended would continue to be as stringent as, or more stringent than, those of other listing markets.[9] Consequently, the Exchange does not believe that the proposed amendments raise any novel regulatory issues or give rise to any investor protection concerns.

Section 103.00 contains the following text:

Domestic listing requirements call for minimum distribution of a company's shares within the United States, or in the case of North American companies, within North America. This is a major obstacle for many large non-U.S. companies which otherwise fulfill many times over the normal size and earnings requirements for listing on the Exchange. The principal Alternate Listing Standards focus on worldwide rather than U.S. or North American distribution of a non-U.S. company's shares.

As the foregoing would no longer be accurate after adoption of the proposed amendments, the Exchange proposes to delete this text in its entirety.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [10] of the Securities Exchange Act of 1934 (the ''Act'') [11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular in that it is designed 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. The Exchange believes that the proposed amendments are consistent with the protection of investors and the public interest because the Exchange's holders and trading volume requirements exist to ensure that there will be a liquid trading market in a listing applicant's stock and the factors the Exchange will consider in exercising its discretion to include in its calculations shareholders and trading volume from the company's home country market or primary trading market will enable the Exchange to exercise this discretion only in cases where the Exchange is comfortable that a liquid trading market will develop on

[6] The Commission notes that Section 102.01A of the Exchange's Listed Company Manual contains the distribution requirements.

[7] *See id.*

[8] *See* Nasdaq Marketplace Rule 5405(a). The Exchange also notes that Nasdaq Marketplace Rule 5215(b) provides that, when listing an ADR, the underlying security will be considered when determining annual income from continuing operations, publicly held shares, market value of publicly held shares, stockholders' equity, round lot or public holders, operating history, market value of listed securities, and total assets and total revenue.

[9] *See* note 8 *supra.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78a.

[12] 15 U.S.C. 78f(b)(5).

the NYSE after listing. In that regard, the Exchange notes that the proposed amendment is consistent with the concern underlying its distribution standards that there should be a liquid trading market for NYSE listed securities, as it has been its experience that where there is a liquid market for a company's securities in its home country or primary trading market and where it is relatively easy to transfer securities between the home country or primary trading market and the United States, a liquid trading market can develop quickly on the Exchange even if there are relatively few U.S. holders at the time of original listing.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) [14] thereunder because the proposal does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed.[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.[16]

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 15 U.S.C. 78s(b)(3)(C).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–52 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–2012–52. 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–NYSE–2012–52 and should be submitted on or before November 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26143 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68066; File No. SR–NYSEMKT–2012–52]**

## Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 17—Equities To Add a New Paragraph (c)(3) Addressing the Authority of the Exchange or Archipelago Securities LLC To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of an Error Account for Arca Securities

October 18, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 10, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Rule 17—Equities by adding a new paragraph (c)(3) that addresses the authority of the Exchange or Archipelago Securities LLC (''Arca Securities'') to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities. 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.

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 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 Rule 17—Equities by adding a new paragraph (c)(3) that addresses the authority of the Exchange or Arca Securities to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities.[4]

Arca Securities is the approved routing broker of the Exchange, subject to the conditions listed in Rule 17(c)—Equities. The Exchange relies on Arca Securities to provide outbound routing services from itself to routing destinations of Arca Securities (''routing destinations'').[5] When Arca Securities routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of Arca Securities, and Arca Securities arranges for any resulting securities positions to be delivered to the member organization that submitted the corresponding order to the Exchange. However, from time to time, the Exchange and Arca Securities encounter situations in which it becomes necessary to cancel orders and resolve error positions.[6]

Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at Arca Securities, a routing destination, or the Exchange that may cause the Exchange or Arca Securities to take steps to cancel orders if the Exchange or Arca Securities determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or Arca Securities may decide to cancel orders.

*Example 1.* If Arca Securities or a routing destination experiences a technical or systems issue that results in Arca Securities not receiving responses to immediate or cancel (''IOC'') orders that it sent to the routing destination, and that issue is not resolved in a timely manner, Arca Securities or the Exchange would seek to cancel the routed orders affected by the issue.[7] For instance, if Arca Securities experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and Arca Securities or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member organization submitted to the Exchange on its initial order during such a situation would be honored.[8]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected member organizations of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the member organizations' initial orders.

Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at Arca Securities, a routing destination, the Exchange, or a non-affiliate third-party Routing Broker may also result in Arca Securities acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or Arca Securities attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, Arca Securities may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to member organizations because of the earlier decision to cancel

[4] Arca Securities is a facility of the Exchange. Accordingly, under Rule 17—Equities, the Exchange is responsible for filing with the Commission rule changes and fees relating to Arca Securities' functions. In addition, the Exchange is using the phrase ''Arca Securities or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of Arca Securities or the Exchange depending on where those orders are located at the time of that decision.

From time to time, the Exchange also uses non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through Arca Securities, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of Arca Securities so that any resulting positions are delivered to Arca Securities upon settlement. As described above, Arca Securities normally arranges for any resulting securities positions to be delivered to the member organization that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 17(c)(3)(B)—Equities) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to Arca Securities through the clearance and settlement process, Arca Securities would be permitted to resolve those positions in accordance with proposed Rule 17(c)(3)—Equities. If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to Arca Securities through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and Arca Securities would not be permitted to accept the error positions, as set forth in proposed Rule 17(c)(3)(B)(ii)—Equities.

[5] The Exchange has also been approved to receive inbound routes of equities orders by Arca Securities from the NYSE Arca Equities, Inc. (''NYSE Arca'') and New York Stock Exchange LLC (''NYSE''). *See* Rule 17(c)(2)—Equities.

[6] The examples described in this filing are not intended to be exclusive. Proposed Rule 17(c)(3)—Equities would provide general authority for the Exchange or Arca Securities to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 17(c)(3)—Equities also would set forth the manner in which error positions may be handled by the Exchange or Arca Securities. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[7] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), Arca Securities should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the member organization. After submitting an order that is routed to a routing destination, if a member organization sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member organization and the cancellation instruction would be disregarded.

[8] If a member organization did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor Arca Securities would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

the affected routed orders. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Depository Trust & Clearing Corporation (''DTCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member organization because of the earlier cancellation message from the routing destination. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if Arca Securities receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a member organization sends the Exchange an order to buy 100 shares of ABC stock, which causes Arca Securities to send an order to a routing destination that is subsequently executed, cleared and closed out by that routing destination, and the execution is ultimately communicated back to that member organization. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, Arca Securities would still be responsible for settling that member organization's purchase, but would be left with a short position in its error account.[9] Arca Securities would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of Arca Securities that are not related to Arca Securities' function as the Exchange's routing broker and are not related to any corresponding orders of member organizations. As a result, Arca Securities would not be able to assign any positions resulting from such an issue to member organizations. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

In the circumstances described above, Arca Securities may not learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to DTCC a transaction for clearance and settlement for which Arca Securities never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted by Arca Securities to DTCC for clearance and settlement. Moreover, the affected member organizations' trade may not be nullified absent express authority under Exchange rules.[10]

Proposed Amendments to Rule 17—Equities

The Exchange proposes to amend Rule 17—Equities to add new paragraph (c)(3) to address the cancellation of orders due to technical or systems issues and the use of an error account by Arca Securities.

Specifically, under paragraph (c)(3)(A) of the proposed rule, the Exchange or Arca Securities would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, Arca Securities, or a routing destination.[11] The Exchange or Arca Securities would be required to provide notice of the cancellation to affected member organizations as soon as practicable.

Paragraph (c)(3)(B) of the proposed rule would permit Arca Securities to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''error positions''). By definition, an error position would not include any position that results from an order submitted by a member organization to the Exchange that is executed on the Exchange and processed pursuant to Rule 132—Equities.[12] In addition, the Exchange proposes to add to the proposed rule that for purposes of proposed Rule 17(c)(3)—Equities, uncompared transactions that may be processed pursuant to Rule 134(e)—Equities are not error positions of Arca Securities.[13] Arca Securities also would not be permitted to accept any positions in its error account from an account of a member organization and could not permit any member organization to transfer any positions from the member organization's account to Arca Securities' error account under the proposed rule.[14]

Under paragraph (c)(3)(C), in connection with a particular technical or systems issue, Arca Securities or the Exchange would be permitted to either (1) assign all resulting error positions to member organizations, or (2) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

Arca Securities or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable member organizations affected by that technical or systems issue if Arca Securities or the Exchange:

- Determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable member organizations affected by that technical or systems issue;
- Determined that it has sufficient time pursuant to normal clearance and

[9] To the extent that Arca Securities incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

[10] *See, e.g.,* Rule 128—Equities (regarding clearly erroneous executions).

[11] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or Arca Securities determines to cancel orders routed to a routing destination under proposed Rule 17(c)(3)—Equities, but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[12] As provided in Rule 132(a)—Equities, ''Each party to a contract shall submit data regarding its side of the contract (''trade data'') to a Fully-Interfaced Clearing Agency for comparison or settlement, but each party shall be free to select the Fully-Interfaced Clearing Agency of its choice for such purpose.''

[13] Rule 134(e)—Equities provides for the manner by which uncompared transactions at the Exchange are resolved.

[14] The purpose of this provision is to clarify that Arca Securities may address error positions under the proposed rule that are caused by a technical or systems issue, but that Arca Securities may not accept from a member organization positions that are delivered to the member organization through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at Arca Securities, the Exchange, a routing destination of Arca Securities, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described above in which Arca Securities incurred a short position to settle a member organization purchase, as the member organization did not yet have a position in its account as a result of the purchase at the time of Arca Securities' action (*i.e.,* Arca Securities' action was necessary for the purchase to settle into the member organization's account). Moreover, to the extent a member organization receives positions pursuant to Rule 132—Equities in connection with a technical or systems issue, that member organization may seek to rely on Rule 18—Equities if it experiences a loss. That rule provides member organizations with the ability to file claims against the Exchange ''related to an Exchange system failure.''

settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable member organizations affected by that technical or systems issue; and

• Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to DTCC. If there were a small number of trades, there may be sufficient time to match positions with member organization orders and avoid using the error account.

There may be scenarios, however, where Arca Securities determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected member organizations, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which member organization to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after Arca Securities has transmitted IOC orders to it that prevents Arca Securities from receiving responses to those orders, Arca Securities or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, Arca Securities or the Exchange would not pass on to the member organizations any executions on the routed orders received from the routing destination.

The proposed rule also would require Arca Securities to liquidate error positions as soon as practicable.[15] In liquidating error positions, Arca Securities would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or methods of trading to liquidate the error positions. Arca Securities also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Arca Securities/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (c)(3)(D), Arca Securities and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to member organizations or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[16] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[17] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since Arca Securities' or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing Arca Securities or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing Arca Securities to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to Rule 17—Equities, would be the least disruptive means to correct these errors, except in cases where Arca Securities can assign all such error positions to all affected member organizations of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among member organizations. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require Arca Securities to establish controls to restrict the flow of any confidential information between the third-party broker and Arca Securities/the Exchange associated with the liquidation of error positions.

*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**

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.[20] The Commission notes that it previously approved NYSE Arca Equities Rule 7.45(d), which is substantively identical to the instant proposed rule change.[21] The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the

[15] If Arca Securities determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected member organizations but other error positions cannot be assigned, Arca Securities would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected member organizations).

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6). 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.

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See* Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22).

Exchange to implement the proposed rule change as part of a planned implementation of similar rules on the Exchange's affiliate exchanges. Accordingly, the Commission designates the proposal operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEMKT–2012–52 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–2012–52. 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–NYSEMKT–2012–52 and should be submitted on or before November 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26144 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68068; File No. SR–ISE–2012–86]**

## Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Maker Fees for Certain Complex Orders Executed on the Exchange

October 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 10, 2012, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The ISE is proposing to amend maker fees for certain complex orders executed on the Exchange. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange currently assesses per contract transaction fees and provides rebates to market participants that add or remove liquidity from the Exchange (''maker/taker fees and rebates'') in a number of option classes (the ''Select Symbols'').[3] The Exchange's maker/taker fees and rebates are applicable to regular and complex orders executed in the Select Symbols [4] and in the Special Non-Select Penny Pilot Symbols.[5] The Exchange also currently assesses maker/taker fees and rebates for complex orders in symbols that are in the Penny Pilot program but are not a Select Symbol (''Non-Select Penny Pilot Symbols'') [6] and for complex orders in all symbols that are not in the Penny Pilot Program (''Non-Penny Pilot Symbols'').[7] The purpose of this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Options classes subject to maker/taker fees and rebates are identified by their ticker symbol on the Exchange's Schedule of Fees.

[4] These fees also apply to SPY. While the Exchange currently has a distinct taker fee for SPY, the maker fee for SPY is currently the same as the maker fee for all Select Symbols, as SPY is a Select Symbol.

[5] *See* Exchange Act Release Nos. 67201 (June 14, 2012), 77 FR 37082 (June 20, 2012) (SR–ISE–2012–49); and 67627 (August 9, 2012), 77 FR 49046 (August 15, 2012) (SR–ISE–2012–70).

[6] *See* Exchange Act Release No. 65724 (November 10, 2011), 76 FR 71413 (November 17, 2011) (SR–ISE–2011–72).

[7] *See* Exchange Act Release Nos. 66084 (January 3, 2012), 77 FR 1103 (January 9, 2012) (SR–ISE–2011–84); 66392 (February 14, 2012), 77 FR 10016 (February 21, 2012) (SR–ISE–2012–06); 66961 (May 10, 2012), 77 FR 28914 (May 16, 2012) (SR–ISE–2012–38); and 67400 (July 11, 2012), 77 FR 42036 (July 17, 2012) (SR–ISE–2012–63).

proposed rule change is to amend the complex order maker fees charged by the Exchange for certain complex orders executed on the Exchange. Specifically, the Exchange proposes to adopt complex order maker fees for orders that trade against Priority Customer orders in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols. Section II of the current Schedule of Fees provides the fees and rebates for complex orders traded on the Exchange, with the rebates provided in one table and the fees in another. With this proposed rule change, the Exchange is separating the fees table into two tables, one for maker fees and another for taker fees with the latter retaining the other fees applicable to complex orders, i.e., Fee for Crossing Orders and Fees for Responses to Crossing Orders. The Exchange is not proposing any change to the complex order taker fees or rebates applicable for executions in these symbols.

For Select Symbols (including SPY) and Penny Pilot symbols, the Exchange currently charges a complex order maker fee of: (i) $0.10 per contract for Market Maker,[8] Firm Proprietary/Broker-Dealer and Professional Customer[9] orders; (ii) $0.20 per contract for Non-ISE Market Maker[10] orders; and (iii) $0.00 per contract for Priority Customer[11] orders. For Non-Penny Pilot Symbols, the Exchange currently charges a complex order maker fee of: (i) $0.10 per contract for Market Maker, Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders; and (ii) $0.00 for Priority Customer orders.

The Exchange now proposes to amend the maker fee for the group of symbols noted above when orders in these symbols trade against Priority Customer complex orders. Specifically, the Exchange proposes to adopt the following maker fees for complex orders that trade against Priority Customer orders in the Select Symbols (excluding SPY):

- $0.37 per contract for Market Maker orders;
- $0.39 for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in SPY, the Exchange proposes to adopt the following maker fees:

- $0.38 per contract for Market Maker orders;
- $0.40 for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 for Priority Customer orders.

For complex orders that trade against Priority Customer complex orders in Non-Select Penny Pilot Symbols, the Exchange proposes to adopt the following maker fees:

- $0.37 per contract for Market Maker orders;
- $0.39 for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 for Priority Customer orders.

For orders that trade against Priority Customer complex orders in Non-Penny Pilot Symbols, the Exchange proposes to adopt the following complex order maker fees:

- $0.80 per contract for Market Maker orders;
- $0.83 for Firm Proprietary/Broker-Dealer, Professional Customer and Non-ISE Market Maker orders;
- $0.00 for Priority Customer orders.

The Exchange also proposes to increase the maker fee for Non-ISE Market Maker orders in the Non-Penny Pilot Symbols from $0.10 per contract to $0.20 per contract when trading against a non-Priority Customer. With this change, the Exchange seeks to standardize the maker fee for complex orders in Non-Penny Pilot Symbols with the fee currently charged for complex orders in Select Symbols and Penny Pilot Symbols for Non-ISE Market Maker orders when trading against a non-Priority Customer order.

Additionally, the Exchange provides Market Makers with a two cent discount when trading against Priority Customer orders that are preferenced to them. This discount is currently applicable when Market Makers remove liquidity in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols from the complex order book. The Exchange also currently provides Market Makers with a two-cent discount when they make liquidity in a select group of option classes (''Complex Quoting Symbols'').[12] The Exchange now proposes to provide Market Makers with a two-cent discount when they also add liquidity in the Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols when trading against Priority Customer orders. Accordingly, Market Makers that add or remove liquidity from the complex order book by trading against Priority Customer orders that are preferenced to them will be charged: (i) $0.35 per contract in the Select Symbols; (ii) $0.36 per contract in SPY; (iii) $0.35 per contract in the Non-Select Penny Pilot Symbols; and iv) $0.78 per contract in the Non-Penny Pilot Symbols Select Symbols.

The maker fees proposed herein are identical to the taker fees currently charged by the Exchange.[13] With this proposed rule change, complex orders that trade against Priority Customer orders in the Select Symbols, SPY, Non-Select Penny Pilot Symbols, and Non-Penny Pilot Symbols will now be charged the same fee for making and taking liquidity.

With this proposed rule change, the Exchange will be better positioned to maintain its attractive rebate structure for Priority Customer complex orders. The number of non-Priority Customer maker participants has continued to grown, separately and in addition to the growth in symbols where the Exchange allows complex quoting and has already implemented a fee structure where makers trading against Priority Customer orders pay the taker fee equivalent. This has resulted in an increased number of non-Priority Customer complex maker orders trading with Priority Customer Complex orders. Charging non-Priority Customer orders the equivalent of the taker fee when interacting with Priority Customer complex orders will allow the Exchange to support this model and continue to attract additional orders and liquidity to its Complex Orderbook.

Since the rate changes to the Schedule of Fees pursuant to this proposal will be effective upon filing, for the transactions occurring in October 2012 prior to the effective date of this filing members will be assessed the rates in effect immediately prior to those proposed by this filing. For transactions occurring in October 2012 on and after the effective date of this filing, members will be

[8] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[9] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[10] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended (''Exchange Act''), registered in the same options class on another options exchange.

[11] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[12] *See* Exchange Act Release Nos. 65958 (December 15, 2011), 76 FR 79236 (December 21, 2012 [sic]) (SR–ISE–2011–81); 66406 (February 16, 2012), 77 FR 10579 (February 22, 2012) (SR–ISE–2012–07); and 67316 (June 29, 2012), 77 FR 40136 (July 6, 2012) (SR–ISE–2012–59).

[13] The Exchange has submitted a proposed rule change to increase the taker fees for complex orders in Select Symbols, SPY, Non-Select Penny Pilot Symbols and Non-Penny Pilot Symbols that mirror the proposed maker fees in this filing. *See* SR–ISE–2012–85.

assessed the rates proposed by this filing.

The Exchange's maker/taker fees and rebates for complex orders have proven to be an effective method of attracting order flow to the Exchange. The Exchange believes this proposed rule change will also serve to enhance its competitive position and enable it to attract additional volume in these symbols.

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Exchange Act [14] in general, and furthers the objectives of Section 6(b)(4) of the Exchange Act [15] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in the symbols that are subject to the fees proposed herein.

The Exchange believes it is reasonable and equitable to charge a maker fee of $0.37 per contract for Market Maker orders that trade against Priority Customer interest in the Select Symbols and Penny Pilot symbols and $0.39 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders that trade against Priority Customer interest in the Select Symbols and Non-Select Penny Pilot Symbols. The Exchange believes it is reasonable and equitable to charge a maker fee of $0.38 per contract for Market Maker orders that trade against Priority Customer interest in SPY and $0.40 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders that trade against Priority Customer interest in SPY. The Exchange believes it is reasonable and equitable to charge a maker fee of $0.80 per contract for Market Maker orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols and $0.83 per contract for Non-ISE Market Maker, Firm Proprietary/Broker-Dealer, and Professional Customer orders that trade against Priority Customer interest in the Non-Penny Pilot Symbols.

The Exchange notes that it already charges an identical maker and taker fee for Complex Quoting Symbols and is now simply extending that pricing model to complex orders in the Select Symbols, SPY, in the Non Select Penny Pilot Symbols and in the Non-Penny Pilot Symbols. The Exchange believes that it is reasonable and equitable to charge the fees proposed herein as they are already applicable to complex orders in the Complex Quoting Symbols; with this proposed rule change, the Exchange is simply extending its current pricing model to complex orders in a larger group of option classes.

The complex order pricing employed by the Exchange has proven to be an effective pricing mechanism and attractive to Exchange participants and their customers. The Exchange believes that adopting distinct maker fees for orders that trade against Priority Customer orders in the Select Symbols, SPY, Non Select Penny Pilot Symbols and Non-Penny Pilot Symbols will attract additional business to the Exchange. Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. The Exchange believes it remains an attractive venue for market participants to trade complex orders despite its proposed fee change as its fees remain competitive with those charged by other exchanges. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[16] At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–ISE–2012–86 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2012–86. 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

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78s(b)(3)(A)(ii).

inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2012–86 and should be submitted on or before November 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26146 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68070; File No. SR–C2–2012–024]**

## Self-Regulatory Organizations; C2 Options Exchange, Incorporated; Order Approving a Proposed Rule Change To Adopt a Designated Primary Market-Maker Program

October 18, 2012.

### I. Introduction

On August 21, 2012, the C2 Options Exchange, Incorporated (the ''Exchange'' or ''C2'') filed with the Securities and Exchange Commission (the ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a Designated Primary Market-Maker (''DPM'') program. The proposed rule change was published in the **Federal Register** on September 7, 2012.[3] The Commission received no comment letters on the proposal. This order approves the proposed rule change.

### II. Description of the Proposed Rule Change

As set forth in the Notice, C2 has proposed to adopt a DPM program. The associated proposed rules are based on the rules governing the DPM program on the Chicago Board Options Exchange, Incorporated (''CBOE''), excluding certain provisions that are inapplicable to C2 (such as provisions related to floor trading and CBOE-specific provisions) and other provisions that the Exchange believes are outdated.[4]

The proposed rule change defines a DPM as a Participant[5] organization that is approved by the Exchange to function in allocated securities as a Market-Maker and is subject to obligations under proposed Rule 8.17. Proposed Rule 8.14 sets forth the criteria that the Exchange will consider when reviewing a Participant organization's application to become a DPM. Each approved DPM will retain its status to act as a DPM for one year. After each one-year term, a DPM may file an application with the Exchange to renew its approval to act as a DPM. In addition, the Exchange may take action to suspend or limit a DPM's status, consistent with Rule 8.20 (concerning termination, conditioning, or limiting approval to act as a DPM).[6]

Proposed Rule 8.15 sets forth the manner in which the Exchange will allocate securities to DPMs. Specifically, the Exchange will determine for each security traded on the Exchange whether the security should be allocated to a DPM and, if so, to which DPM. The proposed rule also describes the criteria that the Exchange may consider in making allocation determinations.

Proposed Rule 8.15 further provides that the Exchange may remove an allocation from a DPM and reallocate the security during a DPM's term if the DPM fails to adhere to any market performance commitments made by the DPM in connection with receiving the allocation or the Exchange concludes that doing so is in the best interests of the Exchange based on operational factors or efficiency. The proposed rule also describes the procedures the Exchange must follow prior to taking any action to remove an allocation.

Proposed Rule 8.16 grants the Exchange the authority to establish: (1) Restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and to affiliated DPMs, and (2) minimum eligibility standards applicable to all DPMs, which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and operational capacity.[7]

Proposed Rule 8.17 describes the obligations of a DPM, including the general obligation that a DPM must fulfill all of the obligations of a Market-Maker under Exchange Rules. In addition, the rule sets forth additional requirements applicable to DPMs, such as heightened quoting obligations and a duty to make competitive markets on the Exchange. In particular, DPMs will be subject to a requirement to provide a continuous quote throughout each trading day in 99% of their non-adjusted series (or 100% minus one put-call pair of each assigned class). Proposed Rule 8.18 sets forth the specific financial requirements for DPMs.

Proposed Rule 8.19 grants a trade participation right to DPMs, and gives the Exchange authority to establish a participation entitlement formula that is applicable to all DPMs.[8] The proposed rule provides that: (1) A DPM will be entitled to a participation entitlement only if quoting at the best bid or offer disseminated on the Exchange (''BBO''); (2) a DPM may not be allocated a total quantity greater than the quantity that the DPM is quoting at the BBO; and (3) the participation entitlement is based on the number of contracts remaining after all public customer orders in the Book at the BBO have been satisfied. The proposed rule also provides that the collective DPM participation entitlement shall be: 50% when there is one Market-Maker also quoting at the BBO and 40% when there are two or more Market-Makers also quoting at the

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67772 (August 31, 2012), 77 FR 55257 (September 7, 2012) (the ''Notice'').

[4] *See* CBOE Rules 6.45A(a)(ii)(2) and (iii), 6.45B(a)(i)(2) and (iii), 8.80, 8.83–8.91, 8.95, and 17.50(g)(14).

[5] A ''Participant'' is an Exchange-recognized holder of a Trading Permit (''Trading Permit Holder'' or ''TPH''). A Trading Permit is an Exchange-issued permit that confers the ability to transact on the Exchange. *See* Rule 1.1.

[6] CBOE's DPM rules differ from proposed Rule 8.14 in several ways. CBOE Rule 8.83 provides that a DPM's term is unlimited (until the Exchange relieves or terminates the DPM of its approval to act as a DPM), and accordingly, unlike the proposed rule, lacks a provision allowing DPMs to renew their appointments after each one year term (*cf.* CBOE Rule 8.83(e)). Further, CBOE Rule 8.83 contemplates the resignation of a DPM, while the proposed rule does not because the Exchange believes resignation would be unnecessary given the one-year DPM term. The DPM can simply choose not to renew its application at the end of the term or ask C2 to relieve it of its approval (*cf.* CBOE Rule 8.83(f)). CBOE Rule 8.89 also permits a DPM to sell, transfer, or assign its appointment, which is prohibited without the prior written approval of the Exchange by proposed Rule 8.14(g). Finally, CBOE requires an annual review of DPM operations and performance, but because C2 only permits DPMs to have a one-year term, the Exchange believes an annual review is unnecessary, though in proposed Rule 8.14(e), it may conduct an evaluation of the extent to which the DPM has satisfied its obligations under Rule 8.17 in determining whether to renew the DPM's renewal application (*cf.* CBOE Rule 8.88(a)).

[7] The Commission notes that the exercise of the Exchange's authority under this provision would be subject to the rule filing requirements of Section 19 of the Act and, if so required, would have to be filed with the Commission before such changes can become effective. *See* 15 U.S.C. 78s.

[8] The Commission notes that any changes to the participation entitlement formula would be subject to the rule filing requirements of Section 19 of the Act and, if so required, would have to be filed with the Commission before such changes can become effective. *See* 15 U.S.C. 78s.

BBO.[9] If only the DPM is quoting at the BBO (with no Market-Makers quoting at the BBO), the participation entitlement will not be applicable and the allocation procedures under Rule 6.12 (Order Execution and Priority) will apply.

The Exchange proposed modifications to Rule 6.12 to accommodate the participation entitlement for DPMs. The proposed rule change provides that both PMMs and DPMs may be granted participation rights up to the applicable participation right percentage designated in Rule 8.13 and proposed Rule 8.19. Rule 6.12 also provides that, while the Exchange may activate more than one trade participation right for an option class (including at different priority sequences), in no case may more than one trade participation right be applied on the same trade. Further, the proposed rule provides that: (1) A DPM's order or quote must be at the best price on the Exchange; (2) a DPM may not be allocated a total quantity greater than the quantity that it is quoting (including orders not part of quotes) at that price; (3) in establishing the counterparties to a particular trade, the DPM's participation right must be first counted against its highest priority bids or offers; and (4) the DPM's participation right will only apply to any remaining balance of an order once all higher priorities are satisfied. The proposed rule change also adds paragraph (b)(2) to Rule 6.12 to provide for an optional small order priority overlay.

Proposed Rule 8.20 governs the Exchange's authority to terminate, condition, or otherwise limit the approval of a DPM. The proposed rule provides that the Exchange may take such action if the Participant incurs a material financial or operational change, or if it fails to comply with any of the requirements under C2 Chapter 8 regarding DPM obligations. The proposed rule also describes the procedures the Exchange must follow if it chooses to exercise its authority under the proposed rule.

Proposed Rule 8.21 provides that a DPM must maintain information barriers that are reasonably designed to prevent the misuse of material, non-public information with any affiliates that may conduct a brokerage business in option classes allocated to the DPM or act as a specialist or Market-Maker in any security underlying options allocated to the DPM, and otherwise comply with the requirements of CBOE incorporated Rule 4.18 regarding the misuse of material non-public information. The rule also requires a DPM to provide its information barriers to the Exchange and obtain prior written approval.

Finally, the Exchange is amending Rule 17.50(g)(14) to add DPM quoting obligations to the Exchange's Minor Rule Violation Plan (''MRVP'').[10]

## III. Discussion

The Commission finds that the Exchange's proposed rule change to adopt a DPM program on C2 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) [12] of the Act, which require, among other things, that the rules of an exchange be designed 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, protect investors and the public interest.[13] Moreover, Section 6(b)(5) requires that the rules of a national securities exchange be designed to not permit unfair discrimination between customers, issuers, brokers or dealers.[14]

The Commission finds that the proposed rules are designed to promote just and equitable principles of trade consistent with Section 6(b)(5) of the Act [15] to the extent they require DPMs to undertake certain obligations to the C2 market, including requirements to provide continuous two-sided quoting and meet operational capacity requirements. These requirements should help ensure that DPMs provide liquidity in their allocated classes.

Pursuant to the proposed rules, the transactions of a DPM must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market. A DPM must fulfill all of the obligations of a Market-Maker under C2's rules, and must satisfy the additional requirements imposed on a DPM in the securities allocated to it. In particular, a DPM must, for example: (1) Provide continuous quotes in at least the lesser of 99% of the non-adjusted option series or 100% of the non-adjusted option series minus one call-put pair of each option class allocated to it; (2) assure that each of its displayed market quotations are for the number of contracts required by Rule 8.6(a); (3) make competitive markets on the Exchange; (4) supervise all persons associated with the DPM to assure compliance with the C2 rules; (5) maintain minimum net capital in accordance with C2's rules; (6) maintain information barriers that are reasonably designed to prevent the use of material, non-public information; and (7) continue to act as a DPM and to fulfill all of a DPMs obligations while approved as a DPM. If C2 finds any failure by a DPM to comply with the requirements of C2 Chapter 8 regarding DPM obligations and responsibilities, or if, for any reason, the Exchange believes that a Participant should no longer be eligible to act as a DPM or be allocated particular securities, then C2 may terminate, condition, or otherwise limit a Participant's approval to act as a DPM pursuant to Rule 8.20. Together, these provisions are designed to help assure that DPMs maintain and comply with their obligations to the Exchange and, in so doing, protect investors and the public interest by promoting fair and orderly trading on C2.

Under C2's proposed rules, DPMs would receive certain benefits for their heightened responsibilities. For example, proposed Rule 6.12 allows DPMs to be granted a participation entitlement pursuant to proposed Rule 8.19. A DPM may receive the participation entitlement only when it is one of the Participants quoting at the best price. Further, pursuant to Rule 8.19(b)(3), a DPM will not receive its participation entitlement in trades for which a Preferred Market-Maker receives a participation entitlement. In addition, pursuant to Rule 6.12(b)(2)(B), the small order preference only applies to the allocation of executions among non-customer orders and Market-Maker quotes existing in the Book (*i.e.,* a DPM may not take advantage of this preference to execute an incoming order for 5 or fewer contracts if there is a customer order resting in the Book).

The Commission believes that a DPM must have sufficient affirmative obligations to justify favorable

[9] *Cf.* CBOE Rule 8.87 (providing a different DPM participation entitlement—50% if there is one Market-Maker quoting at the BBO, 40% when there are two Market-Makers quoting at the BBO, and 30% when there are three or more Market-Makers quoting at the BBO).

[10] The CBOE Rule 17.50(g)(14) provides that third and subsequent offenses will be referred to its business conduct committee, unlike the proposed rule change which allows C2 to either fine a Market-Maker $5,000 for a third or subsequent offense, or refer it to its business conduct committee.

[11] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] *Id.*

[15] *Id.*

treatment. The Commission believes that C2's DPM requirements, including those requiring additional liquidity and competitive quoting, impose sufficient affirmative obligations on the Exchange's DPMs, while allowing public customer orders at the best price to continue to be satisfied before a participation entitlement will be applied. Accordingly, the Commission believes that these requirements are consistent with the Act.

The Commission also finds that C2's proposed DPM qualification requirements are consistent with the Act. In particular, the Exchange's rules provide an objective process by which an applicant can become a DPM on the Exchange and are designed to provide for oversight by C2 to monitor for continued compliance by DPMs with the terms of their application for such status and the Exchange's rules. The proposed rules require that the Exchange consider several factors in determining whether to allow a Participant to act as a DPM, including the applicant's adequacy of capital, operational capacity, trading experience, regulatory history, and willingness and ability to promote the Exchange. These factors should ensure that those organizations approved to act as DPMs have the ability to supply liquidity, quote competitively, and perform their obligations competently.

The Exchange also may condition its approval for an applicant's DPM status, including by imposing conditions on the capital or operations of the applicant or the number of securities allocated to the applicant, which should contribute to the Exchange's ability to ensure that a DPM applicant is able to perform its DPM functions. The Commission believes that the financial requirements for DPMs proposed by the Exchange are designed to promote investor protection by ensuring that DPMs have sufficient capital to maintain an orderly market for their allocated securities.

Finally, the Commission believes that the Exchange's proposed procedures for allocating securities to DPMs should help to ensure that securities traded by the Exchange are allocated in an equitable manner, giving all DPMs a fair opportunity to obtain allocations. In addition, the Commission believes that the Exchange's proposed rule limiting each DPM's term to one year should open opportunities to all Participants to become a DPM.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–C2–2012–024) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26148 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68069; File No. SR–ICC–2012–19]**

## Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Schedule 502 of the ICC Rules To Update the Contract Reference Obligation ISINs Associated With Eight Single Name Contracts

October 18, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 10, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(3)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to update the Contract Reference Obligation International Securities Identification Numbers (''Contract Reference Obligation ISINs'') in Schedule 502 of ICC's Rules in order to be consistent with the industry standard reference obligations for eight single name contracts that ICC currently clears (Beam Inc.; AT&T Inc.; Exelon Corporation; Avnet, Inc.; Cardinal Health, Inc.; The Hartford Financial Services Group, Inc.; International Paper Company; and Metlife, Inc.).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(3).

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

ICC is updating the Contract Reference Obligation ISINs in order to remain consistent with the industry standard reference obligations. The Contract Reference Obligation ISINs update does not require any changes to the body of the ICC Rules. Also, the Contract Reference Obligation ISINs update does not require any changes to the ICC risk management framework. The only change being submitted is the update to the Contract Reference Obligation ISINs in Schedule 502 of the ICC Rules.

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F), because the update to the Contract Reference Obligation ISINs for Beam Inc.; AT&T Inc.; Exelon Corporation; Avent, Inc.; Cardinal Health, Inc.; The Hartford Financial Services Group, Inc.; International Paper Company, and Metlife, Inc. will facilitate the prompt and accurate settlement of securities transactions and contribute to the safeguarding of securities and funds associated with swap transactions that are in custody of control of ICC or of which it is responsible.

[4] The Commission has modified the text of the summaries provided by ICC.

[5] 15 U.S.C. 78q–1(b)(3)(F).

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [6] and Rule 19b–4(f)(3) [7] thereunder because it is concerned solely with the administration of the self-regulatory organization. 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.[8]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–19 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2012–19. 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 of submission. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at ICC's principal office and on ICC's Web site at *https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_100512.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2012–19 and should be submitted on or before November 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26147 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

[8] 15 U.S.C. 78s(b)(3)(C).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–68067; File No. SR–NYSE–2012–53]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 17 To Add a New Paragraph (c)(3) Addressing the Authority of the Exchange or Archipelago Securities LLC To Cancel Orders When a Technical or Systems Issue Occurs and To Describe the Operation of an Error Account for Arca Securities

October 18, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that October 10, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend NYSE Rule 17 by adding a new paragraph (c)(3) that addresses the authority of the Exchange or Archipelago Securities LLC (''Arca Securities'') to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend NYSE Rule 17 by adding a new paragraph (c)(3) that addresses the authority of the Exchange or Arca Securities to cancel orders when a technical or systems issue occurs and to describe the operation of an error account for Arca Securities.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Arca Securities is a facility of the Exchange. Accordingly, under NYSE Rule 17, the Exchange is responsible for filing with the Commission rule changes and fees relating to Arca Securities'

Arca Securities is the approved routing broker of the Exchange, subject to the conditions listed in NYSE Rule 17(c). The Exchange relies on Arca Securities to provide outbound routing services from itself to routing destinations of Arca Securities (''routing destinations''). When Arca Securities routes orders to a routing destination, it does so by sending a corresponding order in its own name to the routing destination. In the normal course, routed orders that are executed at routing destinations are submitted for clearance and settlement in the name of Arca Securities, and Arca Securities arranges for any resulting securities positions to be delivered to the member organization that submitted the corresponding order to the Exchange. However, from time to time, the Exchange and Arca Securities encounter situations in which it becomes necessary to cancel orders and resolve error positions.[5]

## Examples of Circumstances That May Lead to Canceled Orders

A technical or systems issue may arise at Arca Securities, a routing destination, or the Exchange that may cause the Exchange or Arca Securities to take steps to cancel orders if the Exchange or Arca Securities determines that such action is necessary to maintain a fair and orderly market. The examples set forth below describe some of the circumstances in which the Exchange or Arca Securities may decide to cancel orders.

*Example 1.* If Arca Securities or a routing destination experiences a technical or systems issue that results in Arca Securities not receiving responses to immediate or cancel (''IOC'') orders that it sent to the routing destination, and that issue is not resolved in a timely manner, Arca Securities or the Exchange would seek to cancel the routed orders affected by the issue.[6] For instance, if Arca Securities experiences a connectivity issue affecting the manner in which it sends or receives order messages to or from routing destinations, it may be unable to receive timely execution or cancellation reports from the routing destinations, and Arca Securities or the Exchange may consequently seek to cancel the affected routed orders. Once the decision is made to cancel those routed orders, any cancellation that a member organization submitted to the Exchange on its initial order during such a situation would be honored.[7]

*Example 2.* If the Exchange experiences a systems issue, the Exchange may take steps to cancel all outstanding orders affected by that issue and notify affected member organizations of the cancellations. In those cases, the Exchange would seek to cancel any routed orders related to the member organizations' initial orders.

## Examples of Circumstances That May Lead to Error Positions

In some instances, the technical or systems issue at Arca Securities, a routing destination, the Exchange, or a non-affiliate third-party Routing Broker may also result in Arca Securities acquiring an error position that it must resolve. The examples set forth below describe some of the circumstances in which error positions may arise.

*Example A.* Error positions may result from routed orders that the Exchange or Arca Securities attempts to cancel but that are executed before the routing destination receives the cancellation message or that are executed because the routing destination is unable to process the cancellation message. Using the situation described in Example 1 above, assume that the Exchange seeks to cancel orders routed to a routing destination because it is not receiving timely execution or cancellation reports from the routing destination. In such a situation, Arca Securities may still receive executions from the routing destination after connectivity is restored, which it would not then allocate to member organizations because of the earlier decision to cancel the affected routed orders. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

*Example B.* Error positions may result from an order processing issue at a routing destination. For instance, if a routing destination experienced a systems problem that affects its order processing, it may transmit back a message purporting to cancel a routed order, but then subsequently submit an execution of that same order (*i.e.,* a locked-in trade) to The Depository Trust & Clearing Corporation (''DTCC'') for clearance and settlement. In such a situation, the Exchange would not then allocate the execution to the member organization because of the earlier cancellation message from the routing destination. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

*Example C.* Error positions may result if Arca Securities receives an execution report from a routing destination but does not receive clearing instructions for the execution from the routing destination. For instance, assume that a member organization sends the Exchange an order to buy 100 shares of ABC stock, which causes Arca Securities to send an order to a routing destination that is subsequently executed, cleared and closed out by that routing destination, and the execution is ultimately communicated back to that member organization. On the next trading day (T+1), if the routing destination does not provide clearing instructions for that execution, Arca Securities would still be responsible for settling that member organization's purchase, but would be left with a short position in its error account.[8] Arca Securities would resolve the position in the manner described below.

*Example D.* Error positions may result from a technical or systems issue that causes orders to be executed in the name of Arca Securities that are not related to Arca Securities' function as the Exchange's routing broker and are not related to any corresponding orders of member organizations. As a result, Arca Securities would not be able to assign any positions

functions. In addition, the Exchange is using the phrase ''Arca Securities or the Exchange'' in this rule filing to reflect the fact that a decision to take action with respect to orders affected by a technical or systems issue may be made in the capacity of Arca Securities or the Exchange depending on where those orders are located at the time of that decision.

From time to time, the Exchange also uses non-affiliate third-party broker-dealers to provide outbound routing services (*i.e.,* third-party Routing Brokers). In those cases, orders are submitted to the third-party Routing Broker through Arca Securities, the third-party Routing Broker routes the orders to the routing destination in its name, and any executions are submitted for clearance and settlement in the name of Arca Securities so that any resulting positions are delivered to Arca Securities upon settlement. As described above, Arca Securities normally arranges for any resulting securities positions to be delivered to the member organization that submitted the corresponding order to the Exchange. If error positions (as defined in proposed Rule 17(c)(3)(B)) result in connection with the Exchange's use of a third-party Routing Broker for outbound routing, and those positions are delivered to Arca Securities through the clearance and settlement process, Arca Securities would be permitted to resolve those positions in accordance with proposed Rule 17(c)(3). If the third-party Routing Broker received error positions in connection with its role as a routing broker for the Exchange, and the error positions were not delivered to Arca Securities through the clearance and settlement process, then the third-party Routing Broker would resolve the error positions itself, and Arca Securities would not be permitted to accept the error positions, as set forth in proposed Rule 17(c)(3)(B)(ii).

[5] The examples described in this filing are not intended to be exclusive. Proposed NYSE Rule 17(c)(3) would provide general authority for the Exchange or Arca Securities to cancel orders in order to maintain fair and orderly markets when technical and systems issues are occurring, and Rule 17(c)(3) also would set forth the manner in which error positions may be handled by the Exchange or Arca Securities. The proposed rule change is not limited to addressing order cancellation or error positions resulting only from the specific examples described in this filing.

[6] In a normal situation (*i.e.,* one in which a technical or systems issue does not exist), Arca Securities should receive an immediate response to an IOC order from a routing destination, and would pass the resulting fill or cancellation on to the member organization. After submitting an order that is routed to a routing destination, if a member organization sends an instruction to cancel that order, the cancellation is held by the Exchange until a response is received from the routing destination. For instance, if the routing destination executes that order, the execution would be passed on to the member organization and the cancellation instruction would be disregarded.

[7] If a member organization did not submit a cancellation to the Exchange, however, that initial order would remain ''live'' and thus be eligible for execution or posting on the Exchange, and neither the Exchange nor Arca Securities would treat any execution of that initial order or any subsequent routed order related to that initial order as an error.

[8] To the extent that Arca Securities incurred a loss in covering its short position, it would submit a reimbursement claim to that routing destination.

resulting from such an issue to member organizations. Instead, Arca Securities would post those positions into its error account and resolve the positions in the manner described below.

In the circumstances described above, Arca Securities may not learn about an error position until T+1, either: (1) During the clearing process when a routing destination has submitted to DTCC a transaction for clearance and settlement for which Arca Securities never received an execution confirmation; or (2) when a routing destination does not recognize a transaction submitted by Arca Securities to DTCC for clearance and settlement. Moreover, the affected member organizations' trade may not be nullified absent express authority under Exchange rules.[9]

Proposed Amendments to NYSE Rule 17

The Exchange proposes to amend NYSE Rule 17 to add new paragraph (c)(3) to address the cancellation of orders due to technical or systems issues and the use of an error account by Arca Securities.

Specifically, under paragraph (c)(3)(A) of the proposed rule, the Exchange or Arca Securities would be expressly authorized to cancel orders as may be necessary to maintain fair and orderly markets if a technical or systems issue occurred at the Exchange, Arca Securities, or a routing destination.[10] The Exchange or Arca Securities would be required to provide notice of the cancellation to affected member organizations as soon as practicable.

Paragraph (c)(3)(B) of the proposed rule would permit Arca Securities to maintain an error account for the purpose of addressing positions that result from a technical or systems issue at Arca Securities, the Exchange, a routing destination, or a non-affiliate third-party Routing Broker that affects one or more orders (''error positions''). By definition, an error position would not include any position that results from an order submitted by a member organization to the Exchange that is executed on the Exchange and processed pursuant to NYSE Rule 132.[11] In addition, the Exchange proposes to add to the proposed rule that for purposes of proposed Rule 17(c)(3), uncompared transactions that may be processed pursuant to Rule 134(e) are not error positions of Arca Securities.[12] Arca Securities also would not be permitted to accept any positions in its error account from an account of a member organization and could not permit any member organization to transfer any positions from the member organization's account to Arca Securities' error account under the proposed rule.[13]

Under paragraph (c)(3)(C), in connection with a particular technical or systems issue, Arca Securities or the Exchange would be permitted to either (1) assign all resulting error positions to member organizations, or (2) have all resulting error positions liquidated, as described below. Any determination to assign or liquidate error positions, as well as any resulting assignments, would be required to be made in a nondiscriminatory fashion.

Arca Securities or the Exchange would be required to assign all error positions resulting from a particular technical or systems issue to the applicable member organizations affected by that technical or systems issue if Arca Securities or the Exchange:

- Determined that it has accurate and sufficient information (including valid clearing information) to assign the positions to all of the applicable member organizations affected by that technical or systems issue;
- Determined that it has sufficient time pursuant to normal clearance and settlement deadlines to evaluate the information necessary to assign the positions to all of the applicable member organizations affected by that technical or systems issue; and
- Had not determined to cancel all orders affected by that technical or systems issue.

For example, a technical or systems issue of limited scope or duration may occur at a routing destination, and the resulting trades may be submitted for clearance and settlement by such routing destination to DTCC. If there were a small number of trades, there may be sufficient time to match positions with member organization orders and avoid using the error account.

There may be scenarios, however, where Arca Securities determines that it is unable to assign all error positions resulting from a particular technical or systems issue to all of the affected member organizations, or determines to cancel all affected routed orders. For example, in some cases, the volume of questionable executions and positions resulting from a technical or systems issue might be such that the research necessary to determine which member organization to assign those executions to could be expected to extend past the normal settlement cycle for such executions. Furthermore, if a routing destination experiences a technical or systems issue after Arca Securities has transmitted IOC orders to it that prevents Arca Securities from receiving responses to those orders, Arca Securities or the Exchange may determine to cancel all routed orders affected by that issue. In such a situation, Arca Securities or the Exchange would not pass on to the member organizations any executions on the routed orders received from the routing destination.

The proposed rule also would require Arca Securities to liquidate error positions as soon as practicable.[14] In liquidating error positions, Arca Securities would be required to provide complete time and price discretion for the trading to liquidate the error positions to a third-party broker-dealer and could not attempt to exercise any influence or control over the timing or

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[9] *See, e.g.,* NYSE Rule 128 (regarding clearly erroneous executions).

[10] Such a situation may not cause the Exchange to declare self-help against the routing destination pursuant to Rule 611 of Regulation NMS. If the Exchange or Arca Securities determines to cancel orders routed to a routing destination under proposed Rule 17(c)(3), but does not declare self-help against that routing destination, the Exchange would continue to be subject to the trade-through requirements in Rule 611 with respect to that routing destination.

[11] As provided in NYSE Rule 132(a), ''Each party to a contract shall submit data regarding its side of the contract (''trade data'') to a Fully-Interfaced Clearing Agency for comparison or settlement, but each party shall be free to select the Fully-Interfaced Clearing Agency of its choice for such purpose.''

[12] Rule 134(e) provides for the manner by which uncompared transactions at the Exchange are resolved.

[13] The purpose of this provision is to clarify that Arca Securities may address error positions under the proposed rule that are caused by a technical or systems issue, but that Arca Securities may not accept from a member organization positions that are delivered to the member organization through the clearance and settlement process, even if those positions may have been related to a technical or systems issue at Arca Securities, the Exchange, a routing destination of Arca Securities, or a non-affiliate third-party Routing Broker. This provision would not apply, however, to situations like the one described above in which Arca Securities incurred a short position to settle a member organization purchase, as the member organization did not yet have a position in its account as a result of the purchase at the time of Arca Securities' action (*i.e.,* Arca Securities' action was necessary for the purchase to settle into the member organization's account). Moreover, to the extent a member organization receives positions pursuant to Rule 132 in connection with a technical or systems issue, that member organization may seek to rely on NYSE Rule 18 if it experiences a loss. That rule provides member organizations with the ability to file claims against the Exchange ''related to an Exchange system failure.''

[14] If Arca Securities determines in connection with a particular technical or systems issue that some error positions can be assigned to some affected member organizations but other error positions cannot be assigned, Arca Securities would be required under the proposed rule to liquidate all such error positions (including those positions that could be assigned to the affected member organizations).

methods of trading to liquidate the error positions. Arca Securities also would be required to establish and enforce policies and procedures reasonably designed to restrict the flow of confidential and proprietary information between the third-party broker-dealer and Arca Securities/the Exchange associated with the liquidation of the error positions.

Under proposed paragraph (c)(3)(D), Arca Securities and the Exchange would be required to make and keep records to document all determinations to treat positions as error positions and all determinations for the assignment of error positions to member organizations or the liquidation of error positions, as well as records associated with the liquidation of error positions through the third-party broker-dealer.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [15] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5),[16] 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, and it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange believes that this proposal is in keeping with those principles since Arca Securities' or the Exchange's ability to cancel orders during a technical and systems issue and to maintain an error account facilitates the smooth and efficient operations of the market. Specifically, the Exchange believes that allowing Arca Securities or the Exchange to cancel orders during a technical or systems issue would allow the Exchange to maintain fair and orderly markets. Moreover, the Exchange believes that allowing Arca Securities to assume error positions in an error account and to liquidate those positions, subject to the conditions set forth in the proposed amendments to NYSE Rule 17, would be the least disruptive means to correct these errors, except in cases where Arca Securities can assign all such error positions to all affected member organizations of the Exchange. Overall, the proposed amendments are designed to ensure full trade certainty for market participants and to avoid disrupting the clearance and settlement process. The proposed amendments are also designed to provide a consistent methodology for handling error positions in a manner that does not discriminate among member organizations. The proposed amendments are also consistent with Section 6 of the Act insofar as they would require Arca Securities to establish controls to restrict the flow of any confidential information between the third-party broker and Arca Securities/the Exchange associated with the liquidation of error positions.

*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**

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 after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) [18] thereunder.

The Exchange has asked the Commission to waive the 30-day operative delay.[19] The Commission notes that it previously approved NYSE Arca Equities Rule 7.45(d), which is substantively identical to the instant proposed rule change.[20] The Commission finds that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow the Exchange to implement the proposed rule change as part of a planned implementation of similar rules on the Exchange's affiliate exchanges. Accordingly, the Commission designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–53 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–2012–53. 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

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). 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.

[19] 17 CFR 240.19b–4(f)(6)(iii).

[20] *See* Securities Exchange Act Release No. 66963 (May 10, 2012), 77 FR 28919 (May 16, 2012) (SR–NYSEArca–2012–22).

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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–NYSE–2012–53 and should be submitted on or before November 14, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2012–26145 Filed 10–23–12; 8:45 am]

**BILLING CODE 8011–01–P**

[22] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13271 and #13272]**

### Louisiana Disaster Number LA–00048

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 10.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for the State of Louisiana (FEMA—4080—DR), dated 08/31/2012.

*Incident:* Hurricane Isaac.

*Incident Period:* 08/26/2012 through 09/10/2012.

*Effective Date:* 10/17/2012.

*Physical Loan Application Deadline Date:* 10/30/2012.

*EIDL Loan Application Deadline Date:* 05/29/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the Presidential disaster declaration for the State of Louisiana, dated 08/31/2012 is hereby amended to include the following areas as adversely affected by the disaster:

*Primary Parishes: (Physical Damage and Economic Injury Loans):* Pointe Coupee.

All Contiguous Counties have previously been declared.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2012–26158 Filed 10–23–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #13346 and #13347]**

### Pennsylvania Disaster #PA–00054

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 10/18/2012.

*Incident:* Cheltenham Township Condominium Complex Fire.

*Incident Period:* 10/05/2012.

*Effective Date:* 10/18/2012.

*Physical Loan Application Deadline Date:* 12/17/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 07/18/2013.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Montgomery.

*Contiguous Counties:*

Pennsylvania: Berks, Bucks, Chester, Delaware, Lehigh, Philadelphia.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners With Credit Available Elsewhere | 3.375 |
| Homeowners Without Credit Available Elsewhere | 1.688 |
| Businesses With Credit Available Elsewhere | 6.000 |
| Businesses Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations With Credit Available Elsewhere | 3.125 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere | 4.000 |
| Non-Profit Organizations Without Credit Available Elsewhere | 3.000 |

The number assigned to this disaster for physical damage is 13346 5 and for economic injury is 13347 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: October 18, 2012.

**Karen G. Mills,**

*Administrator.*

[FR Doc. 2012–26157 Filed 10–23–12; 8:45 am]

**BILLING CODE 8025–01–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to and extensions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–

6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 24, 2012. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Representative Payment Policies and Administrative Procedures for Imposing Penalties for False or Misleading Statements or Withholding of Information—0960–0740. This information collection request (ICR) comprises several regulation sections that provide additional safeguards for Social Security beneficiaries whose representative payees receive their payments. SSA requires representative payees to notify us of any event or change in circumstances that would affect receipt of benefits or performance of payee duties. SSA uses the information to determine continued eligibility for benefits, the amount of benefits due, and if the payee is suitable to continue serving as payee. The respondents are representative payees who receive and use benefits on behalf of Social Security beneficiaries.

TYPE OF COLLECTION—EXTENSION OF AN OMB-APPROVED INFORMATION COLLECTION

| Regulation Section | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| 404.2035(d)—Paper/Mail | 27,500 | 1 | 5 | 2,292 |
| 404.2035(d)—Office interview/Intranet | 522,500 | 1 | 5 | 43,542 |
| 404.2035(f)—Paper/Mail | 275 | 1 | 5 | 23 |
| 404.2035(f)—Office interview/Intranet | 5,225 | 1 | 5 | 435 |
| 416.635(d)—Paper/Mail | 15,000 | 1 | 5 | 1,250 |
| 416.635(d)—Office interview/Intranet | 285,000 | 1 | 5 | 23,750 |
| 416.635(f)—Paper/Mail | 150 | 1 | 5 | 13 |
| 416.635(f)—Office interview/Intranet | 2,850 | 1 | 5 | 238 |
| Total | 858,500 | ..... | ..... | 71,543 |

2. Protecting the Public and Our Personnel To Ensure Operational Effectiveness (RIN 0960–AH35), Regulation 3729I—20 CFR 422.905, 422.906—0960–0796.

**Background**

When members of the public demonstrate disruptive, violent, or threatening actions or behavior toward SSA employees, the agency takes measures to ensure the safety of everyone involved, including banning such individuals from appearing in person at any of our field offices. In lieu of in-person office visits, the agency provides services to banned individuals through alternate methods, including our 800 number, online applications, mail services, or, in limited circumstances, face-to-face services by appointment with additional security present.

On September 2, 2011, the agency published regulations and notifications processes for the ban decision at 76 FR 54700. The current ICR requests full approval for the public reporting burdens from the interim final rules. We previously obtained emergency OMB approval for these burdens.

**Information Collection Description**

The interim final ban decision rules contain two public reporting burdens:

- 20 CFR 422.905—after SSA issues a ban decision against an individual, the individual has 60 days to appeal the determination. Individuals must submit a written appeal stating why they believe SSA should rescind the ban and allow them to conduct business with us on a face-to-face basis in one of our offices. There is no printed form for this request; banned individuals create their own written statement of appeal, and submit it to a sole decision-maker in the regional office of the region where the ban originated. The individuals may also provide additional documentation to support their appeal.
- 20 CFR 422.906—three years after the original ban decision, banned individuals may re-submit a written appeal of the determination. The same criteria apply as for the original appeal: (1) It must be in writing;

(2) it must go to a sole decision-maker in the regional office of the region where the ban originated for review; and (3) it may accompany supporting documentation.

Respondents for this collection are individuals appealing their banning from SSA field offices.

TYPE OF REQUEST—EXTENSION OF AN OMB-APPROVED INFORMATION COLLECTION

| Regulation section | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| 20 CFR 422.905 | 75 | 1 | 15 | 19 |
| 20 CFR 422.906 | 75 | 1 | 20 | 25 |
| Totals | 150 | ..... | ..... | 44 |

II. SSA submitted the information collections below to OMB for clearance. Your comments regarding the information collections would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than November 23, 2012. Individuals can obtain copies of the OMB clearance packages by writing to *OR.Reports.Clearance@ssa.gov.*

1. Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040. When SSA needs information to determine a worker's employment status for the purpose of maintaining a worker's earning records, the agency uses Form SSA–7160–F4 to determine the existence of an employer-employee relationship. We use the information to develop the employment relationship; specifically to determine whether a beneficiary is self-employed or an employee. The respondents are individuals seeking to establish their status as employees and their alleged employers.

TYPE OF REQUEST—REVISION OF AN OMB-APPROVED INFORMATION COLLECTION

| Respondent type | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| Individuals | 8,000 | 1 | 25 | 3,333 |
| Businesses | 7,200 | 1 | 25 | 3,000 |
| State/Local Government | 800 | 1 | 25 | 333 |
| Totals: | 16,000 | | | 6,666 |

2. Blood Donor Locator Service (BDLS)—20 CFR 401.200—0960–0501. The regulations on Privacy and Disclosure of Official Records and Information, Subpart C, stipulate that when blood donor facilities identify blood donations as human immunodeficiency virus-positive, the overseeing state agency must provide the names and Social Security Numbers of the affected donors to SSA's Blood Donor Locator Service. SSA uses this information to furnish the state agencies with the blood donors' address information to notify the blood donors. Respondents are state agencies acting on behalf of blood donor facilities.

TYPE OF REQUEST—EXTENSION OF AN OMB-APPROVED INFORMATION COLLECTION

| Regulation section | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| 20 CFR 401.200 | 10 | 5 | 15 | 13 |

3. The Ticket to Work and Self-Sufficiency Program—20 CFR 411—0960–0644. SSA's Ticket to Work (Ticket) Program transitions Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) recipients toward independence by allowing them to receive Social Security payments while maintaining employment under the auspices of the program. SSA uses service providers, called Employment Networks (ENs), to supervise participant progress through the stages of Ticket Program participation, such as job searches and interviews, progress reviews, and changes in ticket status. ENs can be private for-profit and nonprofit organizations, as well as state vocational rehabilitation agencies (VRs). SSA and the ENs utilize the Ticket to Work Program Manager to operate the Ticket Program and exchange information about participants. For example, the ENs use the Program Manager to provide updates on tasks such as selecting a payment system or requesting payments for helping the beneficiary achieve certain work goals. Since the ENs are not PRA-exempt, the multiple information collections within the Ticket Program Manager require OMB approval, and we clear them under this ICR. Most of the categories of information in this ICR are necessary for SSA to: (1) Comply with the Ticket to Work legislation; and (2) provide proper oversight of the program. SSA collects this information through several modalities, including forms, electronic exchanges, and written documentation. The respondents are the ENs or state VRs, as well as SSDI beneficiaries and blind or disabled SSI recipients working under the auspices of the Ticket to Work Program.

This is a correction notice: SSA inadvertantly published incorrect burden information for this collection at 77 FR 47908, on 8/10/12. We are publishing correct burden data here.

TYPE OF REQUEST—REVISION OF AN OMB-APPROVED INFORMATION COLLECTION

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| (a) 20 CFR 411.140(d)(2)—Interactive Voice Recognition Telephone | 6,428 | 1 | 2.5 | 268 |
| (a) 20 CFR 411.140(d)(2)—Portal | 25,713 | 1 | 1.25 | 536 |
| (a) 20 CFR 411.140(d)(3); 411.325(a); 411.150(b)(3)—SSA–1365 | 948 | 1 | 15 | 237 |
| (a) 20 CFR 411.140(d)(3); 411.325(a); 411.150(b)(3)—SSA–1365 Portal | 3,792 | 1 | 11 | 695 |
| (a) 20 CFR 411.140(d)(3); 411.325(a); 411.150(b)(3)—SSA–1370 | 1,565 | 1 | 60 | 1,565 |

TYPE OF REQUEST—REVISION OF AN OMB-APPROVED INFORMATION COLLECTION—Continued

| Collection instrument | Number of respondents | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| (a) 20 CFR 411.140(d)(3); 411.325(a); 411.150(b)(3)—SSA–1370 Portal | 6,260 | 1 | 45 | 4,695 |
| (a) 20 CFR 411.166; 411.170(b)—Electronic File Submission | 35,584 | 1 | 5 | 2,965 |
| (b) 20 CFR 411.145; 411.325 | 1,995 | 1 | 15 | 499 |
| (b) 20 CFR 411.145; 411.325—Portal | 7,980 | 1 | 11 | 1,463 |
| (b) 20 CFR 411.535(a)(1)(iii)—Data Sharing/Portal | 8,505 | 1 | 5 | 709 |
| (c) 20 CFR 411.192(b)&(c) | 6 | 1 | 30 | 3 |
| (c) 20 CFR 411.200(b)—SSA–1375 | 112,362 | 1 | 15 | 28,091 |
| (c) 20 CFR 411.200(b) –Portal | 64,824 | 1 | 10 | 10,804 |
| (c) 20 CFR 411.210(b) | 41 | 1 | 30 | 21 |
| (d) 20 CFR 411.365; 411.505; 411.515 | 5 | 1 | 10 | 1 |
| (e) 20 CFR 411.325(d); 411.415 | *1 | 1 | 480 | 8 |
| (f) 20 CFR 411.575—SSA–1389; SSA–1391; SSA–1393; SSA–1396; SSA–1398; SSA–1399 | 5,610 | 1 | 40 | 3,740 |
| (f) 20 CFR 411.575—Portal | 22,440 | 1 | 22 | 8,228 |
| (f) 20 CFR 411.575—Automatic Payments | 28,050 | 1 | 0 | 0 |
| (f) 20 CFR 411.560—SSA–1401 | 100 | 1 | 20 | 33 |
| (g) 20 CFR 411.325(f) | 1,371 | 1 | 45 | 1,028 |
| (h) 20 CFR 411.435; 411.615; 411.625 | 2 | 1 | 120 | 4 |
| (i) 20 CFR 411.320—SSA–1394 | 42 | 1 | 10 | 7 |
| (i) 20 CFR 411.320—SSA–1394 Portal | 168 | 1 | 7.5 | 21 |
| Totals | 333,792 | | | 65,621 |

* (None received in 2010 or 2011).

Dated: October 19, 2012.

**Faye Lipsky,**

*Reports Clearance Director, Social Security Administration.*

[FR Doc. 2012–26151 Filed 10–23–12; 8:45 am]

**BILLING CODE 4191–02–P**

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions to OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB)

Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov.*

(SSA)

Social Security Administration, DCRDP, Attn: Reports Clearance Director, 107 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov.*

The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than December 24, 2012. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Request for Reinstatement (Title II)—20 CFR 404.1592b—404.1592f—0960–0742. SSA allows certain previously entitled disability beneficiaries to request expedited reinstatement (EXR) of benefits under title II of the Social Security Act (Act) when their medical condition no longer permits them to perform substantial gainful activity. SSA uses Form SSA–371 to obtain (1) a signed statement from individuals requesting an EXR of their title II disability benefits, and (2) proof the requestors meet the EXR requirements. SSA maintains the form in the disability folder of the applicant to demonstrate the requestors' awareness of the EXR requirements, and their choice to request EXR. Respondents are applicants for EXR of title II disability benefits.

TYPE OF REQUEST—REVISION OF AN OMB-APPROVED INFORMATION COLLECTION

| Modality of completion | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–371 | 10,000 | 1 | 2 | 333 |

2. Request for Reinstatement (Title XVI)—20 CFR 416.999–416.999d–0960–0744. SSA uses Form SSA–372 to (1) inform previously entitled beneficiaries of the EXR requirements of Supplemental Security Income (SSI)

payments under title XVI of the Act, and (2) document their requests for EXR. We require this application for reinstatement of benefits for respondents to obtain SSI disability payments for EXR. When an SSA claims representative learns of individuals whose medical conditions no longer permit them to perform substantial gainful activity as defined in the Act, the claims representative gives or mails the form to the previously entitled individuals if they request EXR over the phone. SSA employees collect this information whenever an individual files for EXR benefits. The respondents are applicants for EXR of SSI disability payments.

TYPE OF REQUEST—REVISION OF AN OMB APPROVED INFORMATION COLLECTION

| Modality of completion | Number of responses | Frequency of response | Average burden per response (minutes) | Estimated total annual burden (hours) |
|---|---|---|---|---|
| SSA–372 | 2,000 | 1 | 2 | 67 |

Dated: October 19, 2012.

**Faye Lipsky,**

*Reports Clearance Director, Social Security Administration.*

[FR Doc. 2012–26152 Filed 10–23–12; 8:45 am]

**BILLING CODE 4191–02–P**

## DEPARTMENT OF STATE

**[Public Notice 8067]**

## Privacy Act; System of Records: Personal Property Claims, State-27

**SUMMARY:** Notice is hereby given that the Department of State proposes to amend an existing system of records, Personal Property Claims, State-27, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

**DATES:** This system of records will be effective on December 3, 2012, unless we receive comments that will result in a contrary determination.

**ADDRESSES:** Any persons interested in commenting on the amended system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

**FOR FURTHER INFORMATION CONTACT:** Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

**SUPPLEMENTARY INFORMATION:** The Department of State proposes that the current system will retain the name ''Personal Property Claims'' (42 FR 49715). The system settles claims for loss, damage, or destruction of personal property. As part of the biennial review, we have updated all of the sections of the notice for the system to ensure Privacy Act of 1974 compliance.

The Department's report was filed with the Office of Management and Budget. The amended system description, ''Personal Property Claims, State-27,'' will read as set forth below.

**Joyce A. Barr,**

*Assistant Secretary for Administration, U.S. Department of State.*

### STATE–27

**SYSTEM NAME:**

Personal Property Claims.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Department of State, SA–3, Suite 5100, 2121 Virginia Ave., Washington, DC 20037.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees of the Department of State and the Agency for International Development who have filed claims for loss of personal property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Claims and determinations of claims which can include information such as names, birthdates, social security numbers (SSNs), employee IDs, addresses, phone numbers, and email addresses.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

31 U.S.C. 3701 *et seq.*

**PURPOSE:**

This information is used to settle claims for loss, damage, or destruction of personal property.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The information may be shared outside the Department of State with the Agency for International Development per the request of the individual making a claim employed by said agency.

This information may also be released to other government agencies having statutory or other lawful authority to maintain such information.

The Department of State periodically publishes in the **Federal Register** its standard routine uses which apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to Personal Property Claims, State-27.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Hard copy documents stored in physical files and electronic records stored in a database storage system.

**RETRIEVABILITY:**

Hard copy files are usually retrieved by individual name. Electronic records can be retrieved by search parameters such as claim number, claimant number, claim type, incident place, first name, and last name.

**SAFEGUARDS:**

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Personal Property Claims, a user must first be granted access to the Department of State computer system. Remote access to the Department of State network from non-Department owned systems is authorized only through a Department

approved access program. Remote access to the network is configured with the Office of Management and Budget Memorandum M–07–16 security requirements which include but are not limited to two-factor authentication and time out function.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State, its annexes and posts abroad is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel only. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

**RETENTION AND DISPOSAL:**

Records are retired and destroyed in accordance with published Department of State Records Disposition Schedules as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW.; Washington, DC 20522–8100.

**SYSTEM MANAGER(S) AND ADDRESS:**

Transportation and Travel Management Division (A/LM/OPS/TTM), Department of State, SA–3, Suite 5100, 2121 Virginia Ave., Washington, DC 20037.

**NOTIFICATION PROCEDURE:**

Individuals who have cause to believe that the Office of Personal Property Claims might have records pertaining to him or her should write to the Director; Office of Information Programs and Services, A/GIS/IPS; SA–2, Department of State; 515 22nd Street NW.; Washington, DC 20522–8100. The individual must specify that he or she wishes the records of the Office of Personal Property Claims to be checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; and other information helpful in identifying the record.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of Information Programs and Services (address above.)

**CONTESTING RECORD PROCEDURES:**

(See above).

**RECORD SOURCE CATEGORIES:**

The individual; personnel of the Department of State; insurance companies.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 2012–26232 Filed 10–23–12; 8:45 am]

**BILLING CODE 4710–24–P**

## DEPARTMENT OF STATE

**[Public Notice 8066]**

### Privacy Act; System of Records: Translator and Interpreter Records, State-37

**SUMMARY:** Notice is hereby given that the Department of State proposes to amend an existing system of records, Translator and Interpreter Records, State-37, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I.

**DATES:** This system of records will be effective on December 3, 2012, unless we receive comments that will result in a contrary determination.

**ADDRESSES:** Any persons interested in commenting on the amended system of records may do so by writing to the Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

**FOR FURTHER INFORMATION CONTACT:** Director; Office of Information Programs and Services, A/GIS/IPS; Department of State, SA–2; 515 22nd Street NW.; Washington, DC 20522–8001.

**SUPPLEMENTARY INFORMATION:** The Department of State proposes that the current system will retain the name ''Translator and Interpreter Records'' (42 FR 49719). The system will facilitate the procurement and effective performance of translators and interpreters who serve a vital function in accomplishing the Department's foreign policy mission. As part of the biennial review, we have updated all of the sections of the notice for the system to ensure Privacy Act of 1974 compliance.

The Department's report was filed with the Office of Management and Budget. The amended system description, ''Translator and Interpreter Records, State-37,'' will read as set forth below.

**Joyce A. Barr,**

*Assistant Secretary for Administration, U.S. Department of State.*

**STATE–37**

**SYSTEM NAME:**

Translator and Interpreter Records.

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Department of State, 2401 E Street NW., SA–1, 14th Floor, Washington, DC 20522.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have contracted with the Department of State to provide various translation and interpretation services.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

The records are collected in the following groups: Biographical information, contractual information, and professional proficiency information. The biographical information includes but is not limited to: Name, social security number; date and place of birth, citizenship, visa information; contact information; education information; languages spoken; and data universal numbering system. The contractual information includes, but is not limited to: The Basic Ordering Agreement (contract or contract award) and work order. The professional proficiency information includes, but is not limited to: Test and interview results (both performance and evaluation) on language proficiency; and performance and evaluation records.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

22 U.S.C. 3921 (Management of the Foreign Service), 22 U.S.C. 2651a (Organization of the Department of State).

**PURPOSE:**

To facilitate the procurement and effective performance of translators and interpreters who serve a vital function in accomplishing the Department's foreign policy mission.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Information contained in the Translator and Interpreter Records may be used by potential employers, credit institutions, rental offices etc., requesting verification of employment and/or earnings; and

To provide officials of other U.S. government agencies information needed in the performance of official duties in support of the function for which the records were collected and maintained.

The Department of State periodically publishes in the **Federal Register** its standard routine uses that apply to all of its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to the Translator and Interpreter Records, State-37.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

None.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Hard copy and electronic.

**RETRIEVABILITY:**

By individual's name and social security number.

**SAFEGUARDS:**

All users are given cyber security awareness training which covers the procedures for handling Sensitive but Unclassified information, including personally identifiable information (PII). Annual refresher training is mandatory. In addition, all Foreign Service and Civil Service employees and those Locally Engaged Staff who handle PII are required to take the Foreign Service Institute distance learning course instructing employees on privacy and security requirements, including the rules of behavior for handling PII and the potential consequences if it is handled improperly. Before being granted access to Translator and Interpreter Records, a user must first be granted access to Department of State computer system.

Remote access to the Department of State network from non-Department owned systems is authorized only through a Department-approved access program. Remote access to the network is configured in accordance with the Office of Management and Budget Memorandum M–07–16 security requirements, which include but are not limited to two factor authentication and time-out function.

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. Access to the Department of State building and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All paper records containing personal information are maintained in secured file cabinets in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage. When it is determined that a user no longer needs access, the user account is disabled.

**RETENTION AND DISPOSAL:**

Records are retired and destroyed in accordance with published records disposition schedules of the Department of State and as approved by the National Archives and Records Administration (NARA). More specific information may be obtained by writing the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street NW., Washington, DC 20522–8001.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Office of Language Services, Department of State, 2401 E Street NW., SA–1, 14th Floor, Washington, DC 20522.

**NOTIFICATION PROCEDURE:**

Individuals who have cause to believe that Office of Language Services might have records pertaining to them should write to the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street NW., Washington, DC 20522–8001. The individual must request to have the Translator and Interpreter Records checked. At a minimum, the individual must include: Name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances, including the approximate dates on which the individual has cause to believe that the Office of Language Services might have records pertaining to him/her.

**RECORD ACCESS PROCEDURES:**

Individuals who wish to gain access to or amend records pertaining to them should write to the Director, Office of Information Programs and Services (address above.)

**CONTESTING RECORD PROCEDURES:**

(See above.)

**RECORD SOURCE CATEGORIES:**

The individual; end-users of the contracted services; and various employees of the contracting office.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 2012–26235 Filed 10–23–12; 8:45 am]

**BILLING CODE 4710–24–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2010–0153; Notice 2]**

### Continental Tire North America, LLC, Mootness of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of petition mootness.

**SUMMARY:** Continental Tire North America, LLC.[1] (Continental), has determined that certain passenger car replacement tires manufactured in 2009, do not fully comply with paragraph S5.5(b) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Continental has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (dated August 10, 2010).

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Continental has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of Continental's petition was published, with a 30-day public comment period, on November 29, 2010, in the **Federal Register** (75 FR 73159). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System Web site at: *http://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2010–0153.''

[1] Continental Tire North America, LLC. (Continental) is a replacement equipment manufacturer and importer that is incorporated in the state of Ohio.

Contact Infromation: For further information on this decision, contact Mr. George Gillespie, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5299, facsimile (202) 366–7002.

Summary of Continental's Petition: Affected are approximately 17,121 size 235/45ZR17 94W Continental brand Extremecontact DWS model passenger car tires manufactured from March 2009 to October 2009 at Continental's plant located in Camaçari-BA, Brasil. A total of approximately 16,245 of these tires have been delivered to Continental's customers in the United States.

Continental explains that the noncompliance is that, due to a mold labeling error, the sidewall marking on the reference side of the tires incorrectly identifies the tire size code as ''658R 3VR'' when in fact it should be identified as ''658P 3VR'' in the tread area of the tires as required by paragraph S5.5(b).

Continental also explains that while the noncompliant tires are mislabeled, all of the tires included in this petition meet or exceed the performance requirements of FMVSS No. 139. Continental argues that this noncompliance is inconsequential to motor vehicle safety because the noncompliant sidewall marking does not create an unsafe condition and all other labeling requirements have been met.

Continental points out that NHTSA has previously granted similar petitions for non-compliances in sidewall marking.

Continental additionally states that it has corrected the affected tire molds and all future production will have the correct material shown on the sidewall.

In summation, Continental believes that the described noncompliance of its tires to meet the requirements of FMVSS No. 139 is inconsequential to motor vehicle safety, and that its petition, to exempt from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120, and should be granted.

NHTSA Decision:

Inconsequential noncompliance petitions filed under 49 CFR Part 556 only apply to situations where there is a noncompliance with a Federal motor vehicle safety standard (FMVSS). In its petition, Continental stated that the tires in question have two different tire size codes, one on each sidewall. In discussions with NHTSA, subsequent to the notification of petition receipt, Continental explained that it has designated both of the size codes for this tire model to have the same meaning and that either the full TIN or the partial TIN uniquely identifies these tires. Based on this, NHTSA has determined that the alleged tire sidewall labeling noncompliance described in the subject petition is not a noncompliance with FMVSS No. 139 or any other applicable FMVSS. Therefore, this petition is moot and no further action on the petition is warranted.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8)

Issued on: October 17, 2012.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2012–26159 Filed 10–23–12; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2012–0118; Notice 1]**

### Mazda North American Operations, Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Receipt of Petition.

**SUMMARY:** Mazda North American Operations (MNAO),[1] on behalf of Mazda Motor Corporation of Hiroshima, Japan (Mazda),[2] has determined that certain Mazda brand motor vehicles manufactured between 2007 and 2012 for sale or lease in Puerto Rico, do not fully comply with paragraph S4.5 of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* MNAO has filed an appropriate report dated June 21, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), MNAO submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MNAO's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

*Vehicles Involved:* Affected are approximately 16,748 Mazda brand motor vehicles manufactured between 2007 and 2012 for sale or lease in Puerto Rico.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 16,748 [3] vehicles that MNAO no longer controlled at the time it determined that the noncompliance existed.

*Noncompliance:* MNAO explains that the noncompliance is that certain Mazda brand motor vehicles sold in Puerto Rico were not delivered with the instruction statements required by paragraph S4.5(a) of FMVSS No 138 written in English. The instructions were provided in Spanish as part of the Spanish language version of the vehicle owner's manual provided with the vehicles at first sale, however, no English version owner's manuals were provided.

*Rule Text:* Paragraph S4.5 of FMVSS No. 138 requires in pertinent part:

S4.5 Written instructions.

(a) Beginning on September 1, 2006, the owner's manual in each vehicle certified as complying with S4.5 must provide an image of the Low Tire Pressure Telltale symbol (and an image of the TPMS Malfunction Telltale warning (''TPMS''), if a dedicated telltale is utilized for this function) with the following statement in English:

Each tire, including the spare (if provided), should be checked monthly when cold and inflated to the inflation pressure recommended by the vehicle manufacturer on the vehicle placard or tire inflation pressure label. (If your vehicle has tires of a different size than the size indicated on the vehicle placard or tire inflation pressure label, you should determine the proper tire inflation pressure for those tires.)

As an added safety feature, your vehicle has been equipped with a tire pressure monitoring system (TPMS) that illuminates a

[1] Mazda North American Operations, is a U.S. company that manufactures and imports motor vehicles.

[2] Mazda Motor Corporation, is a Japanese company that manufactures motor vehicles.

[3] MNAO's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt MNAO as a vehicle manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the 16,748 affected vehicles. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after MNAO notified them that the subject noncompliance existed.

low tire pressure telltale when one or more of your tires is significantly under-inflated. Accordingly, when the low tire pressure telltale illuminates, you should stop and check your tires as soon as possible, and inflate them to the proper pressure. Driving on a significantly under-inflated tire causes the tire to overheat and can lead to tire failure. Under-inflation also reduces fuel efficiency and tire tread life, and may affect the vehicle's handling and stopping ability* * *

Summary of MNAO'S Analysis and Arguments:

MNAO believes that while the subject motor vehicles were delivered to customers in Puerto Rico with Owners Manuals that did not include the statement as required by paragraph S4.5(a) of FMVSS No. 138 in English, it is inconsequential as it relates to motor vehicle safety for the following reasons:

1. All affected owner's manuals contain accurate Spanish translations of the information.

2. In Puerto Rico, Spanish is the universally prevalent language. According to a U.S. Census done by the Census Bureau in 2010, 95.7% of Puerto Rico's population speaks Spanish as their primary language.

3. English Owners manuals for Mazda motor vehicles manufactured on or after 2002 can be downloaded from MNAO's Web site or upon request through MNAO dealerships and is available for customers in Puerto Rico free of charge.

4. MNAO has not received any complaints or claims in Puerto Rico with regards to the language of the Owner's manuals.

MNAO has additionally informed NHTSA that it has corrected the noncompliance so that all future production vehicles will comply with FMVSS No. 138.

In summation, MNAO believes that the described noncompliance is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

*Comments:* Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

*Comment Closing Date:* November 23, 2012.

**Authority:** (49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8)

Issued on: October 15, 2012.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2012–26156 Filed 10–23–12; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 18, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 23, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0193.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 4972—Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

*Form:* 4972.

*Abstract:* IRC Section 402(e) allows taxpayers to compute a separate tax on a lump sum distribution from a qualified retirement plan. Form 4972 is used to correctly figure that tax. The data is used to verify the correctness of the separate tax. Form 4972 is also used to make the special 20% capital gain election attributable to pre-1974 participation from the lump-sum distribution.

*Affected Public:* Private Sector: Businesses or other For-Profit Institutions.

*Estimated Total Burden Hours:* 61,257.

*OMB Number:* 1545–0771.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* EE–63–88 (Final and temporary regulations) Taxation of Fringe Benefits and Exclusions From Gross Income for Certain Fringe Benefits; IA–140–86 (Temporary) Fringe Benefits; Listed Property.

*Abstract:* This regulation provides guidance on the tax treatment of taxable and nontaxable fringe benefits and general and specific rules for the valuation of taxable fringe benefits in accordance with Code sections 61 and 132. The regulation also provides guidance on exclusions from gross income for certain fringe benefits. IA–140–86 This regulation provides guidance relating to the requirement that any deduction or credit with respect to business travel, entertainment, and gift expenses be substantiated with adequate records in accordance with Code section 274(d).

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Total Burden Hours:* 37,922,688.

*OMB Number:* 1545–1809.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Form 8882—Credit for Employer-Provided Child Care Facilities and Services.

*Form:* 8882.

*Abstract:* Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing childcare facilities and resource and referral services. The credit is 25% of the qualified childcare expenditures plus 10% of the qualified childcare resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Total Burden Hours:* 2,459,998.

*OMB Number:* 1545–1996.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Notice 2006–05, Waiver for Reasonable Cause for Failure to Report Loan Origination Fees and Capitalized Interest.

*Abstract:* This Notice provides information to payees who receive payment of interest on qualified education loans who are unable to comply with the information reporting requirements under section 6050S of the Internal Revenue Code.

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Total Burden Hours:* 5,000.

*OMB Number:* 1545–2155.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* TD 9469 (REG–102822–08) Section 108 Reduction of Tax Attributes for S Corporations.

*Abstract:* The regulation provides guidance to S corporations that must reduce their tax attributes under section 108(b) of the Internal Revenue Code for taxable years in which an S corporation incurs discharge of indebtedness income that is excluded under section 108(a). The regulations affect S corporations and their shareholders. The collection of information in the regulations requires shareholders to inform the S corporation of a shareholder-level tax attribute that the S corporation must reduce under section 108(b). Following the tax attribute reduction, the S corporation must inform the shareholders of the remaining balance, if any, of the shareholder's tax attribute.

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Total Burden Hours:* 1,000.

*OMB Number:* 1545–2205.

*Type of Review:* Revision of a currently approved collection.

*Title:* Form 1099–K, Merchant Card and Third Party Payments.

*Abstract:* This form is in response to section 3091(a) of Public Law 110–289, the Housing Assistance Tax Act of 2008 (Div. C of the Housing and Economic Recovery Act of 2010). The form reflects payments made in settlement of merchant card and third party network transactions for purchases of goods and/or services made with merchant cards and through third party networks.

*Affected Public:* Private Sector: Business or other for-profits.

*Estimated Total Burden Hours:* 18,298.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–26113 Filed 10–23–12; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 18, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 23, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Bureau of the Public Debt (BPD)**

*OMB Number:* 1535–0098.

*Type of Review:* Revision of a currently approved collection.

*Title:* Claim for Relief on Account of the Non-receipt of United States Savings Bonds.

*Form:* PD F 3062–4.

*Abstract:* Application by owner to request a substitute savings bond or payment in lieu of bond not received.

*Affected Public:* Individuals or Households.

*Estimated Total Burden Hours:* 2,505.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–26121 Filed 10–23–12; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 18, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 23, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and

Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or online at *www.PRAComment.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Office of Foreign Assets Control (OFAC)**

*OMB Number:* 1505–0121.

*Type of Review:* Revision of a currently approved collection.

*Title:* Regulations Pertaining to Mergers, Acquisitions and Takeovers by Foreign Persons.

*Abstract:* Treasury disseminates to other agencies that are members of the Committee on Foreign Investment in the United States information collected under the regulations from parties involved in a foreign acquisition of a U.S. company in order to do a national security analysis of the acquisition.

*Affected Public:* Private Sector: businesses or other for-profits; Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 12,000.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–26117 Filed 10–23–12; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 18, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 23, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *www.reginfo.gov.*

**Financial Management Service (FMS)**

*OMB Number:* 1510–0048.

*Type of Review:* Revision of a currently approved collection.

*Title:* Minority Bank Deposit Program (MBDP) Certification Form for Admission.

*Form:* FMS 3144.

*Abstract:* A financial institution who wants to participate in the MBDP must complete this form. The approved application certifies the institution as minority and is admitted into the program.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 75.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–26118 Filed 10–23–12; 8:45 am]

**BILLING CODE 4810–35–P**

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

October 18, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

**DATES:** Comments should be received on or before November 23, 2012 to be assured of consideration.

**ADDRESSES:** Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to the (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and to the (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

**FOR FURTHER INFORMATION CONTACT:** Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov.*

**Alcohol And Tobacco Tax And Trade Bureau (TTB)**

*OMB Number:* 1513–0004.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Authorization to Furnish Financial Information and Certificate of Compliance.

*Abstract:* The Right to Financial Privacy Act of 1978 limits access to records held by financial institutions and provides for certain procedures to gain access to the information. TTB F 5030.6 serves as both a customer authorization for TTB to receive information and as the required certification to the financial institution.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 500.

*OMB Number:* 1513–0089.

*Type of Review:* Extension without change of a currently approved collection.

*Title:* Liquors and Articles from Puerto Rico or the Virgin Islands.

*Abstract:* The information collection requirements for persons bringing non-beverage products into the United States from Puerto Rico and the Virgin Islands are necessary for the verification of claims for drawback of distilled spirits excise taxes paid on such products.

*Affected Public:* Private Sector: Businesses or other for-profits.

*Estimated Total Burden Hours:* 160.

**Robert Dahl,**

*Treasury PRA Clearance Officer.*

[FR Doc. 2012–26119 Filed 10–23–12; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities; Proposed Information Collection; Comment Request; Securities Exchange Act Disclosure Rules (12 CFR Part 11) and Securities of Federal Savings Associations (12 CFR Part 194)

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and Request for Comment.

**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 a continuing information collection, as required by the Paperwork Reduction Act of 1995.

Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information and to allow 60 days for public comment in response to the notice.

In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, ''Securities Exchange Act Disclosure Rules (12 CFR part 11) and Securities of Federal Savings Associations (12 CFR part 194).''

**DATES:** Comments must be received by December 24, 2012.

**ADDRESSES:** Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3; Attention: 1557–0206, 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 can inspect and photocopy the comments at the OCC, 250 E Street SW., Washington, DC 20219. 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 to submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0206, 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 information collection from Mary H. Gottlieb or Johnny Vilela, OCC Clearance Officers, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, the OCC invites comments on these topics:

(a) Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

**Securities Exchange Act Disclosure Rules and Securities of Federal Savings Associations—12 CFR 11 and 12 CFR 194 (OMB Control Number 1557–0106)—Extension**

The OCC is proposing to extend OMB approval of the following information collection:

*Title:* Securities Exchange Act Disclosure Rules (12 CFR Part 11) and Securities of Federal Savings Associations (12 CFR Part 194).

*OMB Control No.:* 1557–0106.

*Description:* This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB approve its revised estimates.

The Securities and Exchange Commission (SEC) is required by statute to collect, through regulation, from any firm that is required to register its stock with the SEC, certain information and documents. 15 U.S.C. 78m(a)(1). Federal law also requires the OCC to apply similar regulations to any national bank or Federal savings association similarly required to be registered (those with a class of equity securities held by 2,000 or more shareholders). 15 U.S.C. 78l(i).

12 CFR parts 11 and 194 ensure that a national bank or Federal savings association whose securities are subject to registration provides adequate information about its operations to current and potential shareholders, depositors, and to the public. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed under these rules. Investors, depositors, and the public use the information to make informed investment decisions.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals; Businesses or other for-profit.

*Estimated Number of Respondents:* 14.

*Estimated Total Annual Responses:* 78.

*Frequency of Response:* On occasion.

*Estimated Total Annual Burden:* 522.5.

Dated: October 11, 2012.

**Michele Meyer,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 2012–25629 Filed 10–23–12; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Designation of 1 individual Pursuant To Executive Order 13224 of September 23, 2001, Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism

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

**ACTION:** Notice.

**SUMMARY:** The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of 1 individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

**DATES:** The designation by the Director of OFAC of the 1 individual in this notice, pursuant to Executive Order 13224, is effective on October 18, 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.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

### Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On October 18, 2012, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, 1 individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The listing for this individual on OFAC's list of Specially Designated Nationals and Blocked Persons appears as follows:

### Individual

1. AL–HARBI, Adel Radi Saqr Al-Wahabi (a.k.a. ALHARBI, Adel Radhi Saqer; a.k.a. AL–HARBI, 'Adil Radi Saqr al-Wahbi; a.k.a. MUHARIB, Abu Ali; a.k.a. ''MUHARIB''); DOB 01 Dec 1986; POB Buraydah, Saudi Arabia; nationality Saudi Arabia; Passport J110141 (Saudi Arabia) issued 18 Apr 2010 expires 22 Feb 2015; National ID No. 1059887057 (Saudi Arabia) (individual) [SDGT].

Dated: October 18, 2012.

**Adam J. Szubin,**

*Director, Office of Foreign Assets Control.*

[FR Doc. 2012–26161 Filed 10–23–12; 8:45 am]

**BILLING CODE 4810–AL–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Minority Veterans will meet on November 14–16, 2012, at the Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC. On November 14–15, the sessions will be in room 430 from 8 a.m. until 5:30 p.m. and on November 16 in room 730 from 8 a.m. until 1 p.m. This meeting is open to the public.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority Veterans; to assess the needs of minority Veterans; and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee makes recommendations to the Secretary regarding such activities.

On November 14, the Committee will receive briefings and updates from the Veterans Benefits Administration (VBA), Center for Minority Veterans, Office of Public and Intergovernmental Affairs, Veterans Health Administration (VHA), and a panel discussion with ex-officio members. On November 15, the Committee will receive briefings and updates on the National Cemetery Administration (NCA), Office of Diversity and Inclusion, Office of Health Equity, and a special panel discussion with Center for Women Veterans, Center for Faith-Based and Neighborhood Partnership, Office of Survivors Assistance, VA for Vets, and Office of Small and Disadvantaged Business Utilization. On November 16, the Committee will hold an exit briefing with VBA, VHA and NCA. The Committee will receive public comments from 10:30 a.m. to 10:45 a.m. After public comment, the Committee will continue to work on their report.

A sign-in sheet for those who want to give comments will be available at the meeting. Individuals who speak are invited to submit a 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record. Members of the public

may also submit written statements for the Committee's review to Mr. Dwayne Campbell, Department of Veterans Affairs, Center for Minority Veterans (00M), 810 Vermont Avenue NW., Washington, DC 20420, or email at *Dwayne.Campbell3@va.gov*. Any member of the public wishing to attend or seeking additional information should contact Mr. Campbell or Mr. Ronald Sagudan at (202) 461–6191 or by fax at (202) 273–7092.

Dated: October 18, 2012.

By Direction of the Secretary:

**Vivian Drake,**

*Committee Management Officer.*

[FR Doc. 2012–26084 Filed 10–23–12; 8:45 am]

**BILLING CODE 8320–01–P**

# FEDERAL REGISTER

Vol. 77 Wednesday,
No. 206 October 24, 2012

Part II

## Department of Commerce

National Oceanic and Atmospheric Administration

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort and Chukchi Seas, Alaska; Notice

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XC091**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Seismic Survey in the Beaufort and Chukchi Seas, Alaska

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

**ACTION:** Notice; issuance of an incidental take authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA) regulations, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to ION Geophysical (ION) to take, by harassment, small numbers of nine species of marine mammals incidental to in-ice marine seismic surveys in the Beaufort and Chukchi Seas, Alaska, during the fall and winter of 2012.

**DATES:** Effective October 17, 2011, through December 15, 2012.

**ADDRESSES:** Requests for information on the incidental take authorization should be addressed to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. A copy of the application containing a list of the references used in this document, NMFS' Environmental Assessment (EA), Finding of No Significant Impact (FONSI), and the IHA may be obtained by writing to the address specified above or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

**FOR FURTHER INFORMATION CONTACT:** Shane Guan, Office of Protected Resources, NMFS, (301) 427–8401 or Brad Smith, NMFS, Alaska Region, (907) 271–3023.

**SUPPLEMENTARY INFORMATION:**

#### Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * * an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the U.S. can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

#### Summary of Request

NMFS received an application on March 1, 2012, from ION for the taking, by harassment, of marine mammals incidental to a marine seismic survey in ice in the Beaufort and Chukchi Seas, Alaska, during October through December 15, 2012. After addressing comments from NMFS, ION modified its application and submitted a revised application on June 11, 2012.

#### Description of the Specified Activity

ION's activities consist of a geophysical in-ice (seismic reflection/refraction) survey and related vessel operations to be conducted primarily in the Alaskan Beaufort and Chukchi seas from October to December 15, 2012. The primary survey area extends from the U.S.–Canadian border in the east to Point Barrow in the west. Two survey lines extend west of Point Barrow into the northern Chukchi Sea, and three short tracks are proposed near the U.S.–Russian border (see Figure 1 of ION's IHA application). The bathymetry of the proposed survey area ranges from shallow (<20 m [66 ft]) to relatively deep (>3,500 m [11,483 ft]) water over the continental shelf, the continental slope, and the abyssal plain.

The survey will be conducted from the seismic vessel *Geo Arctic* escorted by the *Polar Prince,* a medium class (100A) icebreaker. The survey grid consists of ~7,175 km (4,458 mi) of transect line, not including transits when the airguns are not operating. There may be small amounts of additional seismic operations associated with airgun testing, start up, and repeat coverage of any areas where initial data quality is sub-standard. The seismic source towed by the *Geo Arctic* would be an airgun array consisting of 26 active Sercel G-gun airguns with a total volume of 4,450 $in^3$. A single hydrophone streamer 4.5–9 km (2.8–5.6 mi) in length, depending on ice conditions, would be towed by the *Geo Arctic* to record the returning seismic signals.

The survey vessels arrived in the survey area from Canadian waters in early October and plan to begin data collection on or after October 15, 2012. After completion of the survey, or when ice and weather conditions dictate, the vessels will exit to the south, transiting through the Chukchi and Bering Seas. The *Polar Prince* may be used to perform an at-sea refueling (bunkering) operation to supply as much as 500 metric tons of Arctic diesel to the *Geo Arctic.* The *Polar Prince* will carry that fuel onboard at the start of the operation, and it will be transferred to the *Geo Arctic* if/when necessary. Depending on its own fuel consumption, the *Polar Prince* may then transit to Tuktoyuktuk, Canada to take on additional fuel for itself. Once the *Polar Prince* returns to the *Geo Arctic* the survey would continue. The entire refueling operation will therefore involve one fuel transfer and potentially one transit to and from Tuktoyuktuk. The refueling operation will likely take place in late October, at which time the

*Geo Arctic* will likely be in the eastern or east-central Alaskan Beaufort Sea.

ION's geophysical survey has been designed and scheduled to minimize potential effects to marine mammals, bowhead whales in particular, and subsistence users. For mitigation and operational reasons, the survey area has been bisected by a line that runs from 70.5° N. 150.5° W. to 73° N. 148° W. (see Figure 1 of ION's IHA application). Weather and ice permitting, ION plans to begin survey operations east of the line described above (eastern survey area) and in offshore waters (>1,000 m [3,281 ft]) where bowheads are expected to be least abundant in early October. This operational plan is based on the fact that only ~2% of bowhead whales observed by Bureau of Ocean Energy Management's (BOEM) aerial surveys from 1979–2007 occurred in areas of water depth >1,000 m (3,281 ft) (MMS, 2010), and on average ~97% of bowheads have passed through the eastern U.S. Beaufort Sea by October 15 (Miller *et al.,* 2002). The survey will then progress to shallower waters in the eastern survey area before moving to the western survey area in late October or early November 2012.

Ice conditions are expected to range from open water to 10/10 ice cover. However, the survey cannot take place in thick multi-year ice as both the icebreaker and seismic vessel must make continuous forward progress at 3–4 kts. In order for the survey to proceed, areas of high ice concentration can only consist of mostly newly forming juvenile first year ice or young first year ice less than 0.5 m (1.6 ft) thick. Sounds generated by the icebreaker and seismic vessel moving through these relatively light ice conditions are expected to be far below the high sound levels often attributed to icebreaking. These high sound levels (≤200 dB re 1 μPa [rms]) have been recorded from icebreakers during backing and ramming operations in very heavy ice conditions and are created by cavitation of the propellers as the vessel is slowed by the ice or reverses direction (Erbe and Farmer, 1998; Roth and Schmidt, 2010).

*Acoustic Sources*

(1) Seismic Airgun Array

The seismic source used during the project would be an airgun array consisting of 28 Sercel G-gun airguns, of which 26 would be active and have a total discharge volume of 4,450 $in^3$. The 28 airguns would be distributed in two sub-arrays with 14 airguns per sub-array. Individual airgun sizes range from 70 to 380 $in^3$. Airguns will be operated at 2,000 psi. The seismic array and a single hydrophone streamer 4.5–9 km (2.8–5.6 mi) in length would be towed behind the *Geo Arctic.* Additional specifications of the airgun array are provided in Appendix B of ION's IHA application.

(2) Echo Sounders

Both vessels will operate industry standard echo sounder/fathometer instruments for continuous measurements of water depth while underway. These instruments are used by all large vessels to provide routine water depth information to the vessel crew. Navigation echo sounders send a single, narrowly focused, high frequency acoustic signal directly downward to the sea floor. The sound energy reflected off the sea floor returns to the vessel where it is detected by the instrument, and the depth is calculated and displayed to the user. Source levels of navigational echo sounders of this type are typically in the 180–200 dB re 1 μPA-m (Richardson *et al.* 1995a).

The *Geo Arctic* will use one navigational echo sounder during the project. The downward facing single-beam Simrad EA600 operates at frequencies ranging from 38 to 200 kHz with an output power of 100–2000 Watts. Pulse durations are between 0.064 and 4.096 milliseconds, and the pulse repetition frequency (PRF or ping rate) depends on the depth range. The highest PRF at shallow depths is about 40 pings per second. It can be used for water depths up to 4,000 m (13,123 ft) and provides up to 1 cm (0.4 in) resolution.

The *Polar Prince* will use one echo sounder, an ELAC LAZ–72. The LAZ–72 has an operating frequency of 30 kHz. The ping rate depends on the water depth and the fastest rate, which occurs in shallow depths, is about 5 pings per second.

*Dates, Duration, and Region of Activity*

The proposed geophysical survey would be conducted for ~76 days from approximately October 15 to December 15, 2012. Both the *Geo Arctic* and the *Polar Prince* entered the Alaskan Beaufort Sea from Canadian waters in early October. The survey area will be bounded approximately by 138° to 169° W. longitude and 70° to 73° N. latitude in water depths ranging from <20 to >3,500 m (66 to 11,483 ft) (see Figure 1 of ION's IHA application). For mitigation and operational reasons the survey area has been bisected by a line that runs from 70.5° N, 150.5° W to 73° N, 148° W. Weather and ice permitting, ION plans to begin survey operations east of the line (eastern survey area) in offshore waters (≤1,000 m [3,281 ft]) where bowheads are expected to be least abundant in early October. The survey will then progress to shallower waters in the eastern survey area before moving to the west survey area in late October or early November. The vessels will depart the region to the south via the Chukchi and Bering Seas and arrive in Dutch Harbor in mid- to late December.

**Comments and Responses**

A notice of NMFS' proposal to issue an IHA to ION was published in the **Federal Register** on August 17, 2012 (77 FR 49922). That notice described, in detail, ION's proposed activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals and the availability of marine mammals for subsistence uses. During the 30-day public comment period, NMFS received comments from the following organizations: the Marine Mammal Commission (Commission), the North Slope Borough (NSB), Oceana, Ocean Conservation Research, Ocean Conservancy, PEW Environment Group (PEW), and a group joined by the Alaska Wilderness League, Audubon Alaska, Center for Biological Diversity, EarthJustice, Natural Resources Defense Council, Northern Alaska Environmental Center, Ocean Conservation Research, Pacific Environment, Sierra Club, and World Wildlife Fund (AWL *et al.*).

Any comments specific to ION's application that address the statutory and regulatory requirements or findings NMFS must make to issue an IHA are addressed in this section of the **Federal Register** notice.

*General MMPA Issues and Impact Analyses*

*Comment 1:* The Commission recommends that NMFS continue to include proposed incidental harassment authorization language, including the total number of estimated takes by Level A and Level B harassment, at the end of **Federal Register** notices but ensure that the language is consistent with that referenced in the main body of the corresponding notice.

*Response:* NMFS agrees with the Commission's recommendation and will, to the extent practicable, include proposed incidental harassment authorization language at the end of **Federal Register** notices. In addition, NMFS agrees that the language should be consistent with that referenced in the main body of the corresponding notice and will make every effort to ensure consistency. However, the total number of estimated takes by Level A and Level B harassment is presented in tables

within the subsection *Estimated Takes by Harassment* of the **Federal Register** notice, and it would be redundant to repeat this information within the proposed incidental harassment authorization language elsewhere in the same **Federal Register** notice.

*Comment 2:* The Commission recommends that NMFS propose to issue regulations under section 101(a)(5)(A) of the MMPA and a letter of authorization, rather than an incidental harassment authorization, for any proposed activities expected to cause a permanent threshold shift (PTS).

*Response:* The legal requirements and underlying analysis for the issuance of an IHA concerning take do not require the issuance of regulations and a letter of authorization in this particular case. In order to issue an authorization pursuant to Section 101(a)(5)(D) of the MMPA, NMFS must determine that the taking by harassment of small numbers of marine mammal species or stocks will have a negligible impact on affected species or stocks, and will not have an unmitigable adverse impact on the availability of affected species or stocks for taking for subsistence uses. If there were a potential for serious injury or mortality, NMFS could not issue an IHA. Instead, any incidental take authorization would need to be processed under Section 101(a)(5)(A) of the MMPA.

As described here and in previous FR notices, PTS is considered to be injury (Level A Harassment). However, an animal would need to stay very close to the sound source for an extended amount of time to incur a serious degree of PTS, which could increase the probability of mortality. In this case, it would be highly unlikely for this scenario to unfold given the nature of any anticipated acoustic exposures that could potentially result from a mobile marine mammal that is generally expected to avoid loud sounds swimming in the vicinity of an airgun array moving at 3–4 knots. Therefore, it is appropriate to issue an incidental take authorization under 101(a)(5)(D), as we have made the necessary findings (described elsewhere in this document) under that Section of the MMPA.

*Comment 3:* The Ocean Conservancy, Ocean Conservation Research, Oceana, and AWL *et al.* state the proposed seismic survey would result in harassment takes of a large number of marine mammals, specifically 250 bowhead whales, 4,300 beluga whales, and 60,000 ringed seals, all of which would be exposed to received levels above 160 dB (rms). Thus, the commenters assert that NMFS cannot satisfy MMPA's small number and negligible impact provisions.

*Response:* NMFS disagrees with the commenters' assessment. First, as mentioned in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) and earlier in this document, the estimated takes of marine mammals are based on summer/fall marine mammal densities. With most marine mammals moving out of the proposed seismic area as winter approaches, the density would be lower and the actual numbers of takes would be far fewer than those calculated based on fall densities. As described in the Negligible Impact and Small Numbers Analysis and Determination section of this document, NMFS considers the number of authorized takes small.

As discussed in detail in the Negligible Impact and Small Numbers Analysis and Determination section of this document, most of the takes from ION's proposed in-ice seismic surveys are expected to be Level B behavioral harassment, in the form of startle behavior or vacating the area for the short duration of time when the seismic airgun is firing in the area. Animals could also change their behavior patterns during this short duration, butare expected to resume their normal activities and reoccupy the area as soon as the vessels move away. Additionally, since the proposed icebreaking seismic survey is planned outside the time when ice seals are giving birth and after approximately 97% of the bowhead population is expected to have moved through the area, no impacts on pups or calves are expected, and nor are there any orther areas of particular importance for reproduction or feeding that could be impacted. Therefore, any behavioral effects to ringed seals, bowheads, or other species are not expected to have significant impacts to individual fitness or the population. In addition, the mitigation and monitoring measures (described previously in this document) included in the IHA are expected to further reduce any potential disturbance to marine mammals. Last, a small number of takes in the form of PTS are being authorized, however, if incurred, they would be expected to be minor in degree (low intensity—a few dBs of loss at certain frequencies), and they are not expected because of a combination of mitigation and likely avoidance of high source levels. Mortality is neither authorized nor anticipated.

Therefore, NMFS believes that the take, by harassment, from ION's in-ice seismic survey will have a negligible impacton the affected species or stocks.

*Comment 4:* The Ocean Conservancy, Ocean Conservation Research, and AWL *et al.* claims that NMFS failed to consider cumulative impacts adequately. In addition, AWL *et al.* states that it is essential for NMFS to consider ION's proposed survey along with the impacts of Shell's exploratory drilling program in Beaufort and Chukchi Seas.

*Response:* Section 101(a)(5)(D) of the MMPA requires NMFS to make a determination that the harassment incidental to a specified activity will have a negligible impact on the affected species or stocks of marine mammals, and will not result in an unmitigable adverse impact on the availability of marine mammals for taking for subsistence uses. Neither the MMPA nor NMFS' implementing regulations specify how to consider other activities and their impacts on the same populations. However, consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into the negligible impact analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the density/distribution and status of the species, population size and growth rate, and ambient noise).

In addition, cumulative effects were addressed in the Environmental Assessment and biological opinion prepared for this action, both of which NMFS indicated would be completed prior to the issuance of an IHA (77 FR 49922; August 17, 2012). The Environmental Assessment's cumulative effects analysis included consideration of (among other things): BP Exploration (Alasks), Inc.'s (BPXA) ocean-bottom-cable seismic surveys in the Simpson Lagoon area of the Beaufort Sea; BPXA's proposed Northstar oil production activity in the Beaufort Sea; and Shell Offshore Inc.'s (Shell) proposed exploratory drilling activities in the Beaufort and Chukchi Seas, Arctic warming, subsistence hunting, and noise contribution from vessel traffic.

These documents, as well as the Alaska Marine Stock Assessments and the most recent abundance estimates for the affected species, are part of NMFS' Administrative Record for this action, and provided the decision maker with information regarding other activities in the action area that affect marine mammals, an analysis of cumulative impacts, and other information relevant to the determination made under the MMPA.

*Comment 5:* AWL *et al.* states that in determining whether to proceed with

ION's request, NMFS must also consider the extent of missing information as to both the environmental baseline in the Arctic and marine mammal responses to noise in general.

*Response:* NMFS has been conducting such analyses in both aspects since 2010 when it first received ION's IHA application.

Regarding the environmental baseline, as described in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), where the marine mammal distribution and density data for fall and winter seasons in the Beaufort and Chukchi Seas were not available, NMFS used the summer and fall density data. This data is an appropriate proxy for this analysis because it is for the same species and because we assume it is an overestimate since animals are known to move out of the area in the winter (Allen and Angliss 2011).

Separately, regarding marine mammal responses to noise in general and as described in the *Potential Effects of the Specified Activity on Marine Mammals* section of the proposed IHA, while there are not data indicating the responses of every species to every specific sound source type, we believe that the large body of available information across multiple species and sound types allows us to reasonably anticipate likely responses to the proposed seismic airgun and icebreaking and make the findings necessary for issuance of this IHA.

*Density Calculation and Take Estimate*

*Comment 6:* PEW states that NMFS did not use the best available data for impact analysis, as most survey data NMFS were collected during the open water season that usually conclude by October.

*Response:* NMFS does not agree with PEW's statement that we did not use the best available data for impact analysis. As it was discussed in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), the reason for using the fall marine mammal densities for take calculation is because the lack of marine mammal density data in the winter season. Nevertheless, the fall marine mammal density data NMFS and ION used are the best available data. In addition, during the initial impact analysis, NMFS Office of Protected Resources and ION consulted with NMFS National Marine Mammal Laboratory (NMML) to make sure that the marine mammal density data used for impact analysis are the best available data. Using marine mammal summer/fall density data results in over-estimates as the overwhelming majority marine mammals will have likely departed the Beaufort and Chukchi Seas by the start of winter (Mate *et al.* 2000; Miller *et al.* 2002; Frost *et al.* 2004; Suydam *et al.* 2005; Cameron and Boveng, 2009; Christie *et al.* 2010; Allen and Angliss 2011).

*Comment 7:* AWL *et al.* states that using density is unsuited for determining bowhead take during the fall migration. AWL *et al.* further argues that the bowhead whales would pass through the Beaufort and Chukchi Sea in the fall during their migration within a migratory corridor. AWL *et al.* then points out that it was not clear NMFS has adequately considered the migration of beluga whales in the Beaufort Sea as well. AWL *et al.* predicts that when taking the bowhead migration into account could dramatically increase the estimate of harassed whales.

*Response:* NMFS does not agree AWL *et al.'s* assessment. ION's in-ice seismic survey would only occur after the majority of bowhead and beluga whales have migrated out of the Beaufort Sea. In addition, as noted in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), ION would start its seismic survey from the east and proceed westward, thereby overlapping with the fewest possible number of marine mammals later in the season. Therefore, using summer/fall marine mammal density to calculate takes in the Arctic when most animals have left the area is a reasonable and scientifically supportable approach, although, as stated it will result in an over-estimate of takes.

*Comment 8:* The Commission requests NMFS require ION to (1) consult with NMFS National Marine Mammal Laboratory (NMML) and other researchers and revise its expected density estimates for gray whales and bearded seals to reflect new information from passive acoustic recordings, and (2) include, as appropriate, an estimate of takes by Level A harassment for those species. Citing Stafford *et al.* (2007), Wang and Overland (2009), Shelden and Mocklin (2012), the Commission points out that acoustic data show that these species are present throughout the winter months. The NSB also expresses its concern that bowhead and gray whales may remain in the area much longer than previously thought. Oceana is also concerned that there could be Level A takes of bearded seals, though it recognizes that much of the bearded seal population will have already migrated into the Bering Sea.

*Response:* NMFS' Office of Protected Resources and ION worked extensively with NMFS' NMML on density estimates for all marine mammals (gray whales and bearded seals included) that could occur in the proposed survey area. The approaches took into account the best available scientific data on the abundance of marine mammals (gray whales and bearded seals included) that could potentially occur through the winter season, as well as estimates erred on the overestimation. NMFS and ION conducted a thorough review of acoustic recordings data pertaining to overwintering marine mammals (*e.g.,* Stafford *et al.* 2007; Roth 2008; MacIntyre and Stafford 2011; Shelden and Mocklin 2012). We concluded that although some marine mammals were detected in the Beaufort and Chukchi Seas during this time, none of the studies allowed us to identify specific density estimates. In addition, many studies show that marine mammal calling rates dropped significantly during the winter months (Roth 2008; MacIntyre and Stafford 2011), which is consistent with our prediction based on tagging research (Cameron and Boveng 2009; Harwood *et al.* 2012). The notion is also shared by Oceana as it stated in its comment that much of the population of bearded seals will have already migrated into the Bering Sea. These reviews support our initial analyses and the basis for marine mammal take estimates. Therefore, we do not believe it is necessary, nor is it feasible, to revise density estimates or to include gray whales and bearded seals in the Level A take estimates.

Finally, we acknowledge that bowhead and gray whales may remain in the Beaufort and Chukchi Seas during the timeframe of ION's proposed survey. To account for this possibility, NMFS relied on summer/fall data to estimate potential abundance of these species, which resulted in an over-estimate of take.

*Comment 9:* The Commission requests NMFS require ION to recalculate expected densities for bowhead whales based on (1) the corrected decrease in abundance of bowhead whales reported by Miller *et al.* (2002) for early and late October (*i.e.,* 78 percent) and (2) any additional information from more recent surveys, including acoustical surveys, conducted by NMFS' NMML and other researchers to assess the distribution and relative abundance of bowhead whales in the survey area from October through December.

*Response:* Through the process of analyzing the potential impacts of ION's in-ice seismic survey in the Beaufort and Chukchi Seas, NMFS' Office of Protected Resources and ION worked extensively with NMFS' NMML on marine mammal density estimates, including distribution and densities of

bowhead whales. The early October (October 1–15) bowhead abundance of 0.55 bowheads/100 km and the late October (October 15–31) abundance of 0.12 bowheads/100 km reported in Miller *et al.* (2002) were both calculated as overall averages across the four survey regions and all water depth strata. The reference density to which the 90% decrease from early October to late October adjustment was applied was based only on bowhead sightings in less than 200 m of water. Thus, data in table Appendix 9.1 in Miller *et al.* (2002), which excludes water depths >200 m, were used for the calculation. In that table, the mean number of bowheads/100 km seen from October 1–15 was 0.618 and the mean for October 16–31 was 0.089. This represents an 86% decrease from early to late October, which was rounded to 90%.

If the percentage decrease were left unrounded the average density for water depths <200 m in the Eastern Beaufort Sea in Table 2 of the ION's IHA application would become 0.0132 bowheads/km$^2$. Using this value the take calculations would be 282, instead of the 201 stated in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012).

NMFS and ION by focused on bowhead whale aerial surveys that were conducted in the spring of 2011 and 2012. We ultimately agreed that the aerial survey data being used for density calculations was the most appropriate and that any newer data (*i.e.* from 2011 surveys) was of no added value. More recent aerial survey data were not used for the direct calculation of densities in late October as there have been very few surveys conducted at that time of year in the eastern U.S. Beaufort in recent years. Although acoustic data can be useful in assessing distribution, and to a limited extent, relative abundance, however, as with acoustic data for other marine mammals, none of them provides a basis for density estimates.

*Comment 10:* The Commission requests NMFS provide stronger assurance that the actual number of takes would be negligible by (1) estimating the expected number of takes plus some measure of uncertainty in that estimate, (2) using maximum estimated densities of the marine mammals in the survey area to estimate takes, or (3) using some comparable approach that accounts for uncertainty and provides a high level of assurance that the actual taking would, in fact, be negligible. In addition, the Commission requests NMFS require ION to account for all sources of uncertainty in its estimation approach, including animals that may be present but not observed. Oceana and the NSB also express their concerns regarding the uncertainty of the impacts to marine mammals from ION's in-ice seismic survey during the winter season.

*Response:* NMFS believes that the analyses provided in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) has already provided a well-founded assurance that the impacts from even the overestimated takes, which were based on summer-fall marine mammal density, would be negligible to marine mammal species and stocks in ION's in-ice seismic survey areas in the Beaufort and Chukchi Seas, and that the take would not have unmitigable impacts to subsistence use of these species and stocks. These analyses already took uncertainties of marine mammal winter distribution and densities into account and erred on the side of caution.

The determination regarding whether the total taking would have a negligible impact on the species or stocks is based on the species-specific average density, or based on allotted number from past chance occurrence, as described above and in the proposed **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012). More importantly, the negligible impact analysis is not simply an assessment of the number of takes, but rather includes consideration of the nature, context, and likely severity of the takes, as well as the anticipated effectiveness of the mitigation measures. As described later in this document, our analysis allowed us to determine that the total taking would have a negligible impact on the affected species.

Regarding the requirement for ION to account for all sources of uncertainty in its estimation approach, including animals that may be present but not observed, NMFS believes that all population survey studies, as well as density estimates, take into account for marine mammals not observed during the survey.

*Acoustic Impacts*

*Comment 11:* PEW states that NMFS needs to ensure that best science is used when considering permitting an IHA to authorize Level A harassment of marine mammals, since this is the first time Level A take is being proposed.

*Response:* NMFS has relied on the best available scientific information to support the issuance of ION's authorization. In the case of authorizing Level A harassment, NMFS has estimated that no more than 1 bowhead whale, 3 beluga whales, and 4 ringed seals could, although unlikely, experience minor permanent threshold shifts of hearing sensitivity (PTS). The available data and analyses, as described more fully in the proposed IHA, include extrapolation results of many studies on marine mammal noise-induced temporary threshold shifts of hearing sensitivities (TTS) (Kryter 1985; Richardson *et al.* 1995; Kastak *et al.* 1999; Schlundt *et al.* 2000; Finneran *et al.* 2002; 2005; Nachtigall *et al.* 2003; 2004; Kastak *et al.* 2004; 2005; Southall *et al.* 2007; Mooney *et al.* 2009a; 2009b; Finneran *et al.* 2010a; 2010b). An extensive review of TTS studies and experiments prompted NMFS to conclude that possibility of minor PTS in the form of slight upward shift of hearing threshold at certain frequency bands by a few individuals of marine mammals is extremely low, but not unlikely.

*Comment 12:* Citing NMFS' 1995 **Federal Register** notice (60 FR 28379), AWL *et al.* argues that since the proposed seismic survey has the potential to cause permanent hearing loss in marine mammals, the impact must constitute ''serious injury.'' Ocean Conservancy also states that PTS equals ''serious injury''. AWL *et al.* further states that marine mammals enter the 180/190 dB re 1 μPa exclusion zones have at least the potential to suffer serious injury, and thus AWL *et al.* assumes that at least 23 beluga whales, 6 bowhead whales, and 277 ringed seals could potentially suffer serious injury as a result of the survey. Oceana also expresses its concern that serious injury could occur to marine mammals.

*Response:* Our understanding of noise-induced impacts on marine mammals has evolved over the past two decades and we no longer believe, based on the best available data, that PTS equals ''serious injury.'' As described in detail in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), the potential Level A takes would be limited to minor degrees of PTS by 1 bowhead whale, 3 beluga whales, and 4 ringed seals. This level of injury is different from ''serious injury,'' which is defined as ''any injury that will likely result in mortality'' (50 CFR 229.2).

Noise-induced threshold shifts (TS, include PTS) are defined as increases in the threshold of audibility (*i.e.,* the sound has to be louder to be detected) of the ear at a certain frequency or range of frequencies (ANSI 1995; Yost 2000). Several important factors relate to the magnitude of TS, such as level, duration, spectral content (frequency range), and temporal pattern (continuous, intermittent) of exposure (Yost 2000; Henderson *et al.* 2008). TS occurs in terms of frequency range

(hertz [Hz] or kHz), hearing threshold level (dB), or both frequency and hearing threshold level (CDC 2004).

In addition, there are different degrees of PTS: Ranging from slight/mild to moderate and from severe to profound (Clark 1981). Profound PTS or the complete loss of the ability to hear in one or both ears is commonly referred to as deafness (CDC 2004; WHO 2006). High-frequency PTS, presumably as a normal process of aging that occurs in humans and other terrestrial mammals, has also been demonstrated in captive cetaceans (Ridgway and Carder 1997; Yuen *et al.* 2005; Finneran *et al.* 2005a; Houser and Finneran 2006; Finneran *et al.* 2007a; Schlundt *et al.* 2011) and in stranded individuals (Mann *et al.* 2010).

In terms of what is analyzed for the potential PTS (Level A harassment) in marine mammals as a result of ION's in-ice seismic survey, if it occurs, NMFS has determined that the levels would be slight/mild because research shows that most cetaceans (and particularly Arctic cetaceans) show relatively high levels of avoidance when received sound pulse levels exceed 160 dB re 1 µPa (rms) (review in Richardson *et al.* 1995; Southall *et al.* 2007), and it is uncommon to sight Arctic cetaceans within the 180 dB radius, especially for prolonged duration. Results from monitoring programs associated with seismic activities in the Arctic have shown significant responses by cetaceans at levels much lower than 180 dB. These results have been used by agencies to support monitoring requirements within distances where received levels fall below 160 dB and even 120 dB. Thus, very few animals would be exposed to sound levels of 180 dB re 1 µPa (rms) regardless of detectability by protected species observers. Avoidance varies among individuals and depends on their activities or reasons for being in the area, and occasionally a few individual Arctic cetaceans will tolerate sound levels above 160 dB. Tolerance of levels above 180 dB is infrequent, regardless of the circumstances. Therefore, a calculation of the number of cetaceans potentially exposed to >180 dB that is based simply on density would be a gross overestimate of the actual numbers exposed to 180 dB. Such calculations would be misleading unless avoidance response behaviors were taken into account to estimate what fraction of those originally present within the soon-to-be ensonified to >180 dB zone (as estimated from density) would still be there by the time levels reach 180 dB.

*Comment 13:* The Ocean Conservancy and AWL *et al.* state that NMFS' analysis underestimated the impact of stress and the effects of airguns on bowhead whales.

*Response:* NMFS does not agree with the assessment. The **Federal Register** for the proposed IHA (77 FR 49922; August 17, 2012) provided an analysis of the potential stress response to marine mammals (bowhead included) that could result from ION's in-ice seismic survey. However, almost no information is available on sound-induced stress in marine mammals, or on its potential (alone or in combination with other stressors) to affect the long-term well-being or reproductive success of marine mammals (Fair and Becker 2000; Hildebrand 2005; Wright *et al.* 2007a, 2007b). Nevertheless, extrapolation of information regarding stress responses in other species is applicable because the responses are highly consistent among all species in which they have been examined to date, especially considering that marine mammals will likely respond in a manner consistent with other species studied (Wright *et al.* 2007a). In the section discussing non-auditory effects, NMFS summarized that a range of issues may arise from an extended stress response from noise exposure, which include suppression of reproduction (physiologically and behaviorally), accelerated aging and sickness-like symptoms. Such long-term effects, if they occur, would be mainly associated with chronic noise exposure, which is characteristic of some seismic surveys and exposure situations (McCauley *et al.* 2000b; Nieukirk *et al.* 2009) but not of some others. As described in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), ION's in-ice seismic survey would be performed in a limited area for a short duration (a total 76 days). In addition, the source vessel would be in constant movement as it acquires seismic data and [would not overlap with individuals for a substantial period of time]. Therefore, we have concluded that marine mammals would not suffer from chronic and long-term, noise exposure.

In addition, NMFS provided more detailed analyses on noise-induced stress in its EA for the issuance of an IHA to ION (NMFS 2012), which also included three specific studies concerning marine mammals (Thomas *et al.* 1990; Romano *et al.* 2004; Rolland *et al.* 2012). These studies point out that short-term noise exposure, such as those animals being tested for TTS, only induced stress-immune system change during intense noise exposure (Romano *et al.* 2004), while during playbacks of recorded drilling noise to four captive beluga whales showed no changes in blood levels of stress-related hormones (Thomas *et al.* 1990).

*Comment 14:* Citing Lucke *et al.* (2009) TTS experiment on a harbor porpoise, the AWL *et al.* points out that a harbor porpoise experienced TTS when exposed to airgun noise at 164 dB, a significantly lower level than what NMFS predicts.

*Response:* NMFS does not agree with AWL *et al.'s* assessment. AWL *et al.* erroneously interpreted the results of the TTS-induced sound exposure level (SEL) in Lucke *et al.* (2009) to be sound pressure level (SPL) that NMFS uses for the threshold of PTS. In their paper, Lucke *et al.* (2009) found a threshold shift (TS) of a harbor porpoise after exposing it to airgun noise with peak-to-peak (pk-pk) received SPL at 200.2 $dB_{pk-pk}$ re 1 µPa, which according to the authors, corresponds to SEL of 164.5 dB re 1 $\mu Pa^2s$ after integrating exposure. It is important to understand that SPL and SEL are two very different ways to express the relative sound intensity. NMFS currently uses root-mean-square (rms) of received SPL at 180 dB and 190 dB re 1 µPa as the threshold above which PTS could occur for cetaceans and pinnipeds, respectively, and that TTS is thought to occur below these levels. However, TTS experiments so far have shown that in almost all cases TTS would occur at levels much higher than the 180 and 190 dB re 1 µPa thresholds. It is difficult to determine the equivalent of rms SPL from the reported pk-pk SPL in Lucke *et al.* (2009) because the airgun noise is a broadband impulse. Although it is a standard practice to subtract 9 dB from pk-pk SPL of a sinusoidal signal to convert it to rms SPL, for boardband signal from seismic surveys, the difference could be as large as 16 dB (Harris *et al.* 2001; McCauley *et al.* 2000). If we applied the 16 dB difference and convert the pk-pk reported in Lucke *et al.* (2009), the rms SPL for harbor porpoise to experience TTS would be 184 dB re 1 µPa, and the received levels associated with PTS (Level A harassment) would be higher than that. This is still above NMFS 180 $dB_{rms}$ re 1 µPa threshold for injury.

Nevertheless, NMFS recognizes that the TTS threshold of harbor porpoise is lower that other cetacean species (bottlenose dolphin and beluga whale) tested (*e.g.,* Finneran *et al.* 2002), and is discussed in the **Federal Register** notice of the proposed IHA (77 FR 49922; August 17, 2012), as well as the EA for the issuance of the IHA to ION (NMFS 2012).

*Comment 15:* Citing Kastak *et al.* (2008) and Jujawa and Liberman (2009), AWL *et al.* states that anthropogenic sound can induce PTS at lower levels

than anticipated. In addition, AWL states that new data indicate that mid-frequency cetaceans, such as bottlenose dolphins and beluga whales have greater sensitivity to sounds within their best hearing range than was supposed at the time Southall *et al.* (2007) was published.

*Response:* NMFS agrees that PTS could occur at relatively lower levels, such as at levels normally would only cause TTS, if the animal experiences repeated exposures at very close distances to the sound source. These long term effects are well known in terrestrial mammals (Yost 2000; Henderson *et al.* 2008) and is acknowledged in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) that repeated exposure to elevated noise that causes TTS could eventually result in PTS. However, as mentioned in detailed in the proposed IHA, ION's in-ice seismic survey would be performed in a limited area for a short duration of a total 76 days. In addition, the source vessel would be in constant movement as it acquires seismic data and any overlap between the vessel and affected species would be minimal and short-lived. Therefore, NMFS considers it highly unlikely many animals would be repeatedly exposed to received levels that would cause TTS.

As far as the hearing sensitivity of mid-frequency cetaceans is concerned, it is well known that mid-frequency cetaceans have greater sensitivity to sounds within their best hearing ranges, which are typically between 10–100 kHz (Johnson 1967; Hall and Johnson 1972; White *et al.* 1978; Awbrey *et al.* 1988; Johnson *et al.* 1989; Ridgway *et al.* 2001). Further TTS research on a bottlenose dolphin exposed to pure tones suggests that mid-frequency cetacean tends to be more vulnerable (in terms of TTS occurrence) at their most sensitive hearing range (Finneran *et al.* 2010). However, the majority of acoustic energy from a seismic airgun, vessel and icebreaking noise is under 1 kHz (Richardson *et al.* 1995), which is expected to have less impact on the most sensitive hearing ranges of these cetaceans.

*Comment 16:* AWL *et al.* argues that NMFS' justifications for the use of a correction factor of only counting 10% marine mammals being exposure to received levels at Level A would show no avoidance and thus subject to PTS and that exposure will only be brief are both flawed and unsupported by survey data and scientific evidence. Citing Arctic seismic survey monitoring and mitigation reports from previous years, AWL *et al.* states that marine mammals, especially ice seals, do not always avoid loud noises, and that marine mammals routinely stray too close to the airguns, even during daylight hours. The Commission also requests NMFS require ION provide a scientific basis for any conclusions about the animals' responses to the airguns. The Commission further requests NMFS require ION to revise the estimated number of Level A harassment takes to include all marine mammals that may be exposed to source levels greater than or equal to 180 and 190 dB re 1 μPa for cetaceans and pinnipeds, respectively.

*Response:* NMFS does not agree with AWL *et al.'s* assessment. As discussed earlier in the response to Comment 13, NMFS' current Level A take threshold of 180 dB re 1 μPa for cetaceans is appropriate. Marine mammals found in these zones are not expected to experience TTS (a form of Level B Harassment), much less PTS (Level A Harassment) even if they are exposed to a few seismic impulses. On the other hand, almost all marine mammals that underwent TTS experiments showed strong aversive behavioral reactions when the received noise levels approached to levels that could cause TTS (*e.g.,* Nachtigall *et al.* 2004; Fineran and Schlundt 2004; Lucke *et al.* 2009), despite the fact that these animals are trained and food-reinforced to participate the studies. Simply because previous seismic survey monitoring reports reveal that marine mammals were observed in the exclusion zones does not mean the animals necessarily experienced TTS, much less PTS..

The 10% correction factor used by NMFS is appropriate for estimating likely Level A Harassment takes, since there is evidence suggesting that most, if not all, marine mammals would avoid the noise levels that could cause immediate PTS (as described in the Estimated Take section below.

NMFS does not agree with the Commission's recommendation. Again, there is a difference between potential TTS (Level B Harassment), potential PTS (Level A Harassment) and serious injury. As described in detail in the response to Comment 13, the 180/190 dB re 1 μPa are the current standards used to prevent marine mammals from experiencing injury, which is equated with PTS, not TTS, which occurs at substantively lower received levels than PTS. In fact, all studies on marine mammal TTS have pointed out that TTS occurs at a received levels higher than NMFS current 180/190 dB re 1 μPa threshold (*e.g.,* Finneran *et al.* 2000; 2002; Lucke *et al.* 2009). Even if the animal is exposed multiple times at levels higher than the 180/190 dB re 1 μPa threshold and receives TTS, it is not considered physical injury. TTS, which is also referred to as auditory fatigue, is a reversible hearing threshold shift and it often recovers within minutes to hours (Ward 1997; Finneran *et al.* 2000; 2002). The numbers AWL *et al.* cited in their comment are the estimates of marine mammals that could occur within NMFS 180/190 dB re 1 μPa exclusion zones, which do not represent the number of animals that would receive TTS, not to mention PTS. In fact, NMFS considers in most cases all animals would avoid staying within the zones long enough to receive TTS. Therefore, most marine mammals will not experience TTS, which means the occurrence of PTS would be even lower.

Finally, even if the animal receives PTS, this does not equate to serious injury. As stated earlier in response to Comment 13, NMFS defines injury as ''any injury that will likely result in mortality'' (50 CFR 229.2), which, based on the best available science and NMFS' judgment, does not include PTS. .

*Comment 17:* The AWL *et al.* states that the current NMFS 160-dB re 1 μPa threshold for Level B harassment is arbitrary and non-conservative. Citing papers by Clark and Gagnon (2006), Risch *et al.* (2012), Bain and Williams (2006), Miller *et al.* (1999; 2005), the AWL *et al.* argues that in many cases marine mammals respond to much lower noise levels.

*Response:* NMFS does not agree with AWL *et al.'s* assessment, as the papers AWL cited do not necessarily indicate that the animals exposed under the certain received levels constitute a ''take'' as defined under the MMPA. Clark and Gagnon (2006) reported that fin whales (*Balaenoptera physalus*) in the northeast Pacific Ocean went silent for an extended period starting soon after the onset of a seismic survey in the area, and Risch *et al.* (2012) reported that humpback whale (*Megaptera novaeangliae*) song in the Stellwagen Bank National Marine Sanctuary was reduced, concurrent with transmissions of an Ocean Acoustic Waveguide Remote Sensing experiment that produced series of frequency modulated pulses approximately 200 km away in the Gulf of Maine. Although Miller *et al.* (1999) reported that bowhead whale deflection may occur about 35 km (21.7 mi) to the east of the seismic operations, no SPL measurement to that distance was provided, except noting that received levels at 30 km (18.6 mi) were about 107–126 dB re 1 μPa rms, depending on propagation. In addition, Miller *et al.* (2005) and Bain and Williams (2006) observed that marine mammal densities were generally lower

during seismic surveys and were seen moving away from seismic sources, even in areas where received levels were far below 160 dB re 1 µPa. Nevertheless, Miller *et al.* (2005) noted that bowhead whales have been sighted within the ''safety radius'' without any observed behavioral responses.

To address these observations, it is important to understand that the vocal behaviors shown by fin and humpback whales, as reported by Clark and Gagnon (2006) and Risch *et al.* (2012), are considered to be related to mating activities, which do not apply to bowhead whales and other marine mammal species in the Beaufort and Chukchi Seas during ION's in-ice seismic survey. Second, as stated in the past, NMFS does not believe that minor course corrections during a migration or temporarily moving away from seismic source, as observed by Miller *et al.* (1999; 2005) and Bain and Williams (2005) equate to ''take'' under the MMPA. This conclusion is based on controlled exposure experiments conducted on migrating gray whales exposed to the U.S. Navy's low frequency sonar (LFA) sources (Tyack 2009). When the source was placed in the middle of the migratory corridor, the whales were observed deflecting around the source during their migration. However, such minor deflection is considered not to be biologically significant. To show the contextual nature of this minor behavioral modification, recent monitoring studies of Canadian seismic operations indicate that when not migrating, but involved in feeding, bowhead whales do not move away from a noise source at an SPL of 160 dB. Therefore, while bowheads may avoid an area of 20 km (12.4 mi) around a noise source, when that determination requires a post-survey computer analysis to find that bowheads have made a 1 or 2 degree course change, NMFS believes that does not rise to a level of a ''take.'' NMFS therefore continues to estimate ''takings'' under the MMPA from impulse noises, such as seismic, as being at a distance of 160 dB re 1 µPa. Although it is possible that marine mammals could react to any sound levels detectable above the ambient noise level within the animals' respective frequency response range, this does not mean that such animals would react in a biologically significant way. According to experts on marine mammal behavior, the degree of reaction which constitutes a ''take,'' *i.e.,* a reaction that could potentially disrupt the migration, breathing, nursing, breeding, feeding, or sheltering, etc., of a marine mammal is complex and context specific, and it depends on several variables in addition to the received level of the sound by the animals. These additional variables include, but are not limited to, other source characteristics (such as frequency range, duty cycle, continuous vs. impulse vs. intermittent sounds, duration, moving vs. stationary sources, etc.); specific species, populations, and/or stocks; prior experience of the animals (naive vs. previously exposed); habituation or sensitization of the sound by the animals; and behavior context (whether the animal perceives the sound as predatory or simply annoyance), etc. (Southall *et al.* 2007).

Based on the information and data summarized in Southall *et al.* (2007), and on information from various studies, NMFS believes that the onset for behavioral harassment is largely context dependent, and there are many studies showing marine mammals do not show behavioral responses when exposed to multiple pulses at received levels above 160 dB re 1 µPa (*e.g.,* Malme *et al.* 1983; Malme *et al.* 1984; Richardson *et al.* 1986; Akamatsu *et al.* 1993; Madsen and Møhl 2000; Harris *et al.* 2001; Miller *et al.* 2005). Therefore, although using a uniform SPL of 160-dB for the onset of behavioral harassment for impulse noises may not capture all of the nuances of different marine mammal reactions to sound, it is an appropriate way to manage and regulate anthropogenic noise impacts on marine mammals. Therefore, unless and until an improved approach is developed and peer-reviewed, NMFS will continue to use the 160–dB threshold for determining the level of take of marine mammals by Level B harassment for impulse noise (such as from airguns).

*Comment 18:* Citing the Expert Panel Review of Statoil and ION's 2011 monitoring plans, the AWL *et al.* states that the noise from seismic airgun arrays as ''a mixed impulsive/continuous noise source'' and that ''NMFS should evaluate its impacts on that basis.''

*Response:* NMFS does not agree with the AWL *et al.'s* statement. First, nowhere in the Expert Panel's report did it states that airgun sound is ''a mixed impulsive/continuous noise source''. It has been well understood that the source characteristics from a seismic airgun (or airgun array) are impulsive, with no continuous acoustic components (Richardson *et al.* 1995). What the Expert Panel stated in its report is that ''seismic airgun signals should not be treated as truly impulsive when received at ranges where sound propagation is known to remove the impulsive nature of these signals'', which means that the signals become ''stretched'' at very large distance due to reverberation and multipath propagation. Furthermore, the Expert Panel stated that ''[o]ver very short ranges where potential hearing loss (temporary or permanent) can occur, airgun impulses retain their impulsive features and should be considered as impulses.''

Although it has been known that at long distances an impulse acoustic signal will lose its pulse feature by stretching its duration due to multipath propagation, these signals (or noises) are still fundamentally different from other non-impulse noise sources such as those from vibratory pile driving, drilling, and dredging based on the following characteristics:

First, the elongated pulse signals from the airgun array at far distances are caused by multipath propagation in a reverberant environment (Greene and Richardson 1988; Richardson *et al.* 1995; Madsen *et al.* 2002; Lurton 2002), which is different from other non-pulse signals at closer distances, which is composed of mostly direct sound. The reverberation part of the sound in the ocean behaves differently compared to the direct sound and early surface and bottom reflections from the perspective of the receiver. The direct sound and early reflections follow the inverse square law, with the addition of absorption effects in the case of early reflections, and so their amplitude varies with distance. However the reverberant part of the sound remains relatively constant up to a large distance with the position of the receiver. Therefore, as distance increases from the source, the component of reverberant sounds increases against the direct sound. In addition, the reverberant energy is less directional and is distributed more uniformly around the ambient environment of the animal. As shown in human psychoacoustics, these characteristics in a reverberant field provide distance cues to the listener as to how far away the source is located (Howard and Angus 2006). Therefore, at a distance where the airgun signals have been ''stretched'' to non-pulse, the receiving animals would be able to correctly perceive that these sounds are coming from far away, and would thus be less likely to be affected behaviorally as behavior responses are not solely dependent on received levels. Other factors such as distance to the source, movement of the source, source characteristics, and the receiver's (*i.e.,* animal's) age, sex, motivation states, and prior experience, etc. probably play more significant roles in determining the responses of the animals that are

being exposed to lower levels of noises than solely the received sound level.

Second, even though during horizontal propagation, the initial short pulse could be ''stretched'' from milliseconds when emitted to about 0.25–0.5 second long at a few kilometers in shallow water (Richardson *et al.* 1995), the noise duration is still very short when compared to those ''conventional'' non-pulse noise sources (vibratory pile driving, drilling, and dredging, etc.) for which NMFS applies a 120 dB threshold for assessing behavioral harassment. The empirical measurements of a 3,000 in3 airgun array received signal characteristics showed that its pulse duration was stretched to 0.2 second at approximately 1.3 km (0.8 mi), to 0.5 second at approximately 10 km (6.2 mi), and to about 1.8 seconds at 80 km (50 mi) from the source (O'Neill *et al.* 2011). Based on the airgun array's firing rate of 0.1 Hz (1 shot every 10 seconds), the duty cycle was only 18% for the signal at 80 km (50 mi) (1.8 seconds on for every 10 seconds). Conversely, the ''conventional'' non-pulse noises from vibratory pile driving, drilling, and dredging typically last much longer (minutes to hours) with very brief (seconds for vibratory pile driving) intervals.

Therefore, NMFS does not agree that it is appropriate to treat elongated airgun pulses at long distances as a ''conventional'' non-pulse signal and apply the 120 dB behavioral response threshold to that received sound.

*Comment 19:* Citing Madsen (2005), the AWL *et al.* states that ''the threshold's basis in the root mean square (''RMS'') of sound pressure, rather than in peak pressure, is non-conservative.'' The AWL *et al.* further claims that studies have criticized the use of RMS for seismic sound because of the degree to which pulsed sounds must be ''stretched,'' resulting in significant potential underestimates of marine mammal take. The AWL *et al.* predicts that if NMFS would modify its threshold estimates to use the peak pressure level instead of RMS, the estimated number of marine mammal takes could be significantly higher than the number of takes NMFS intends to authorize in for this survey.

*Response:* NMFS does not agree with the AWL *et al.*'s statement. First, there is no scientific basis that the use of root-mean-square (rms) for sound pressure is less conservative than using peak pressure (which includes zero-peak pressure and peak-peak pressure). All of these are valid terms to express acoustic pressure and other physical oscillations (*e.g.,* alternating electrical current). NMFS chooses to use rms because it was first established to regulate underwater noise impacts to marine mammals and that rms uses the product mean of acoustic pressures, which provides a more consistent result when dealing with multiple impulses such as pile driving. For a sinusoidal signal, the relationship between rms level and peak pressure level is that the rms level of a given sinusoidal signal is always 3 dB lower than the zero-peak level, and 9 dB lower than the peak-peak level. Therefore, for example, if the peak levels would be used to set the threshold for marine mammal disturbance, it would be 163 dB re 1 µPa (0-peak) or 169 dB re 1 µPa (peak-peak), instead of the current 160 dB re 1 µPa (rms).

Second, it is not true that the use of rms for calculating the levels of seismic impulse, or any other acoustic impulse, the pulsed sound ''must be stretched''. The concern raised by Madsen (2005) was the perceived lack of a standardized window for calculating the rms levels during averaging. Citing a 2003 **Federal Register** notice (68 FR 9991; March 3, 2003), Madsen (2005) stated ''[t]he rms measure critically relies upon choosing the size of averaging window for the squared pressures. Derivation of this window is not standardized, which can lead to 2–12 dB differences in rms sound pressure for the same wave form.'' However, NMFS actually uses a standard 90% energy window when performing rms calculation for impulse sounds.

*Comment 20:* The Ocean Conservation Research is concerned that acoustic impacts on the habitat, especially other marine organisms were not analyzed. In addition, citing Roth *et al.* (2012), the Ocean Conservation Research points out that the overall ambient noise levels could increase by 8 dB as a result of the seismic survey.

*Response:* NMFS does not agree with the Ocean Conservation Research's assessment. The **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) provided an analysis on the potential impacts of marine mammal habitat. The acoustic impacts on other marine organisms in the context of their value in marine mammal habitat, including planktonic species, invertebrates, and fish species are further analyzed in detail in the Environmental Assessment for the issuance of the IHA. Regarding the Ocean Conservation Research's concern of the raising ambient noise due to seismic survey in the Arctic, NMFS agrees that such concerns are valid, as was reported by Roth *et al.* (2012) that the average ambient noise in the Chukchi and Beaufort Seas increased by 2–8 dB in September and early October in all years between 2006 and 2009. However, ION's in-ice seismic survey is short in duration, will be confined to a limited area, and will occur from mid- to late-October through December, outside the time period of concern. The overall impact to the Beaufort and Chukchi Sea ecosystem, including marine mammal habitat, is not expected to be significant.

*Monitoring and Mitigation Issues*

*Comment 21:* PEW states that NMFS should exclude important habitat from the survey area and institute time- and place-based restriction before permitting activities. Especially, PEW requested NMFS consider excluding Hanna and Herald Shoals, the Barrow Canyon, and the Chukchi Sea ice lead system.

*Response:* Although the Hanna Shoals are located in the U.S. EEZ, the majority of the Herald Shoals are located in the Russian EEZ. Nevertheless, both areas are outside ION's seismic survey area. Although Barrow Canyon, which is on the edge of the proposed in-ice seismic survey boundary, is considered as an important feeding area for bowhead whales primarily due to its high productivity, it is only important to marine mammals during the open water summer and early fall seasons, which ends in September (Suydam *et al.* 2005; Ashjian *et al.* 2010; Moore *et al.* 2010). The Chukchi Sea ice lead system along the entire Alaskan coastline serves as an important corridor for migrating marine mammals such as bowhead whales, especially during the spring (Braham *et al.* 1980). PEW even acknowledged in its comments to NMFS on the draft *Environmental Impact Statement (EIS) on the Effects of Oil and Gas Activities in the Arctic Ocean* (NMFS 2012a) that the bowhead whale population ''travels along the Chukchi Sea coast during spring months, from March through June.'' In addition, it is well known that bowhead whale fall migration does not necessarily follow the lead system (Huntington and Quakenbush 2009; Quakenbush *et al.* 2010; Allen and Angliss 2011). Considering that ION's in-ice seismic survey is designed specifically to avoid encountering large numbers of marine mammals after the majority of the animals have migrated out of the Beaufort and Chukchi Seas, NMFS does not believe that time and area restrictions are scientifically supportable or would provide any meaningful benefit to marine mammals.

*Comment 22:* AWL *et al.* claims that NMFS did not fully consider the impacts of ION's survey on migrating bowhead whale mother and calf pairs,

as cows and calves are known to favor the tail end of the spring and fall migrations. Citing NMFS 2008 and 2011 Biological Opinions, AWL *et al.* states that females with young bowhead whales are more responsive to noise and human disturbance than other and that cow/calf pairs typically migrate through the area later in the season (*i.e.,* late September/October). AWL *et al.* points out that in 2006 NMFS required a 120-dB exclusion zone for four or more cow-calf pairs to reduce impacts on mother-calf pairs. In addition, the Commission also recommends NMFS require ION to establish and monitor adequately both a 160- and 120-dB re 1 μPa disturbance zone around all sound sources and to not initiate or continue an activity if (1) an aggregation of bowhead whales or gray whales (12 or more whales of any age/sex class that appear to be engaged in a non-migratory, significant biological behavior (*e.g.,* feeding, socializing)) is observed within the 160-dB re 1 μPa, or (2) a female-calf pair is observed within the 120-dB re 1 μPa zone.

*Response:* NMFS recognizes that bowhead cow and calf pairs are more prone to human disturbance than other individuals, and that they normally follow the tail-end of the migration. However, as discussed in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), ION's in-ice seismic survey will occur in the very latter part of the bowhead whale season (beginning after mid-October) and we expect very few exposures. Research indicates that on average about 97% of the bowhead whales would have passed through eastern of the Beaufort Sea by October 15 (Miller *et al.* 2002), and that all studies point that majority of the bowhead whales will be out of the Beaufort and Chukchi Seas (Allen and Angliss 2011). More importantly, ION plans to conduct its survey in an east to west fashion (the fall migration of bowhead whales occurs in an east to west direction), which would further reduce the potential takes of the few remaining whales. In addition, as discussed in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) and in the Environmental Assessment, daylight hours during ION's in-ice seismic survey would be very limited, which makes aerial surveys unfeasible. Therefore, based on our knowledge of bowhead whale migration and the practicability in carry out the monitoring and mitigation measures, NMFS will not require ION implement the 120-dB exclusion zone for cow-calf pairs nor the 160-dB exclusion zone for an aggregation of 12 or more whales, and concludes that the potential impacts to bowhead whale cow-calf pairs are extremely unlikely.

*Comment 23:* AWL *et al.* states that NMFS should require ION provide additional clarification about the location and timing of its surveying. AWL *et al.* points out that the proposed IHA describes the surveying as beginning in deeper water (>1,000 m) in the eastern half of the survey area before moving to the west in late October or early November. AWL *et al.* states that bowhead migration has the potential to extend into late October and even November. AWL *et al.* further states that NMFS must specify the earliest date at which ION may survey in more shallow waters near the migration corridor, and include the specific timing of ION's operation in its conclusions and recommendations.

*Response:* NMFS believes that ION's survey plan is adequately described in its application and the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012). ION entered the U.S. Beaufort Sea survey area from Canadian waters in early October and plans to begin data collection in mid-October 2012. Therefore, the actual seismic survey would not start until after mid-October due to logistical delays. Weather and ice permitting, ION plans to begin survey operations east of the Beaufort Sea and in offshore waters (>1,000 m [3,281 ft]) where bowheads are expected to be least abundant in mid-October. This operational plan is based on the fact that only ~2% of bowhead whales observed by Bureau of Ocean Energy Management's (BOEM) aerial surveys from 1979–2007 occurred in areas of water depth >1,000 m (3,281 ft) (MMS 2010), and on average ~97% of bowheads have passed through the eastern U.S. Beaufort Sea by October 15 (Miller *et al.* 2002). The survey would then progress to shallower waters in the eastern survey area before moving to the western survey area in late October or early November 2012. NMFS has conducted thorough analysis on potential disturbances of bowhead whales and other marine mammals in the entire Beaufort and Chukchi Seas for the period of ION's in-ice seismic survey and reached a negligible determination. Finally, at this point it is clear that the delay of ION's in-ice seismic survey into mid- to late October would further reduce impacts to marine mammals in the action area.

*Comment 24:* The Commission requests that NMFS require ION to (1) record, analyze, and report (within five days of collecting the data) the results of measurements of vessel sounds, including the icebreaking vessel and (2) adjust the size of the 120–dB re 1 μPa harassment zone and revise the estimated number of animals expected to be taken by Level B harassment for all icebreaking activities, as necessary.

*Response:* NMFS worked with ION on its sound source verification (SSV) measures when it first submitted its IHA application in 2010 and has continued to do so for the 2012 application. Due to the unique situation of the in-ice seismic survey, the traditional method of SSV test using bottom mounted hydrophone would not work. NMFS and ION have agreed to use the SSV measurements that ION collected in the ice-free Canadian Beaufort Sea, coupling with the in-situ sound velocity profile measurements in the seismic survey areas in the Beaufort and Chukchi Seas, to model the exclusion zones (180 and 190 dB re 1 μPa for cetaceans and pinnipeds, respectively) and behavioral harassment zones (160 and 120 dB re 1 μPa for seismic airgun array and icebreaking activity, respectively). However, after NMFS published its proposed IHA, ION informed NMFS that direct SSV measurements of airgun would be possible in the U.S. Beaufort Sea based on ice condition prediction. Therefore, ION will be conducting traditional SSV tests on its airgun array prior to conducting seismic surveys and submit the results within five days of collecting the data. ION will also adjust the size of the take zones based on the SSV tests. Nevertheless, NMFS does not believe direct SSV test in open water would be a good indicator for measuring icebreaking noise, since this would be an underestimate of noise produced during actual icebreaking activities. Therefore, for icebreaking activities, ION would use its seismic survey streamer to measure its noise during actual icebreaking, which is described in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012). In addition, overwintering buoys deployed by ION and its partner would also provide better estimates of noise levels from icebreaking activities. However, these are no SSV measurements as these measurements could not be carried out under controlled test setting. Nevertheless, NMFS believes that the 160–dB re 1 μPa harassment zone from the seismic airgun array would surpass the 120–dB re 1 μPa harassment zone from icebreaking activity based on acoustic modeling. Therefore, the 160–dB re 1 μPa received level from the airgun array would determine the numbers of marine mammals being taken.

*Comment 25:* The NSB is concerned that ION's in-ice seismic survey would

be conducted during the time when visibility would be poor most of the time. The Commission and NSB request that NMFS require ION to use active acoustic monitoring, whenever practicable, to supplement visual monitoring during the implementation of its mitigation measures for all activities that generate sound. The NSB further recommends ION deploy their own acoustic recorders and collect the acoustic data.

*Response:* As noted, NMFS' analyses on the potential impacts on marine mammals likely overestimates the number of animals taken and our analysis of the nature, context, and severity of those takes allowed to conclude that the taking will have a negligible impact on affected species or stocks. Further, NMFS has concluded that acoustic monitoring for ION's in-ice seismic survey is not necessary or practicable. In the Environmental Assessment prepared by NMFS, NMFS considered requiring ION to employ a near real-time passive acoustic monitoring (PAM) and active acoustic monitoring (AAM) program. These measures would supplement visual observation that is already required for ION. However, we determined these technologies should not be utilized in this particular instance because (1) the technologies are still being developed and thus, the efficacy of these measures for ION's survey would be questionable; and (2) the use of PAM, in particular, would require an additional icebreaker to serve as a PAM platform. After consulting with ION, we determined that a second icebreaker would not be practicable from an operational and economic perspective and could also result in additional environmental impacts such as additional noise being introduced into the water and disturbed habitat by additional icebreaking activities. Although NMFS has required the use of PAM in past IHAs (*e.g.,* Houser *et al.* 2008; McPherson *et al.* 2012) and it has shown to be able to detect marine mammals beyond visual observation, as explained previously, we do not believe PAM is an appropriate mitigation tool for ION's project.

Nevertheless, NMFS requires ION to work with other oil and gas companies in the Arctic to deploy overwintering acoustic sensors to assess the impacts of its in-ice seismic survey and provide a baseline of the acoustic environment and marine mammal distribution during the winter season.

*Comment 26:* The Commission requests that NMFS specify reduced vessel speeds of 9 knots or less when in transit and 5 knots or less when weather conditions or darkness reduce visibility.

*Response:* NMFS does not agree with the Commission's recommendation of specifying vessel speeds of 9 knots or less when in transit and 5 knots or less when weather conditions or darkness reduce visibility. As NMFS discussed with ION, stipulating vessel speed during transit would severely hamper its proposed seismic survey activity, and would not be practicable. In any event, ION has indicated that its seismic vessel and icebreaker would normally move at a speed of 9–12 knots during transit and 4–5 knots during seismic survey.

*NEPA and Miscellaneous Issues*

*Comment 27:* Noting that NMFS is still working on the Arctic EIS, AWL *et al.* and Oceana state that NEPA regulations makes clear that agencies should not proceed with authorizations for individual projects like the ION proposal until an ongoing programmatic EIS is complete.

*Response:* NMFS does not agree with AWL *et al.* and Oceana's statement. While the Final EIS is still being developed, NMFS conducted a thorough analysis of the affected environment and environmental consequences from ION's in-ice seismic survey in the Beaufort and Chukchi Seas in 2012 and prepared an EA specific to the seismic survey program proposed to be conducted by ION. The analysis contained in that EA warranted a finding of no significant impact.

The analysis contained in the Final EIS will apply more broadly to multiple Arctic oil and gas operations over an extended period. NMFS' issuance of the IHA to ION for the taking of several species of marine mammals incidental to conducting its in-ice seismic survey in the Beaufort and Chukchi Seas in 2012, as analyzed in the EA, is not expected to significantly affect the quality of the human environment. Additionally, the EA contained a full analysis of cumulative impacts.

*Comment 28:* PEW states that traditional knowledge needs to be better incorporated into NMFS' analyses.

*Response:* NMFS agrees that traditional knowledge (TK) is generally useful in understanding the potential environmental and subsistence impacts from activities such as ION's in-ice seismic survey. In fact, TK has been an important factor during NMFS analyses and review process of ION's in-ice seismic survey project, especially for the environmental analysis under the National Environmental Policy Act (NMFS 2012b). For instance, part of the analysis on bowhead whale westbound migration that does not depend on the Chukchi Sea ice lead system is from TK as described in Huntington and Quakenbush (2009).

**Description of Marine Mammals in the Area of the Specified Activity**

The marine mammal species under NMFS jurisdiction most likely to occur in the seismic survey area include two cetacean species, beluga (*Delphinapterus leucas*) and bowhead whales (*Balaena mysticetus*), and two pinniped species, ringed (*Phoca hispida*) and bearded (*Erignathus barbatus*) seals

Three additional cetacean species and two pinniped species: Harbor porpoise (*Phocoena phocoena*), gray whale (*Eschrichtius robustus*), and minke whale (*Balaenoptera acutorostrata*); and spotted (*P. largha*) and ribbon seals (*Histriophoca fasciata*) could also occur in the project area.

The bowhead whale is listed as ''endangered'' under the Endangered Species Act (ESA) and as depleted under the MMPA. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. The ESA-listed western North Pacific gray whale population occurs in the West Pacific, and the ESA-listed Cook Inlet beluga population resides in Cook Inlet, Alaska. The southern distinct population segment of spotted seal that is listed under the ESA is found in Liaodong Bay, China, and Peter the Great Bay, Russia. Additionally, the ribbon seal is considered a ''species of concern'', meaning that NMFS has some concerns regarding status and threats to this species, but for which insufficient information is available to indicate a need to list the species under the ESA. Bearded and ringed seals are ''candidate species'' under the ESA, meaning they are currently being considered for listing.

ION's application contains information on the status, distribution, seasonal distribution, and abundance of each of the species under NMFS' jurisdiction mentioned. Please refer to the application for that information (see **ADDRESSES**). Additional information can also be found in the NMFS Stock Assessment Reports (SAR). The Alaska 2011 SAR is available at: *http://www.nmfs.noaa.gov/pr/pdfs/sars/ak2011.pdf.*

*Potential Effects of the Specified Activity on Marine Mammals*

Operating active acoustic sources such as airgun arrays and icebreaking activities have the potential for adverse effects on marine mammals.

*Potential Effects of Airgun Sounds on Marine Mammals*

The effects of sounds from airgun pulses might include one or more of the following: Tolerance, masking of natural sounds, behavioral disturbance, and temporary or permanent hearing impairment or non-auditory effects (Richardson *et al.* 1995). As outlined in previous NMFS documents, the effects of noise on marine mammals are highly variable. The Notice of Proposed IHA (77 FR 49922; August 17, 2012) included a discussion of the effects of airguns on marine mammals, which is not repeated here. That discussion did not take into consideration the monitoring and mitigation measures proposed by ION and those that will be required by NMFS. No instances of serious injury or mortality are expected as a result of ION's activities given the strong likelihood that marine mammals (especially migrating bowheads) would avoid the approaching airguns (or vessel) before being exposed to levels high enough for them to be seriously injured or killed.

*Potential Effects From Icebreaking on Marine Mammals*

Icebreaking would be carried out for the ION's proposed in-ice seismic survey activities in the Beaufort and Chukchi Seas. Acoustic source modeling and propagation of the icebreaker were provided in the Notice of Proposed IHA (77 FR 49922; August 17, 2012). The source levels of the icebreaker are much lower than those of the airguns. Although they are non-impulse sounds and are treated differently from airgun pulses when the Level B behavioral harassment is considered, the 120 dB re 1 μPa radii from icebreaking activities are still smaller than the 160 dB re 1 μPa radii. Therefore, the zone of influence from the airgun arrays essentially covers the area that would be ensonified by icebreaking activities during the survey, except for vessel transiting. The potential effects of icebreaking to marine mammals are discussed in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) and are not repeated here.

**Anticipated Effects on Habitat**

The primary potential impacts to marine mammals and other marine species are associated with elevated sound levels produced by airguns and other active acoustic sources, noise generated from icebreaking, and breaking of ice during the seismic survey. However, other potential impacts to the surrounding habitat from physical disturbance are also possible. Major potential anticipated effects on habitat from ION's proposed in-ice seismic survey include impacts on prey species (fish and other marine species that serve as marine mammal food) and physical environment (the destroy of ice layers) and are discussed in detail in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012) and are not repeated here.

**Potential Impacts on Availability of Affected Species or Stock for Taking for Subsistence Uses**

NMFS has defined ''unmitigable adverse impact'' in 50 CFR 216.103 as: '' * * * an impact resulting from the specified activity: (1) That is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by: (i) Causing the marine mammals to abandon or avoid hunting areas; (ii) Directly displacing subsistence users; or (iii) Placing physical barriers between the marine mammals and the subsistence hunters; and (2) That cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.''

Seismic surveys and associated icebreaking operations have the potential to impact marine mammals hunted by Native Alaskans. In the case of cetaceans, the most common reaction to anthropogenic sounds (as noted previously in this document) is avoidance of the ensonified area. In the case of bowhead whales, this often means that the animals could divert from their normal migratory path by up to several kilometers. Additionally, general vessel presence in the vicinity of traditional hunting areas could negatively impact a hunt.

In the case of subsistence hunts for bowhead whales in the Beaufort and Chukchi Seas, there could be an adverse impact on the hunt if the whales were deflected seaward (further from shore) in traditional hunting areas. The impact would be that whaling crews would have to travel greater distances to intercept westward migrating whales, thereby creating a safety hazard for whaling crews and/or limiting chances of successfully striking and landing bowheads. Native knowledge indicates that bowhead whales become increasingly ''skittish'' in the presence of seismic noise. Whales are more wary around the hunters and tend to expose a much smaller portion of their back when surfacing (which makes harvesting more difficult). Additionally, natives report that bowheads exhibit angry behaviors in the presence of seismic, such as tail-slapping, which translate to danger for nearby subsistence harvesters.

However, due to its proposed time and location, ION's proposed in-ice seismic survey in the Beaufort and Chukchi Seas would be unlikely to result in the aforementioned impacts. As discussed in detail in the **Federal Register** for the proposed IHA (77 FR 49922; August 17, 2012), the only potential impacts on subsistence use of marine mammals from ION's proposed icebreaking seismic survey during October—December period are the fall bowhead hunt and ringed seal harvest. Nevertheless, the proposed seismic survey is expected to occur in waters far offshore from the regular seal hunting areas, and ION indicates it would elect to operate at the eastern end of the survey area until fall whaling in the Beaufort Sea near Barrow is finished, thus reducing the likelihood of interfering with subsistence use of marine mammals in the vicinity of the project area.

Finally, ION has signed a Conflict Avoidance Agreement (CAA), and prepared a Plan of Cooperation (POC) under 50 CFR 216.104 to address potential impacts on subsistence hunting activities. The CAA identifies those measures will be taken to minimize adverse impacts of the planned activities on subsistence harvesting. ION met with the AEWC and communities' Whaling Captains' Associations as part of the CAA development, and established avoidance guidelines and other mitigation measures to be followed where the activities may have an impact on subsistence.

**Mitigation Measures**

Any incidental take authorization (ITA) under Section 101(a)(5)(D) of the MMPA, must prescribe where applicable, the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses.

For ION's in-ice seismic survey in the Beaufort and Chukchi Seas, NMFS is requiring ION to implement the following mitigation measures to minimize the potential impacts to marine mammals in the project vicinity

as a result of the marine seismic survey activities.

The mitigation measures are divided into the following major groups: (1) Establishing exclusion and disturbance zones, (2) Vessel speed or course alteration, (3) Ramp up procedures (4) Power down procedures, and (5) Shutdown procedures. The primary purpose of these mitigation measures is to detect marine mammals within, or about to enter designated exclusion zones and to initiate immediate shutdown or power down of the airgun(s).

*(1) Exclusion Zones*

Under current NMFS guidelines, ''exclusion zones'' for marine mammals around industrial sound sources are customarily defined as the distances within which received sound levels are ≥180 dB re 1 μPa (rms) for cetaceans and ≥190 dB re 1 μPa (rms) for pinnipeds. These criteria are based on an assumption that sound energy at lower received levels will not injure these animals or impair their hearing abilities but that higher received levels might have some such effects. Disturbance or behavioral effects to marine mammals from underwater sound may occur after exposure to sound at distances greater than the exclusion zone (Richardson *et al.,* 1995).

Received sound levels were modeled for the full 26 airgun, 4,450 $in^3$ array in relation to distance and direction from the source (Zykov *et al.,* 2010). Based on the model results, Table 1 in this document shows the distances from the airguns where ION predicts that received sound levels will drop below 190, 180, and 160 dB re 1 μPa (rms). A single 70-$in^3$ airgun would be used during turns or if a power down of the full array is necessary due to the presence of a marine mammal within or about to enter the applicable exclusion zone of the full airgun array. To model the source level of the 70-$in^3$ airgun, ION used the measurements of a 30-$in^3$ airgun. Underwater sound propagation of a 30-$in^3$ airgun was measured in <100 m (328 ft) of water near Harrison Bay in 2007, and results were reported in Funk *et al.* (2008). The constant term of the resulting equation was increased by 2.45 dB based on the difference between the volume of the two airguns [2.45 = 20Log(70/30) − (⅓)]. The 190 and 180 dB (rms) distances for the 70-$in^3$ airgun from the adjusted equation, 19 m (62 ft) and 86 m (282 ft) respectively, would be used as the exclusion zones around the single 70 $in^3$ airgun in all water depths until results from field measurements are available.

An acoustics contractor would perform the direct measurements of the received levels of underwater sound versus distance and direction from the energy source arrays using calibrated hydrophones (see below ''Sound Source Verification'' in the ''Monitoring and Reporting Measures'' section). The acoustic data would be analyzed as quickly and as reasonably practicable in the field and used to verify (and if necessary adjust) the size of the exclusion zones. The field report will be made available to NMFS and the Protected Species Observers (PSOs) within 120 hrs of completing the measurements. The mitigation measures to be implemented at the 190 and 180 dB (rms) sound levels would include power downs and shut downs as described below.

TABLE 1—MARINE MAMMAL EXCLUSION ZONES FROM THE 26 AIRGUN, 4,450-$IN^3$ ARRAY, FOR SPECIFIC CATEGORIES BASED ON THE WATER DEPTH

| rms (dB re. 1 μPa) | Exclusion and disturbance zones (meters) | | |
|---|---|---|---|
| | Depth less than 100 m | Depth 100 m–1,000 m | Depth more than 1,000 m |
| 190 | 600 | 180 | 180 |
| 180 | 2,850 | 660 | 580 |
| 160 | 27,800 | 42,200 | 31,600 |

*(2) Speed or Course Alteration*

If a marine mammal (in water) is detected outside the exclusion zone and, based on its position and the relative motion, is likely to enter the exclusion zone, the vessel's speed and/or direct course shall be changed in a manner that also minimizes the effect on the planned objectives when such a maneuver is safe.

Another measure proposes to avoid concentrations or groups of whales by all vessels in transit under the direction of ION. Operators of vessels should, at all times, conduct their activities at the maximum distance possible from such concentrations of whales.

All vessels during transit shall be operated at speeds necessary to ensure no physical contact with whales occurs. If any barge or transit vessel approaches within 1.6 km (1 mi) of observed bowhead whales, the vessel operator shall take reasonable precautions to avoid potential interaction with the bowhead whales by taking one or more of the following actions, as appropriate:

(A) Reducing vessel speed to less than 5 knots within 300 yards (900 feet or 274 m) of the whale(s);

(B) Steering around the whale(s) if possible;

(C) Operating the vessel(s) in such a way as to avoid separating members of a group of whales from other members of the group;

(D) Operating the vessel(s) to avoid causing a whale to make multiple changes in direction; and

(E) Checking the waters immediately adjacent to the vessel(s) to ensure that no whales will be injured when the propellers are engaged.

When weather conditions require, such as when visibility drops, adjust vessel speed accordingly to avoid the likelihood of injury to whales.

In the event that any aircraft (such as helicopters) are used to support the planned survey, the proposed mitigation measures below would apply:

(A) Under no circumstances, other than an emergency, shall aircraft be operated at an altitude lower than 1,000 feet above sea level (ASL) when within 0.3 mile (0.5 km) of groups of whales.

(B) Helicopters shall not hover or circle above or within 0.3 mile (0.5 km) of groups of whales.

*(3) Ramp Ups*

A ramp up of an airgun array provides a gradual increase in sound levels and involves a step-wise increase in the number and total volume of airguns firing until the full volume is achieved. The purpose of a ramp up is to ''warn'' marine mammals in the vicinity of the airguns and to provide the time for them to leave the area and thus avoid any potential injury or impairment of their hearing abilities.

During the proposed seismic survey program, the seismic operator will ramp up the airgun arrays slowly. Full ramp ups (*i.e.,* from a cold start after a shut down or when no airguns have been

firing) will begin by firing a single airgun in the array. A full ramp up, following a cold start, can be applied if the exclusion zone has been free of marine mammals for a consecutive 30-minute period. The entire exclusion zone must have been visible during these 30 minutes. If the entire exclusion zone is not visible, then ramp up from a cold start cannot begin.

Ramp up procedures from a cold start shall be delayed if a marine mammal is sighted within the exclusion zone during the 30-minute period prior to the ramp up. The delay shall last until the marine mammal(s) has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 or 30 minutes. The 15 minutes applies to small odontocetes and pinnipeds, while a 30 minute observation period applies to baleen whales and large toothed whales.

A ramp up, following a shutdown, can be initiated if the marine mammal(s) for which the shutdown occurred has been observed to leave the exclusion zone or until the animal(s) is not sighted for at least 15 minutes (small odontocetes and pinnipeds) or 30 minutes (baleen whales and large toothed whales).

If, for any reason, electrical power to the airgun array has been discontinued for a period of 10 minutes or more, ramp-up procedures shall be implemented. Only if the PSO watch has been suspended, a 30-minute clearance of the exclusion zone is required prior to commencing ramp-up. Discontinuation of airgun activity for less than 10 minutes does not require a ramp-up.

The seismic operator and PSOs shall maintain records of the times when ramp-ups start and when the airgun arrays reach full power.

During turns and transit between seismic transects, the 70 $in^3$ mitigation gun will remain operational. The ramp up procedure will still be followed when increasing the source levels from one airgun to the full array. PSOs will be on duty whenever the airguns are firing during daylight and during the 30 minute periods prior to full ramp ups. Daylight will occur for ~11 hours/day at the start of the survey in mid-October diminishing to ~3 hours/day in mid-November.

*(4) Power Down Procedures*

A power down involves decreasing the number of airguns in use such that the radii of the 190 and 180 dB re 1 μPa (rms) zones are decreased to the extent that observed marine mammals are not in the applicable exclusion zone. A power down may also occur when the vessel is moving from one seismic line to another. During a power down, only one airgun is operated. The continued operation of one airgun is intended to (a) alert marine mammals to the presence of the seismic vessel in the area, and (b) retain the option of initiating a ramp up to full array under poor visibility conditions. In contrast, a shutdown is when all airgun activity is suspended (see next section).

If a marine mammal is detected outside the exclusion zone but is likely to enter the exclusion zone, and if the vessel's speed and/or course cannot be changed to avoid having the mammal enter the exclusion zone, the airguns may (as an alternative to a complete shutdown) be powered down before the mammal is within the exclusion zone. Likewise, if a mammal is already within the exclusion zone when first detected, the airguns will be powered down immediately if this is a reasonable alternative to a complete shutdown. During a power down of the array, the number of guns operating will be reduced to a single 70 $in^3$ airgun. The pre-season estimates of the 190 dB re 1 μPa (rms) and 180 dB re 1 μPa (rms) exclusion zones around the power down source are 19 m (62 ft) and 86 m (282 ft), respectively. The 70 $in^3$ airgun power down source will be measured during acoustic sound source measurements conducted at the start of seismic operations. If a marine mammal is detected within or near the applicable exclusion zone around the single 70 $in^3$ airgun, it too will be deactivated, resulting in a complete shutdown (see next subsection).

Marine mammals hauled out on ice may enter the water when approached closely by a vessel. If a marine mammal on ice is detected by PSOs within the exclusion zones, it will be watched carefully in case it enters the water. In the event the animal does enter the water and is within an applicable exclusion zone of the airguns during seismic operations, a power down or shut-down will immediately be initiated. If the animal does not enter the water, it will not be exposed to sounds at received levels for which mitigation is required; therefore, no mitigation measures will be implemented.

Following a power down, operation of the full airgun array will not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it:

- Is visually observed to have left the exclusion zone, or
- Has not been seen within the zone for 15 min in the case of pinnipeds (excluding walruses) or small odontocetes, or
- Has not been seen within the zone for 30 min in the case of mysticetes or large odontocetes.

*(5) Shutdown Procedures*

The operating airgun(s) will be shut down completely if a marine mammal approaches or enters the then-applicable exclusion zone and a power down is not practical or adequate to reduce exposure to less than 190 or 180 dB re 1 μPa (rms). The operating airgun(s) will also be shut down completely if a marine mammal approaches or enters the estimated exclusion zone around the reduced source (one 70 $in^3$ airgun) that will be used during a power down.

Airgun activity will not resume until the marine mammal has cleared the exclusion zone. The animal will be considered to have cleared the exclusion zone if it is visually observed to have left the exclusion zone, or if it has not been seen within the zone for 15 min (pinnipeds and small odontocetes) or 30 min (mysticetes and large odontocetes). Ramp up procedures will be followed during resumption of full seismic operations after a shutdown of the airgun array.

In addition, a single airgun (also referred to as the ''mitigation gun'' in past IHAs) shall not be kept firing for long periods of time during darkness or other periods of poor visibility when seismic surveys are not ongoing, with the exception of turns when starting a new trackline, or short transits or maintenance with a duration of less than one hour.

Finally, if a pinniped is sighted hauled out on ice within the underwater exclusion zone (received level 190 dB re 1 μPa (rms)), it will be watched carefully by the PSOs. Even though the pinniped may not be exposed to in-air noise levels that could be considered a take, the presence of the seismic vessel could prompt the animal to slip into the water, and thus be exposed to a high intensity sound field as a result. Therefore, the airgun should be powered down or shutdown immediately if thepinniped enters the water.

Mitigation Measures for Subsistence Activities

(1) Subsistence Mitigation Measures

Since ION's proposed October—December in-ice seismic survey in the Beaufort and Chukchi Seas is unlikely to result in adverse impacts to subsistence users due to its proposed time and location, no specific mitigation measures are proposed other than those general mitigation measures discussed above.

(2) Plan of Cooperation (POC) and Conflict Avoidance Agreement (CAA)

Regulations at 50 CFR 216.104(a)(12) require IHA applicants for activities that take place in Arctic waters to provide a POC or information that identifies what measures have been taken and/or will be taken to minimize adverse effects on the availability of marine mammals for subsistence purposes.

ION has signed a Conflict Avoidance Agreement (CAA) with the Alaska Eskimo Whaling Commission (AEWC) and communities' Whaling Captains' Associations for the proposed 2012 in-ice seismic survey. The main purpose of the CAA is to provide (1) equipment and procedures for communications between subsistence participants and industry participants; (2) avoidance guidelines and other mitigation measures to be followed by the industry participants working in or transiting in the vicinity of active subsistence hunters, in areas where subsistence hunters anticipate hunting, or in areas that are in sufficient proximity to areas expected to be used for subsistence hunting that the planned activities could potentially adversely affect the subsistence bowhead whale hunt through effects on bowhead whales; and (3) measures to be taken in the event of an emergency occurring during the term of the CAA.

The CAA states that all vessels (operated by ION) shall report to the appropriate Communication Center (Com-Center) at least once every six hours commencing with a call at approximately 06:00 hours. The appropriate Com-Center shall be notified if there is any significant change in plans, such as an unannounced start-up of operations or significant deviations from announced course, and such Com-Center shall notify all whalers of such changes.

The CAA further states that each Com-Center shall have an Inupiat operator (''Com-Center operator'') on duty 24 hours per day during the 2012 subsistence bowhead whale hunt.

In addition, ION has developed a ''Plan of Cooperation'' (POC) for the 2012 seismic survey in the Beaufort and Chukchi Seas in consultation with representatives of Barrow, Nuiqsut, Kaktovik, and Wainwright and subsistence users within these communities. NMFS received the final POC on August 13, 2012. The final POC is posted on NMFS Web site at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

Mitigation Conclusions

NMFS has carefully evaluated these mitigation measures and considered a range of other measures in the context of ensuring that NMFS prescribes the means of effecting the least practicable impact on the affected marine mammal species and stocks and their habitat. Our evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS and proposed by the independent peer review panel, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

**Monitoring and Reporting Measures**

Any ITA issued under Section 101(a)(5)(D) of the MMPA is required to prescribe, where applicable, ''requirements pertaining to the monitoring and reporting of such taking.'' The MMPA implementing regulations at 50 CFR 216.104(a)(13) state that requests for ITAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area.

*(1) Protected Species Observers (PSOs)*

Vessel-based monitoring for marine mammals shall be performed by trained PSOs throughout the period of survey activities, supplemented by the officers on duty, to comply with expected provisions in the IHA. The observers shall monitor the occurrence and behavior of marine mammals near the survey vessels during all daylight periods. PSO duties include watching for and identifying marine mammals; recording their numbers, distances, and reactions to the survey operations; and documenting ''take by harassment'' as defined by NMFS.

A. Number of Observers

A sufficient number of PSOs shall be required onboard the survey vessel to meet the following criteria:

- 100% monitoring coverage during all periods of survey operations in daylight;
- Maximum of 4 consecutive hours on watch per PSO; and
- Maximum of ~12 hours of watch time per day per PSO.

An experienced field crew leader shall supervise the PSO team onboard the survey vessels. ION's proposed survey will occur in October–December when the number of hours of daylight is significantly reduced, and thus will require fewer PSOs to be aboard the survey vessel than required for surveys conducted during the open water season with nearly 24 hrs of daylight. PSOs aboard the icebreaker operating 0.5–1 km (0.31–0.62 mi) ahead of the survey vessel will provide early detection of marine mammals along the survey track. Three PSOs will be stationed aboard the icebreaker *Polar Prince* to take advantage of this forward operating platform and provide advance notice of marine mammals to the PSO on the survey vessel. Three PSOs will be stationed aboard the survey vessel *Geo Arctic* to monitor the exclusion zones centered on the airguns and to request mitigation actions when necessary.

B. Observer Qualifications and Training

Crew leaders and most other biologists serving as observers shall be individuals with recent experience as observers during one or more seismic monitoring projects in Alaska, the Canadian Beaufort Sea, or other offshore areas.

Biologist-observers shall have previous marine mammal observation experience, and field crew leaders will be highly experienced with previous vessel-based marine mammal monitoring and mitigation projects. Résumés for all individuals shall be provided to NMFS for review and acceptance of their qualifications. Inupiat observers will be experienced in the region, familiar with the marine mammals of the area, and complete an approved observer training course designed to familiarize individuals with monitoring and data collection procedures. A PSO handbook, adapted for the specifics of the planned survey program, will be prepared and distributed beforehand to all PSOs.

Biologist-observers and Inupiat observers shall also complete a two or three-day training and refresher session together on marine mammal monitoring, to be conducted shortly before the anticipated start of the seismic survey. When possible, experienced observers shall be paired with inexperienced observers. The training session(s) shall be conducted by qualified marine

mammalogists with extensive crew-leader experience during previous vessel-based seismic monitoring programs.

Primary objectives of the training include:

- Review of the marine mammal monitoring plan for this project, including any amendments specified by NMFS in the IHA;
- Review of marine mammal sighting, identification, and distance estimation methods using visual aids;
- Review of operation of specialized equipment (reticle binoculars, night vision devices (NVDs), and GPS system);
- Review of, and classroom practice with, data recording and data entry systems, including procedures for recording data on marine mammal sightings, monitoring operations, environmental conditions, and entry error control. These procedures will be implemented through use of a customized computer database and laptop computers;
- Review of the specific tasks of the Inupiat Communicator; and
- Exam to ensure all observers can correctly identify marine mammals and record sightings.

C. PSO Handbook

A PSOs' Handbook will be prepared for ION's monitoring program. Handbooks contain maps, illustrations, and photographs, as well as text, and are intended to provide guidance and reference information to trained individuals who will participate as PSOs. The following topics will be covered in the PSO Handbook for the ION project:

- Summary overview descriptions of the project, marine mammals and underwater noise, the marine mammal monitoring program (vessel-based, aerial, acoustic measurements), the NMFS' IHA (if issued) and other regulations/permits/agencies, the Marine Mammal Protection Act;
- Monitoring and mitigation objectives and procedures, initial exclusion zones;
- Responsibilities of staff and crew regarding the marine mammal monitoring plan;
- Instructions for ship crew regarding the marine mammal monitoring plan;
- Data recording procedures: codes and coding instructions, common coding mistakes, electronic database; navigational, marine physical, field data sheet;
- List of species that might be encountered: identification cues, natural history information;
- Use of specialized field equipment (reticle binoculars, NVDs, forward-looking infrared (FLIR) system);
- Reticle binocular distance scale;
- Table of wind speed, Beaufort wind force, and sea state codes;
- Data storage and backup procedures;
- Safety precautions while onboard;
- Crew and/or personnel discord; conflict resolution among PSOs and crew;
- Drug and alcohol policy and testing;
- Scheduling of cruises and watches;
- Communication availability and procedures;
- List of field gear that will be provided;
- Suggested list of personal items to pack;
- Suggested literature, or literature cited; and
- Copies of the NMFS IHA and USFWS LOA.

*(2) Monitoring Methodology*

A. General Monitoring Methodology

The observer(s) will watch for marine mammals from the best available vantage point on the survey vessels, typically the bridge. The observer(s) will scan systematically with the unaided eye and $7 \times 50$ reticle binoculars, supplemented during good visibility conditions with $20 \times 60$ image-stabilized Zeiss Binoculars or Fujinon $25 \times 150$ ''Big-eye'' binoculars, a thermal imaging (FLIR) camera, and night-vision equipment when needed (see below). Personnel on the bridge shall assist the marine mammal observer(s) in watching for marine mammals.

Information to be recorded by observers shall include the same types of information that were recorded during recent monitoring programs associated with Industry activity in the Arctic (*e.g.,* Ireland *et al.,* 2009). When a mammal sighting is made, the following information about the sighting shall be recorded:

- Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if determinable), bearing and distance from observer, apparent reaction to activities (*e.g.,* none, avoidance, approach, etc.), closest point of approach, and pace;
- Additional details for any unidentified marine mammal or unknown observed;
- Time, location, speed, and activity of the vessel, sea state, ice cover, visibility, and sun glare; and
- The positions of other vessel(s) in the vicinity of the observer location.

The ship's position, speed of the vessel, water depth, sea state, ice cover, visibility, airgun status (ramp up, mitigation gun, or full array), and sun glare shall also be recorded at the start and end of each observation watch, every 30 minutes during a watch, and whenever there is a change in any of those variables.

Distances to nearby marine mammals will be estimated with binoculars containing a reticle to measure the vertical angle of the line of sight to the animal relative to the horizon. Observers may use a laser rangefinder to test and improve their abilities for visually estimating distances to objects in the water. However, previous experience has shown that a Class 1 eye-safe device was not able to measure distances to seals more than about 70 m (230 ft) away. The device was very useful in improving the distance estimation abilities of the observers at distances up to about 600 m (1,968 ft), the maximum range at which the device could measure distances to highly reflective objects such as other vessels. Humans observing objects of more-or-less known size via a standard observation protocol, in this case from a standard height above water, quickly become able to estimate distances within about ±20% when given immediate feedback about actual distances during training.

When a marine mammal is seen within the exclusion zone applicable to that species, the geophysical crew shall be notified immediately so that mitigation measures required by the IHA (if issued) can be implemented. It is expected that the airgun array will be shut down within several seconds, often before the next shot would be fired, and almost always before more than one additional shot is fired. The protected species observer shall then maintain a watch to determine when the mammal(s) appear to be outside the exclusion zone such that airgun operations can resume.

ION will provide or arrange for the following specialized field equipment for use by the onboard PSOs: $7 \times 50$ reticle binoculars, Big-eye binoculars or high power image-stabilized binoculars, GPS unit, laptop computers, night vision binoculars, digital still and possibly digital video cameras in addition to the above mentioned FLIR camera system (see below).

B. Monitoring at Night and in Poor Visibility

Night-vision equipment (Generation 3 binocular image intensifiers, or equivalent units) will be available for use when/if needed. Past experience with NVDs in the Beaufort Sea and elsewhere has indicated that NVDs are

not nearly as effective as visual observation during daylight hours (*e.g.,* Harris *et al.,* 1997, 1998; Moulton and Lawson, 2002). A FLIR camera system mounted on a high point near the bow of the icebreaker will also be available to assist with detecting the presence of seals and polar bears on ice and, perhaps also in the water, ahead of the airgun array. The FLIR system detects thermal contrasts and its ability to sense these differences is not dependent on daylight.

Additional details regarding the monitoring protocol during NVD and FLIR system use has been developed in order to collect data in a standardized manner such that the effectiveness of the two devices can be analyzed and compared.

B. (1) FLIR and NVD Monitoring

The infrared system is able to detect differences in the surface temperature of objects making it potentially useful during both daylight and darkness periods. NVDs, or light intensifiers, amplify low levels of ambient light from moonlight or sky glow light in order to provide an image to the user. Both technologies have the potential to improve monitoring and mitigation efforts in darkness. However, they remain relatively unproven in regards to their effectiveness under the conditions and it the manner of use planned for this survey. The protocols for FLIR and NVD use and data collection described below are intended to collect the necessary data in order to evaluate the ability of these technologies to aid in the detection of marine mammals from a vessel.

- All PSOs shall monitor for marine mammals according to the procedures outlined in the PSO handbook.
- One PSO shall be responsible for monitoring the FLIR system (IR–PSO) during most darkness and twilight periods. The on-duty IR–PSO shall monitor the IR display and alternate between the two search methods described below. If a second PSO is on watch, they shall scan the same area as the FLIR using the NVDs for comparison. The two PSOs shall coordinate what area is currently being scanned.
- The IR–PSO should rotate between the search methods (see below) every 30 minutes in the following routine:
  - 00:00–00:30: Method I
  - 00:30–01:00: Method II, Port side
  - 01:00–01:30: Method I
  - 01:30–02:00: Method II, Starboard side

B. (2) FLIR Search Methods

The FLIR system consists of a camera that will be mounted on high point in front of the vessel. The camera is connected to a joystick control unit (JCU) and a display monitor that will be located on the bridge of the vessel. The IR–PSO shall manually control the view that is displayed by adjusting the pan (360° continuous pan) and tilt (+/− 90° tilt) settings using the JCU. The FLIR manufacturer has indicated that they have tested the FLIR unit (model M626L) to − 25 °C (− 13 °F), but expect that it will operate at colder temperatures. During the time of the proposed seismic survey, the average minimum temperatures at Prudhoe Bay in October and November are +10 °F and − 10 °F, respectively. Colder temperatures are certainly likely at times, but overall the temperatures should generally be within the operational range of the equipment.

As noted above, two different search methods shall be implemented for FLIR monitoring and results from the two will be compared. The first method involves a back-and-forth panning motion and the second utilizes the FLIR unit focused on a fixed swath ahead and to one side of the vessel track:

Method I: Set the horizontal tilt of the camera to an angle that provides an adequate view out in front of the vessel and also provides good resolution to potential targets (this will likely mean that the lower portion of the view displayed on the monitor is of an area relatively close to the vessel (<100 m [328 ft]) while the middle and upper portions of the view are at greater distances (500–2,000 m [1,640–6,562 ft]). Pan back and forth across the forward 180° of the vessels heading at a slow-scanning rate of approximately 1–2°/sec, as one would with binoculars. This method is intended to replicate the type of observations conducted using binoculars and cover a relatively wider swatch compared to Method II. It should produce sightings data that can be analyzed using line-transect methodologies to estimate marine mammal densities in the survey area.

Method II: Set the horizontal tilt of the camera to an angle that provides an adequate view out in front of the vessel (similar or identical to the above), and then set the camera at a fixed position that creates a swath of view off the bow and to one side of the vessel (see Figure 1 of ION's monitoring plan). This method essentially establishes a fixed-strip width that is intended to produce sightings data that can be analyzed using strip-transect methodologies to estimate marine mammal densities.

B. (3) NVD Methods

The NVDs are goggles worn by the observer and are to be used in a similar fashion as binoculars. When observing in conjunction with the FLIR system, the objective will be to replicate the monitoring methodology being employed by the FLIR system. Method I requires a full 180° scan (or as large of a range as possible from the observer's location) with the NVDs, and Method II requires a focused scan of the ~60° swath being monitored by the FLIR system.

C. Field Data-Recording, Verification, Handling, and Security

The observers shall record their observations onto datasheets or directly into handheld computers. During periods between watches and periods when operations are suspended, those data shall be entered into a laptop computer running a custom computer database. The accuracy of the data entry shall be verified in the field by computerized validity checks as the data are entered, and by subsequent manual checking of the database printouts. These procedures will allow initial summaries of data to be prepared during and shortly after the field season, and shall facilitate transfer of the data to statistical, graphical or other programs for further processing. Quality control of the data will be facilitated by (1) the start-of-season training session, (2) subsequent supervision by the onboard field crew leader, and (3) ongoing data checks during the field season.

The data shall be backed up regularly onto CDs and/or USB disks, and stored at separate locations on the vessel. If possible, data sheets will be photocopied daily during the field season. Data shall be secured further by having data sheets and backup data CDs carried back to the Anchorage office during crew rotations.

In addition to routine PSO duties, observers shall use Traditional Knowledge and Natural History datasheets to record observations that are not captured by the sighting or effort data. Copies of these records will be available to observers for reference if they wish to prepare a statement about their observations. If prepared, this statement would be included in the 90-day and final reports documenting the monitoring work.

D. Effort and Sightings Data Collection Methods

Observation effort data shall be designed to capture the amount of PSO effort itself, environmental conditions

that impact an observer's ability to detect marine mammals, and the equipment and method of monitoring being employed. These data shall be collected every 30 minutes or when an effort variable changes (*e.g.,* change in the equipment or method being used to monitor, on/off-signing PSO, etc.), and shall be linked to sightings data. Effort and sightings data forms are the same forms used during other marine mammal monitoring in the open water season, but additional fields have been included to capture information specific to monitoring in darkness and to more accurately describe the observation conditions. The additional fields include the following.

- Observation Method: FLIR, NVD, spotlight, eye (naked eye or regular binoculars), or multiple methods. This data is collected every 30 minutes with the Observer Effort form and with every sighting.
- Cloud Cover: Percentage. This can impact lighting conditions and reflectivity.
- Precipitation Type: Fog, rain, snow, or none.
- Precipitation Reduced Visibility: Confirms whether or not visibility is reduced due to precipitation. This will be compared to the visibility distance (# km) to determine when visibility is reduced due to lighting conditions versus precipitation.
- Daylight Amount: Daylight, twilight, dark. The addition of the twilight field has been included to record observation periods where the sun has set and observation distances may be reduced due to lack of light.
- Light Intensity: Recorded in footcandles (fc) using an incident light meter. This procedure was added to quantify the available light during twilight and darkness periods and may allow for light-intensity bins to be used during analysis.

Analysis of the sightings data shall include comparisons of nighttime (FLIR and NVD) sighting rates to daylight sighting rates. FLIR and NVD analysis will be independent of each other and according to method (I or II) used. Comparison of NVD and FLIR sighting rates will allow for a comparison of marine mammal detection ability of the two methods. However, results and analyses could be limited if relatively few sightings are recorded during the survey.

*(3) Acoustic Monitoring Plan*

A. Sound Source Measurements

As described above, received sound levels were modeled for the full 26 airgun, 4,450 $in^3$ array in relation to distance and direction from the source (Zykov *et al.,* 2010). These modeled distances will be used as temporary exclusion zones until measurements of the airgun sound source are conducted. The measurements shall be made at the beginning of the field season, and the measured radii shall be used for the remainder of the survey period. An acoustics contractor with experience in the Arctic conducting similar measurements in recent years will use their equipment to record and analyze the underwater sounds and write the summary reports as described below.

The objectives of the sound source measurements planned for 2012 in the Beaufort Sea will be (1) to measure the distances in potentially ice covered waters in the broadside and endfire directions at which broadband received levels reach 190, 180, 170, 160, and 120 dB re 1 μPa (rms) for the energy source array combinations that may be used during the survey activities, and (2) measure the sounds produced by the icebreaker and seismic vessel as they travel through sea ice. Conducting the sound source and vessel measurements in ice-covered waters using bottom founded recorders creates a risk of not being able to retrieve the recorders and analyze the data until the following year. If the acoustic recorders are not deployed or are unable to be recovered because of too much sea ice, ION shall use measurements of the same airgun source taken in the Canadian Beaufort Sea in 2010, along with sound velocity measurements taken in the Alaskan Beaufort Sea at the start of the 2012 survey to update the propagation model and estimate new exclusion zones. These modeled results shall then be used for mitigation purposes during the remainder of the survey.

The airgun configurations measured shall include at least the full 26 airgun array and the single 70 $in^3$ mitigation airgun that will be used during power downs. The measurements of airgun array sounds will be made by an acoustics contractor at the beginning of the survey and the distances to the various radii will be reported as soon as possible after recovery of the equipment. The primary area of concern will be the 190 and 180 dB re 1 μPa (rms) exclusion zones for pinnipeds and cetaceans, respectively, and the 160 dB re 1 μPa Level B harassment (for impulsive sources) radii. In addition to reporting the radii of specific regulatory concern, nominal distances to other sound isopleths down to 120 dB re 1 μPa (rms) shall be reported in increments of 10 dB.

Data shall be previewed in the field immediately after download from the hydrophone instruments. An initial sound source analysis shall be supplied to NMFS and the airgun operators within 120 hours of completion of the measurements. The report shall indicate the distances to sound levels based on fits of empirical transmission loss formulae to data in the endfire and broadside directions. A more detailed report will be issued to NMFS as part of the 90-day report following completion of the acoustic program.

B. Seismic Hydrophone Streamer Recordings of Vessel Sounds

Although some measurements of icebreaking sounds have previously been reported, acoustic data on vessels traveling through relatively light ice conditions, as will be the case during the proposed survey, are not available. In order to gather additional information on the sounds produced by this type of icebreaking, ION proposes to use the hydrophones in the seismic streamer on a routine basis throughout the survey. Once every hour the airguns would not be fired at 2 consecutive intervals (one seismic pulse interval is typically ~18 seconds, so there will be ~54 seconds between seismic pulses at this time) and instead a period of background sounds would be recorded, including the sounds generated by the vessels. Over the course of the survey this should generate as many as 750 records of vessel sounds traveling through various ice conditions (from open water to 100% cover juvenile first year ice or lighter multi-year ice). The acoustic data during each sampling period from each hydrophone along the 9 km (5.6 mi) streamer would be analyzed and used to estimate the propagation loss of the vessel sounds. The acoustic data received from the hydrophone streamer would be recorded at an effective bandwidth of 0–400 Hz. In order to estimate sound energy over a larger range of frequencies (broadband), results from previous measurements of icebreakers could be generalized and added to the data collected during this project.

C. Over-Winter Acoustic Recorders

In order to collect additional data on the propagation of sounds produced by icebreaking and seismic airguns in ice-covered waters, as well as on vocalizing marine mammals, ION intends to collaborate with other Industry operators to deploy acoustic recorders in the Alaskan Beaufort Sea in fall 2012, to be retrieved during the 2013 open-water season.

During winter 2011–2012, AURAL acoustic recorders were deployed at or near each of the 5 acoustic array sites

established by Shell for monitoring the fall bowhead whale migration through the Beaufort Sea, as well as one site near the shelf break in the central Alaskan Beaufort Sea. These recorders will be retrieved in July 2012, when Shell deploys Directional Autonomous Seafloor Acoustic Recorders (DASARs) at 5 array locations. When the DASAR arrays are retrieved in early October, ION intends to coordinate with Shell to re-deploy the 6 AURAL recorders to the same locations used during the 2011–2012 winter. Redeploying the recorders in the same locations will provide comparable data from a year with little to no offshore industrial activity (2011) to a year with more offshore industrial activity (2012). Acoustic data from the over-winter recorders will be analyzed to address the following objectives:

- Characterize the sounds and propagation distances produced by ION's source vessel, icebreaker, and airguns on and to the edge of the U.S. Beaufort Sea shelf,
- Characterize ambient sounds and marine mammal calls during October and November to assess the relative effect of ION's seismic survey on the background conditions, and to characterize marine mammal calling behavior, and
- Characterize ambient sound and enumerate marine mammal calls through acoustic sampling of the environment form December 2012 through July 2013, when little or no anthropogenic sounds are expected.

Monitoring Plan Peer Review

The MMPA requires that monitoring plans be independently peer reviewed ''where the proposed activity may affect the availability of a species or stock for taking for subsistence uses'' (16 U.S.C. 1371(a)(5)(D)(ii)(III)). Regarding this requirement, NMFS' implementing regulations state, ''Upon receipt of a complete monitoring plan, and at its discretion, [NMFS] will either submit the plan to members of a peer review panel for review or within 60 days of receipt of the proposed monitoring plan, schedule a workshop to review the plan'' (50 CFR 216.108(d)).

NMFS convened independent peer review panels to review ION's mitigation and monitoring plan in its IHA applications submitted in 2010 and 2011 for taking marine mammals incidental to the proposed seismic survey in the Beaufort and Chukchi Seas, during 2010 and 2011. The panels met on March 25 and 26, 2010, and on March 9, 2011, and provided their final report to NMFS on April 22, 2010 and on April 27, 2011, respectively. The full panel reports can be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

ION's proposed 2012 action is essentially the same as described in its 2010 and 2011 IHA applications. NMFS worked with ION in 2010 and 2011 to address the peer review panels' recommendations on its 2010 and 2011 4MPs. Since ION's 2012 4MP addressed all issues raised during the 2010 and 2011 peer reviews and incorporated all of NMFS' requested changes, NMFS decided it was not necessary to conduct a peer-review of ION's 2012 4MP. All actions based on the 2010 and 2011 panel review are discussed in the **Federal Register** notice for the proposed IHA (77 FR 49922; August 17, 2012), and is not repeated here.

Reporting Measures

(1) SSV Report

A report on the preliminary results of the acoustic verification measurements, including as a minimum the measured 190-, 180-, 160-, and 120-dB re 1 μPa (rms) radii of the airgun arrays shall be submitted within 120 hr after collection and analysis of those measurements at the start of the field season. This report shall specify the distances of the exclusion zones that were adopted for the marine survey activities.

(2) Field Reports

Throughout the survey program, the observers shall prepare a report each day or at such other intervals as the IHA may specify (if issued), or ION may require summarizing the recent results of the monitoring program. The field reports shall summarize the species and numbers of marine mammals sighted. These reports shall be provided to NMFS and to the survey operators.

(3) Technical Reports

The results of the vessel-based monitoring, including estimates of ''take by harassment'', shall be presented in the 90-day and final technical reports. Reporting shall address the requirements established by NMFS in the IHA. The technical report shall include:

(a) Summaries of monitoring effort: total hours, total distances, and distribution of marine mammals through the study period accounting for sea state and other factors affecting visibility and detectability of marine mammals;

(b) Methods, results, and interpretation pertaining to all acoustic characterization work and vessel-based monitoring;

(c) Analyses of the effects of various factors influencing detectability of marine mammals including sea state, number of observers, and fog/glare;

(d) Species composition, occurrence, and distribution of marine mammal sightings including date, water depth, numbers, age/size/gender categories, group sizes, and ice cover; and

(e) Analyses of the effects of survey operations:

- Sighting rates of marine mammals during periods with and without airgun activities (and other variables that could affect detectability);
- Initial sighting distances versus airgun activity state;
- Closest point of approach versus airgun activity state;
- Observed behaviors and types of movements versus airgun activity state;
- Numbers of sightings/individuals seen versus airgun activity state;
- Distribution around the survey vessel versus airgun activity state; and
- Estimates of ''take by harassment''.

(4) Notification of Injured or Dead Marine Mammals

In addition to the reporting measures proposed by ION, NMFS will require that ION notify NMFS' Office of Protected Resources and NMFS' Stranding Network of sighting an injured or dead marine mammal in the vicinity of marine survey operations. Depending on the circumstance of the incident, ION shall take one of the following reporting protocols when an injured or dead marine mammal is discovered in the vicinity of the action area.

(a) In the unanticipated event that survey operations clearly cause the take of a marine mammal in a manner prohibited by this Authorization, such as an injury, serious injury or mortality (*e.g.,* ship-strike, gear interaction, and/or entanglement), ION shall immediately cease survey operations and immediately report the incident to the Supervisor of Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the following information:

(i) Time, date, and location (latitude/longitude) of the incident;

(ii) The name and type of vessel involved;

(iii) The vessel's speed during and leading up to the incident;

(iv) Description of the incident;

(v) Status of all sound source use in the 24 hours preceding the incident;

(vi) Water depth;

(vii) Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, and visibility);

(viii) Description of marine mammal observations in the 24 hours preceding the incident;

(ix) Species identification or description of the animal(s) involved;

(x) The fate of the animal(s); and

(xi) Photographs or video footage of the animal (if equipment is available).

Activities shall not resume until NMFS is able to review the circumstances of the prohibited take. NMFS shall work with ION to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. ION may not resume their activities until notified by NMFS via letter, email, or telephone.

(b) In the event that ION discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.,* in less than a moderate state of decomposition as described in the next paragraph), ION will immediately report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators. The report must include the same information identified above. Activities may continue while NMFS reviews the circumstances of the incident. NMFS will work with ION to determine whether modifications in the activities are appropriate.

(c) In the event that ION discovers an injured or dead marine mammal, and the lead PSO determines that the injury or death is not associated with or related to the activities authorized in the IHA (if issued) (*e.g.,* previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), ION shall report the incident to the Supervisor of the Incidental Take Program, Permits and Conservation Division, Office of Protected Resources, NMFS, and the Alaska Regional Stranding Coordinators, within 24 hours of the discovery. ION shall provide photographs or video footage (if available) or other documentation of the stranded animal sighting to NMFS and the Marine Mammal Stranding Network. ION can continue its operations under such a case.

**Estimated Take by Incidental Harassment**

Except with respect to certain activities not pertinent here (military readiness activities), the MMPA defines ''harassment'' as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment]. For the most part, only take by Level B behavioral harassment is anticipated as a result of the proposed marine seismic survey. However, NMFS has determined that Level A takes of a few individuals of marine mammals could occur if the animals are unable to bedetected within the exclusion zones for a prolonged period of time. Although NMFS believes this is not likely, NMFS is proposing to authorize limited takes from Level A harassment. Anticipated impacts to marine mammals are associated with noise propagation from the seismic airgun(s) and the icebreaking used during the seismic survey.

The full suite of potential impacts to marine mammals was described in detail in the ''Potential Effects of the Specified Activity on Marine Mammals'' section found earlier in this document. The potential effects of sound from the proposed marine survey programs might include one or more of the following: tolerance; masking of natural sounds; behavioral disturbance; non-auditory physical effects; and, at least in theory, temporary or permanent hearing impairment (Richardson *et al.* 1995). As discussed earlier in this document, the most common impact will likely be from behavioral disturbance, including avoidance of the ensonified area or changes in speed, direction, and/or diving profile of the animal.

NMFS uses the 160 dB and 120 dB re 1 μPa (rms) isopleths to indicate the onset of Level B harassment by seismic airgun impulses and by icebreaking noises, respectively. ION provided calculations for the 160-dB and 120-dB isopleths produced by these active acoustic sources and then used those isopleths to estimate takes by harassment. NMFS used the calculations to make preliminary findings under the MMPA. ION provided a full description of the methodology used to estimate takes by harassment in its IHA application (see **ADDRESSES**), which is also described in the following sections.

ION has requested an authorization to take ten marine mammal species by Level B harassment. These ten marine mammal species are: beluga whale, harbor porpoise, bowhead whale, gray whale, humpback whale, minke whale, bearded seal, ringed seal, spotted seal, and ribbon seal. However, NMFS does not anticipate that humpback whales are likely to be encountered during the season of ION's icebreaking seismic survey. Therefore, NMFS determined that only nine of the species could be affected and potentially taken by harassment. In addition, although unlikely, NMFS determined that Level A takes of beluga whales, bowhead whales, and ringed seals could also occur, as the proposed monitoring and mitigation measures may not be 100% effective due to ice coverage and extended periods of darkness. Regardless, our analysis has led us to conclude that marine mammals will likely avoid the sound source thereby minimizing the probability of exposure at a level that would equate to Level A harassment.

*Basis for Estimating ''Take by Harassment''*

As stated previously, it is current NMFS practice to estimate take by Level A harassment for received levels above 180 dB re 1 μPa (rms) for cetaceans and 190 dB re 1 μPa (rms) for pinnipeds, and take by Level B harassment for all marine mammals under NMFS jurisdiction by impulse sounds at a received level above 160 dB re 1 μPa (rms) and by non-impulse sounds at a received level above 120 dB re 1 μPa (rms). However, not all animals are equally affected by the same received noise levels and, as described earlier, in most cases marine mammals are not likely to be taken by Level A harassment (injury) when exposed to received levels higher than 180 dB for a brief period of time.

For behavioral harassment, marine mammals will likely not show strong reactions (and in some cases any reaction) until sounds are much stronger than 160 or 120 dB (for impulse and continuous sounds, respectively). Southall *et al.* (2007) provide a severity scale for ranking observed behavioral responses of both free-ranging marine mammals and laboratory subjects to various types of anthropogenic sound (see Table 4 in Southall *et al.* (2007)). Tables 7, 9, and 11 in Southall *et al.* (2007) outline the numbers of low-frequency cetaceans, mid-frequency cetaceans, and pinnipeds in water, respectively, reported as having behavioral responses to multi-pulses in 10-dB received level increments. These tables illustrate that the more severe reactions did not occur until sounds were much higher than 160 dB re 1 μPa (rms).

Anticipated takes would include ''takes by harassment'' involving temporary changes in behavior (Level B harassment) and TTS (Level B harassment). NMFS does not consider injury (Level A harassment) to be likely, however, due to the limited

effectiveness of monitoring and mitigation measures for animals undetected under the ice and/or during the long periods of darkness, a small amount of Level A harassment takes are also proposed to be authorized. The sections below describe methods used to estimate ''take by harassment'' and present estimates of the numbers of marine mammals that might be affected during the proposed seismic survey in the U.S. Beaufort Sea. The estimates are based on data obtained during marine mammal surveys in the Beaufort Sea and on estimates of the sizes of the areas where effects could potentially occur. In some cases, these estimates were made from data collected from regions and habitats that differed from the proposed project area. Adjustments to reported population or density estimates were made on a case by case basis to account for differences between the source data and the available information on the distribution and abundance of the species in the project area. This section provides estimates of the number of potential ''exposures'' to impulsive sound levels ≥160 dB re 1 μPa (rms), non-pulse sound levels ≥120 dB (rms) from icebreaking, and also includes estimates of exposures to ≥180 dB (rms) for cetaceans and ≥190 dB (rms) for seals.

Although several systematic surveys of marine mammals have been conducted in the southern Beaufort Sea during spring and summer, few data (systematic or otherwise) are available on the distribution and numbers of marine mammals during the early winter period of this survey, particularly in the northern Beaufort Sea. The main sources of distributional and numerical data used in deriving the estimates are described in the next subsection. There is some uncertainty about how representative those data are and the assumptions used below to estimate the potential ''take by harassment''. However, the approach used here is accepted by NMFS as the best available at this time. That is, we calculated the estimated take by multiplying the ensonified area by the density of marine mammals. The following estimates are based on a consideration of the number of marine mammals that might be disturbed appreciably by ~7,250 line kilometers (4,505 line miles) of seismic surveys across the Beaufort Sea and, to a lesser extent, the northern Chukchi Sea.

*Marine Mammal Density Estimates*

This section describes the estimated densities of marine mammals that may occur in the survey area. The area of water that may be ensonified to various levels is described below. Although a marine mammal may be exposed to icebreaking sounds ≥120 dB (rms) or airgun sounds ≥160 dB (rms), this does not mean that every individual exposed at these levels will *actually* exhibit a disruption of behavioral patterns in response to the sound source. Not all animals react to sounds at this low level, and many will not show strong reactions (and in some cases any reaction) until sounds are much stronger. There are several variables that determine whether or not an individual animal will exhibit a response to the sound, such as the age of the animal, previous exposure to this type of anthropogenic sound, habituation, etc.

The survey has been designed to minimize interactions with marine mammals by planning to conduct the work at times and in areas where the relative density of marine mammals is expected to be quite low. The survey will begin in offshore waters (>1,000 m [3,281 ft] deep) of the eastern U.S. Beaufort Sea (east survey area) in mid-October. Weather and ice permitting, the waters <1,000 m (3,281 ft) deep will not be surveyed until mid-October and thereafter, in order to avoid migrating bowhead whales. The western U.S. Beaufort Sea and north-eastern Chukchi Sea (west survey area) is not expected to be surveyed until late October through December.

Separate densities were calculated for habitats specific to cetaceans and pinnipeds. For cetaceans, densities were estimated for areas of water depth <200 m (656 ft), 200–1,000 m (656–3,281 ft), and >1,000 m (3,281 ft), which approximately correspond to the continental shelf, the continental slope, and the abyssal plain, respectively. Separate densities of both cetacean and pinnipeds were also estimated for the east and west survey areas within each water depth category. However, pinniped densities in the west survey area and <200 m (656 ft) water depth category were further sub-divided into <35 m (115 ft) and 35–200 m (115–656 ft) depth categories. This was done because the west survey area is not expected to be surveyed until November–December, and based on historic sea ice data (NOAA National Ice Center, available online at *www.natice.noaa.gov*), it is expected that substantial amounts of sea ice, including shorefast ice, will be present in the west survey area at that time. Past studies have found that seal densities in ice-covered areas of the Beaufort Sea are different where water depths are <35 m (115 ft) and >35 m (Moulton *et al.,* 2002; Frost *et al.,* 2004); therefore, densities were calculated separately for these water depths. The north-eastern Chukchi Sea is composed of mostly continental shelf waters between 30 m (98 ft) and 200 m (656 ft) in depth, so only a single density estimate for each marine mammal species was used in that area. Since most marine mammals will be continuing their southerly migration in November and early December, the same density estimates for continental shelf waters in the west survey area of the Beaufort Sea were used in the Chukchi Sea. When the seismic survey area is on the edge of the range of a species at this time of year, it is assumed that the average density along the seismic trackline will be 10% (0.10x) the density determined from available survey data within the main range. Density estimates for the Chukchi Sea during the period of November–December were taken from the west survey density estimates at the appropriate depth.

Detectability bias, quantified in part by f(0), is associated with diminishing sightability with increasing lateral distance from the survey trackline. Availability bias, g(0), refers to the fact that there is <100% probability of sighting an animal that is present along the survey trackline. Some sources used below took account of one or both of these correction factors in reporting densities. When these factors had not been accounted for, the best available correction factors from similar studies and/or species were applied to reported results. Details regarding the application of correction factors are provided below for each species.

**(1) Cetaceans**

*Beluga Whales:* Beluga density estimates were calculated based on aerial survey data collected in October in the eastern Alaskan Beaufort Sea by the NMML (as part of the Bowhead Whale Aerial Survey Project (BWASP) program funded by BOEM) in 2007–2010. They reported 31 sightings of 66 individual whales during 1,597 km (992 mi) of on-transect effort over waters 200–2,000 m (656–6,562 ft) deep. An f(0) value of 2.326 was applied and it was calculated using beluga whale sightings data collected in the Canadian Beaufort Sea (Innes *et al.* 2002). A g(0) value of 0.419 was used that represents a combination of ga(0) = 0.55 (Innes *et al.,* 2002) and gd(0) = 0.762 (Harwood *et al.,* 1996). The resulting density estimate (0.1169 individuals/km$^2$; Table 2 in this document) was applied to areas of 200–1,000 m (656 –3,281 ft). There were 3 sightings of 4 individual beluga whales during 7,482 km (4,649 mi) of on-transect effort over waters 0–200 m (0–656 ft) deep during this same time

period. Using the same f(0) and g(0) values from above, the resulting density estimate for continental shelf waters (0–200 m deep) is 0.0015 individuals/km² (Table 2 in this document). The density estimate for waters >1000 m (3,281 ft) deep was estimated as 40% of the 200–1,000 m (656–3,281 ft) density based on the relative number of sightings in the two water depth categories. For all water depth and survey area categories, the maximum beluga density estimates represent the mean estimates multiplied by four to allow for chance encounters with unexpected large groups of animals or overall higher densities than expected.

Beluga density estimates for the west survey area, which is planned to be surveyed beginning in November, represent the east survey area estimates multiplied by 0.1 because the Beaufort Sea and north-eastern Chukchi Sea is believed to be at the edge of the species' range in November–December. Belugas typically migrate into the Bering Sea for the winter (Allen and Angliss, 2011) and are not expected to be present in the study area in high numbers in November–December. Satellite tagging data support this and indicate belugas migrate out of the Beaufort Sea in the October–November period (Suydam *et al.,* 2005).

*Bowhead Whales:* Bowhead whale density estimates were calculated based on aerial survey data collected in the Beaufort Sea as part of the BWASP program funded by BOEM. The average density estimate was based on surveys in October 2007–2010 and the maximum density estimate was based on surveys conducted in October 1997–2004. The earlier data were used to calculate the maximum estimate because they include some years of unusually high numbers of bowhead sightings in the western Alaskan Beaufort Sea at that time of year. The 2007–2010 data included 25 on-transect sightings collected during 7,482 km (4,649 mi) of effort over waters 0–200 m (0–656 ft) deep in the eastern Alaskan Beaufort Sea. The 1997–2004 data included 147 on-transect sightings of 472 individual whales collected during 20,340 km (12,639 mi) of effort over waters 0–200 m (0–656 ft) deep in the eastern Alaskan Beaufort Sea. An f(0) correction factor of 2.33 used in the density calculation was the result of a weighted average of the f(0) values applied to each of the flights (Richardson and Thomson, 2002). The multiplication of ga(0) = 0.144 and gd(0) = 0.505 correction factors reported in Richardson and Thomson (2002) gave the g(0) value of 0.0727 used in the density calculation. The resulting density estimates (0.0942 whales/km² and 0.3719 whales/km²) represent the average and maximum densities, respectively for October for areas of <200 m (656 ft) water depth, and are referred to below as the reference density for bowhead whales.

Because bowhead whale density is typically higher in continental shelf waters of the Beaufort Sea in early October, the survey has been planned to start in the eastern U.S. Beaufort Sea in waters deeper than 1,000 m (3,281 ft; ice conditions permitting), where bowhead density is expected to be much lower. Survey activity in shallower waters will proceed from east to west starting later in October as bowhead whales migrate west out of the Beaufort Sea. The nearshore lines in the east survey area will be surveyed during late October. Bowhead density in the east survey area in waters <200 m (656 ft) deep was estimated by taking ten percent of the reference density above (Table 2 in this document). This adjustment was based on data from Miller *et al.* (2002) that showed a ~90% decrease in bowhead whale abundance in the eastern Alaskan Beaufort Sea from early to late October.

Bowhead whale densities in intermediate (200–1,000 m [656–3,281 ft]) and deep (>1,000 m [3,281 ft]) water depths in the east survey area are expected to be quite low. Ninety-seven percent of sightings recorded by MMS aerial surveys 1997–2004 occurred in areas of water depth <200 m (656 ft) (Treacy, 1998, 2000, 2002a, 2000b; Monnett and Treacy, 2005). Therefore, density estimates for areas of water depth 200–1,000 m (656–3,281 ft) were estimated to be ~3% of the values for areas with depth <200 m (656 ft). This is further supported by Mate *et al.* (2000), who found that 87% of locations from satellite-tagged bowhead whales occurred in areas of water depth <100 m (328 ft). In areas with water depth >1,000 m (3,281 ft), ~4,225 km (2,625 mi) of aerial survey effort occurred during October 1997–2004; however, no bowhead sightings were recorded. The effort occurred over eight years, so it is unlikely that this result would have been influenced by ice cover or another single environmental variable that might have affected whale distribution in a given year. Therefore, a minimal density estimate (0.0001 whales/km²) was used for areas with water depth >1,000 m (3,281 ft).

Several sources were used to estimate bowhead whale density in the west survey area, including the north-eastern Chukchi Sea, which is expected to be surveyed beginning in late October or early November. Mate *et al.* (2000) found that satellite-tagged bowhead whales in the Beaufort Sea travelled at an average rate of 88 km (55 mi) per day. At that rate, an individual whale could travel across the extent of the east survey area in four days and across the entire east-west extent of the survey area in ten days, if it did not stop to feed during its migration, as bowhead whales have been observed to do earlier in the year (Christie *et al.,* 2010). Also, Miller *et al.* (2002) presented a 10-day moving average of bowhead whale abundance in the eastern Beaufort Sea using data from 1979–2000 that showed a decrease of ~90% from early to late October. Based on these data, it is expected that almost all whales that had been in the east survey area during early October would likely have migrated beyond the survey areas by November–December. In addition, kernel density estimates and animal tracklines generated from satellite-tagged bowhead whales, along with acoustic monitoring data, suggest that few bowhead whales are present in the proposed survey area in November (near Point Barrow), and no whales were present in December (ADFG, 2010; Moore *et al.,* 2010). Therefore, density estimates for the <200 m (656 ft) and 200–1,000 m (656–3,281 ft) water depth categories in the west survey area were estimated to be one tenth of those estimates for the east survey area. Minimal density estimates (0.0001 whales/km²) were used for areas of water depth >1,000 m (3,281 ft).

*Other Cetaceans:* Other cetacean species are not expected to be present in the area at the time of the planned survey. These species, including humpback and fin whales, typically migrate during autumn and are expected to be south of the proposed survey area by the October–December period. Gray whales have been detected near Point Barrow during the period of the proposed project, and even throughout the winter (Moore *et al.,* 2006; Stafford *et al.,* 2007). Authorization for minimal takes of other cetacean species that are known to occur in the Beaufort Sea during the summer have been requested in case of a chance encounter of a few remaining individuals.

TABLE 2—EXPECTED DENSITIES OF CETACEANS IN THE ARCTIC OCEAN IN OCTOBER–DECEMBER BY WATER DEPTH AND SURVEY AREA

| Species | <200 m | 200–1,000 m | >1,000 m |
|---|---|---|---|
| *Beaufort East Survey Area* | | | |
| Beluga whale | 0.0015 | 0.1169 | 0.0468 |
| Harbor porpoise | 0.0001 | 0.0001 | 0.0001 |
| Bowhead whale | 0.0094 | 0.0028 | 0.0001 |
| Gray whale | 0.0001 | 0.0001 | 0.0001 |
| Minke whale | 0.0001 | 0.0001 | 0.0001 |
| *Beaufort West Survey Area* | | | |
| Beluga whale | 0.0002 | 0.0117 | 0.0047 |
| Harbor porpoise | 0.0001 | 0.0001 | 0.0001 |
| Bowhead whale | 0.0009 | 0.0003 | 0.0001 |
| Gray whale | 0.0001 | 0.0001 | 0.0001 |
| Minke whale | 0.0001 | 0.0001 | 0.0001 |
| *Chukchi Survey Area* | | | |
| Beluga whale | 0.0002 | ..... | ..... |
| Harbor porpoise | 0.0001 | ..... | ..... |
| Bowhead whale | 0.0009 | ..... | ..... |
| Gray whale | 0.0001 | ..... | ..... |
| Minke whale | 0.0001 | ..... | ..... |

(2) Pinnipeds

In polar regions, most pinnipeds are associated with sea ice, and typical census methods involve counting pinnipeds when they are hauled out on ice. In the Beaufort Sea, surveys typically occur in spring when ringed seals emerge from their lairs (Frost *et al.,* 2004). Depending on the species and study, a correction factor for the proportion of animals hauled out at any one time may or may not have been applied (depending on whether an appropriate correction factor was available for the particular species and area). By applying a correction factor, the total density of the pinniped species in an area can be estimated. Only the animals in water would be exposed to the pulsed sounds from the airguns; however, densities that are presented generally represent either only the animals on the ice or all animals in the area. Therefore, only a fraction of the pinnipeds present in areas where ice is present (and of sufficient thickness to support hauled-out animals) would be exposed to seismic sounds during the proposed seismic survey. Individuals hauled out on ice in close proximity to the vessels are likely to enter the water as a reaction to the passing vessels, and the proportion that remain on the ice will likely increase with distance from the vessels.

*Ringed Seals:* Ringed seal density for the east survey area for waters <1000 m (3,281 ft) deep was estimated using vessel-based data collected in the Beaufort Sea during autumn (Sep–Oct) 2006–2008 and reported by Savarese *et al.* (2010; Table 3 in this document). Correction factors for sightability and availability were used when the authors calculated the estimates, so no further adjustments were required. For the east survey area for waters >1000 m (3,281 ft) deep, few data on seal distribution are available. Harwood *et al.* (2005) recorded a ringed seal sighting in the Beaufort Sea in an area where water depth was >1,000 m (3,281 ft) in September–October 2002 during an oceanographic cruise. It is therefore possible that ringed seals would occur in those areas, and their presence would likely be associated with ephemeral prey resources. If a relatively warm surface eddy formed that concentrated prey in offshore areas at depths that would be possible for ringed seals to access, it is possible that seals would be attracted to it. A warm eddy was found in the northern Beaufort Sea in October 2002 in an area where water depth was >1,000 m (3,281 ft) (Crawford, 2010), so it is possible that such an oceanographic feature might develop again and attract seals offshore. However, it is unclear whether such a feature would attract many seals, especially since the marine mammal observers present on the ship in 2002 did not observe very many seals associated with the offshore eddy. In the absence of standardized survey data from deep-water areas, but with available data suggesting densities are likely to be quite low, minimal density estimates (0.0001 seals/km$^2$) were used in areas where water depth is >1,000 m (3,281 ft). For all water depth categories in the east survey area, the maximum ringed seal density was assumed to be the mean estimate multiplied by four to allow for chance encounters with unexpected large groups of animals or overall higher densities than expected.

Habitat zones and associated densities were defined differently in the west survey area, which will be surveyed in November–December, because more ice is expected to be encountered at that time than in October (NOAA National Ice Center: *www.natice.noaa.gov*). The density estimates for the west survey area were calculated using aerial survey data collected by Frost *et al.* (2004) in the Alaskan Beaufort Sea during the spring. A g(0) correction factor of 0.60 from tagging data reported by Bengtson *et al.* (2005) was used to adjust all density estimates from Frost *et al.* (2004) described below. Seal distribution and density in spring, prior to breakup, are thought to reflect distribution patterns established earlier in the year (*i.e.,* during the winter months; Frost *et al.,* 2004). Density estimates were highest (1.00–1.33 seals/km$^2$) in areas of water depth 3–35 m (10–115 ft), and decreased (0–0.77 seals/km$^2$) in water >35 m (115 ft) deep. The mean density estimate used for areas with water depth <35 m (Table 4 in this document) was estimated using an average of the pack ice estimates modeled by Frost *et al.* (2004). The maximum estimate for the same area is the maximum observed density for areas of water depth 3–35 m (10–115 ft) in Frost *et al.* (2004). The mean density estimate used for areas with 35–200 m (115–656 ft) water depth is the modeled value for water depth >35 m (115 ft) from Frost *et al.* (2004). The maximum estimate is the maximum observed density for areas with >35 m (115 ft) water depth in Frost *et al.* (2004). Because ringed seal density tends to decrease with increasing water depth (Moulton *et al.,* 2002; Frost *et al.,* 2004), ringed seal density was estimated to be minimal in areas of >200 m (656 ft) water depth.

In the Chukchi Sea, ringed seal densities were taken from offshore aerial surveys of the pack ice zone conducted in spring 1999 and 2000 (Bengtson *et al.,* 2005). The average density from those two years (weighted by survey effort) was 0.4892 seals/km$^2$. This value served as the average density while the highest density from the two years, (0.8100 seals/km$^2$ in 1999) was used as the maximum density.

*Other Seal Species:* Other seal species are expected to be less frequent in the study area during the period of this survey. Bearded and spotted seals would be present in the area during summer, and possibly ribbon seals as well, but they generally migrate into the southern Chukchi and Bering seas during fall (Allen and Angliss, 2011). Few satellite-tagging studies have been conducted on these species in the Beaufort Sea, winter surveys have not been conducted, and a few bearded seals have been reported over the continental shelf in spring prior to general breakup. However, three bearded seals tracked in 2009 moved south into the Bering Sea along the continental shelf by November (Cameron and Boveng, 2009). It is possible that some individuals, bearded seals in particular, may be present in the survey area. In the absence of better information from the published literature or other sources that would indicate significant numbers of any of these species might be present, minimal density estimates were used for all areas and water depth categories for these species, with the estimates for bearded seals assumed to be slightly higher than those for spotted and ribbon seals (Tables 3 and 4 in this document).

TABLE 3—EXPECTED DENSITIES (#/KM$^2$) OF PINNIPEDS IN THE EAST SURVEY AREA OF THE U.S. BEAUFORT SEA IN OCTOBER.

| Species | <200 m | 200–1,000 m | >1,000 m |
|---|---|---|---|
| Ringed seal | 0.0840 | 0.0840 | 0.0004 |
| Bearded seal | 0.0004 | 0.0004 | 0.0004 |
| Spotted seal | 0.0001 | 0.0001 | 0.0001 |
| Ribbon seal | 0.0001 | 0.0001 | 0.0001 |

TABLE 4—EXPECTED DENSITIES (#/KM$^2$) OF PINNIPEDS IN THE BEAUFORT WEST AND CHUKCHI SURVEY AREAS OF THE ARCTIC OCEAN IN NOVEMBER-DECEMBER.

| Species | <35 m | 35–200 m | >200 m |
|---|---|---|---|
| *Beaufort West* | | | |
| Ringed seal | 1.9375 | 1.0000 | 0.0004 |
| Bearded seal | 0.0004 | 0.0004 | 0.0004 |
| Spotted seal | 0.0001 | 0.0001 | 0.0001 |
| Ribbon seal | 0.0001 | 0.0001 | 0.0001 |
| *Chukchi Sea* | | | |
| Ringed seal | ..... | 0.4892 | ..... |
| Bearded seal | ..... | 0.0004 | ..... |
| Spotted seal | ..... | 0.0001 | ..... |
| Ribbon seal | ..... | 0.0001 | ..... |

*Potential Number of Takes by Level B Behavioral Harassment*

Numbers of marine mammals that might be present and potentially taken are estimated below based on available data about mammal distribution and densities at different locations and times of the year as described above.

The number of individuals of each species potentially exposed to received levels ≥120 dB re 1 μPa (rms) or ≥160 dB re 1 μPa (rms), depending on the type of activity occurring, within each portion of the survey area (east and west) and water depth category was estimated by multiplying:

- The anticipated area to be ensonified to ≥120 dB re 1 μPa (rms) or ≥160 dB re 1 μPa (rms) in each portion of the survey area (east and west) and water depth category, by
- The expected species density in that time and location.

Some of the animals estimated to be exposed, particularly migrating bowhead whales, might show avoidance reactions before being exposed to ≥160 dB re 1 μPa (rms). Thus, these calculations actually estimate the number of individuals potentially exposed to ≥160 dB (rms) that would occur if there were no avoidance of the area ensonified to that level.

(1) Potential Number of Takes by Seismic Airguns at Received Levels ≥160 dB

The area of water potentially exposed to received levels of airgun sounds ≥160 dB (rms) was calculated by using a GIS to buffer the planned survey tracklines within each water depth category by the associated modeled ≥160 dB (rms) distances. The expected sound propagation from the airgun array was modeled by JASCO Applied Research (Zykov *et al.,* 2010) and is expected to vary with water depth. Survey tracklines falling within the <100 m (328 ft), 100–1,000 m (328–3,281 ft), and >1,000 m (3,281 ft) water depth categories were buffered by distances of 27.8 km (17.3 mi), 42.2 km (26.2 mi), and 31.6 km (19.6 mi), respectively. The total area of water that would be exposed to sound >160 dB (rms) on one or more occasions is estimated to be 209,752 km$^2$. A breakdown by water depth classes used in association with density estimates is presented in Table 5 in this document and Figure 2 of the IHA application.

Based on the operational plans and marine mammal densities described above, the estimates of marine mammals potentially exposed to sounds ≥160 dB (rms) are presented in Table 5 in this document. For species likely to be present, the requested numbers are calculated as described above. For less common species, estimates were set to minimal numbers to allow for chance encounters. Discussion of the number of potential exposures is summarized by species in the following subsections.

It is likely that some members of one endangered cetacean species (bowhead whale) will be exposed to received

sound levels ≥160 dB (rms) unless bowheads avoid the survey vessel before the received levels reach 160 dB (rms). However, the late autumn timing and the design of the proposed survey will minimize the number of bowheads and other cetaceans that may be exposed to seismic sounds generated by this survey. The best estimates of the number of whales potentially exposed to ≥160 dB (rms) are 282 and 4,315 for bowheads and belugas, respectively (Table 5).

The ringed seal is the most widespread and abundant pinniped species in ice-covered Arctic waters, and there is a great deal of variation in estimates of population size and distribution of these marine mammals. Ringed seals account for the vast majority of marine mammals expected to be encountered, and hence exposed to airgun sounds with received levels >160 dB (rms) during the proposed marine survey. Our analysis, based on our use of summer/fall density data, resulted in an overestimation of take of ringed seals (approximately 60,293 ringed seals may be exposed to marine survey sounds with received levels >160 dB (rms)) if they do not avoid the sound source. Other pinniped species are not expected to be present in the proposed survey area in more than minimal numbers in October-December; however, ION is requesting authorization for a small number of harassment ''takes'' of species that occur in the area during the summer months in case a few individuals are encountered (Table 5 in this document).

It should be noted that there is no evidence that most seals exposed to airgun pulses with received levels 160 dB re 1 μPa (rms) are disturbed appreciably, and even at a received level of 180 dB (rms) disturbance is not conspicuous (Harris *et al.,* 2001; Moulton and Lawson, 2002). Therefore, for seals, the estimates of numbers exposed to ≥160 dB re 1 μPa (rms) greatly exceed the numbers of seals that will actually be disturbed in any major or (presumably) biologically significant manner.

TABLE 5—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ≥160 DB RE 1 μPA (RMS) DURING ION'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT AND CHUKCHI SEAS, OCTOBER–DECEMBER 2012

| Cetaceans | Water depth | | | Total |
|---|---|---|---|---|
| | <200 m | 200–1,000 m | >1,000 m | |
| Beluga whale | 43 | 1,195 | 3,077 | 4,215 |
| Harbor porpoise | 9 | 2 | 10 | 21 |
| Bowhead whale | 269 | 3 | 10 | 282 |
| Gray whale | 9 | 2 | 10 | 21 |
| Minke whale | 9 | 2 | 10 | 21 |
| **Pinnipeds (Beaufort East)** | **Water depth** | | | **Total** |
| | <35 m | 35–200 m | >200 m | |
| Ringed seal | 1,794 | 805 | 25 | 2,624 |
| Bearded seal | 9 | 4 | 25 | 38 |
| Spotted seal | 2 | 1 | 6 | 9 |
| Ribbon seal | 2 | 1 | 6 | 9 |
| **Pinnipeds (Beaufort West & Chukchi Sea)** | **<35 m** | **35–200 m** | **>200 m** | **Total** |
| Ringed seal | 16,969 | 40,682 | 18 | 57,669 |
| Bearded seal | 4 | 25 | 18 | 47 |
| Spotted seal | 1 | 6 | 5 | 12 |
| Ribbon seal | 1 | 6 | 5 | 12 |

(2) Potential Number of Takes by Icebreaking at Received Levels ≥120 dB

As discussed above, based on available information regarding sounds produced by icebreaking in various ice regimes and the expected ice conditions during the proposed survey, vessel sounds generated during ice breaking are likely to have source levels between 175 and 185 dB re 1 μPa-m. As described above, we have assumed that seismic survey activity will occur along all of the planned tracklines shown in Figure 1 of ION's IHA application. Therefore, received levels ≥160 dB radius of 26.7–42.2 km (16.6–26.2 mi; depending on water depth) to each side of all of the survey lines was applied for the calculation. Assuming a source level of 185 dB re 1 μPa-m and using the 15logR for calculating spreading loss of acoustic intensity, icebreaking sounds may be ≥120 dB out to a maximum distance of ~21.6 km (13.4 mi). Thus, all sounds produced by icebreaking are expected to diminish below 120 dB re 1 μPa within the zone where we assume mammals will be exposed to ≥160 dB (rms) from seismic sounds. Exposures of marine mammals to icebreaking sounds with received levels ≥120 dB would effectively duplicate or ''double-count'' animals already included in the estimates of exposure to strong (≥160 dB) airgun sounds. The planned survey lines cover a large extent of the U.S. Beaufort Sea, and seismic survey activity along all those lines has been assumed in the estimation of takes. Any non-seismic periods, when only icebreaking might occur, would therefore result in fewer exposures than estimated from seismic activities.

If refueling of the *Geo Arctic* is required during the survey and the *Polar Prince* transits to and from Canadian waters to acquire additional fuel for itself, an additional ~200 km (124 mi) of transit may occur. Most of this transit would likely occur through ice in offshore waters >200 m (656 ft) in depth. For estimation purposes we have assumed 25% of the transit will occur in 200–1,000 m (656–3,281 ft) of water and the remaining 75% will occur in >1000 m (3,281 ft) of water. This results in an estimated ~2,160 km$^2$ of water in areas 200–1,000 m (656–3,281 ft) deep and 6,487 km$^2$ in waters >1,000 m (3,281 ft) deep being ensonified to ≥120 dB by icebreaking sounds. Using the density estimates for the east survey

area shown in Tables 2 and 3, the estimated exposures of cetaceans and pinnipeds are shown in Table 6 here.

TABLE 6—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ≥120 DB RE 1 μPA (RMS) DURING ICEBREAKING ACTIVITIES ASSOCIATED WITH THE PREFERRED ALTERNATIVE FOR REFUELING DURING ION'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT SEA, OCTOBER–DECEMBER 2012

| Species | Water depth | | Total |
|---|---|---|---|
| | 200–1,000 m | >1,000 m | |
| Beluga whale | 253 | 320 | 573 |
| Harbor porpoise | 0 | 1 | 1 |
| Bowhead whale | 1 | 1 | 2 |
| Gray whale | 0 | 1 | 1 |
| Minke whale | 0 | 1 | 1 |
| Ringed seal | 181 | 3 | 184 |
| Bearded seal | 1 | 3 | 4 |
| Spotted seal | 0 | 1 | 1 |
| Ribbon seal | 0 | 1 | 1 |

If the *Polar Prince* cannot return to port via Canadian waters, then a transit of ~600 km (373 mi) from east to west across the U.S. Beaufort would be necessary. Again, it is expected that most of this transit would likely occur in offshore waters >200 m (656 ft) in depth. For estimation purposes we have assumed 25% of the transit will occur in 200–1,000 m (656–3,281 ft) of water and the remaining 75% will occur in >1,000 m (3,281 ft) of water. This results in an estimated ~3,240 km² of water in areas 200–1,000 m (656–3,281 ft) deep and 9,720 km² in waters >1,000 m (3,281 ft) deep being ensonified to ≥120 dB by icebreaking sounds within each half of the U.S. Beaufort Sea, for a total of 25,920 km² ensonified across the entire U.S. Beaufort Sea. Using the density estimates in Tables 2–3, estimated exposures of cetaceans and pinnipeds are shown in Table 7 here.

TABLE 7—ESTIMATES OF THE POSSIBLE NUMBERS OF MARINE MAMMALS EXPOSED TO ≥120 DB RE 1 μPA (RMS) DURING ICEBREAKING ACTIVITIES ASSOCIATED WITH THE SECONDARY ALTERNATIVE FOR REFUELING DURING ION'S PROPOSED SEISMIC PROGRAM IN THE BEAUFORT AND CHUKCHI SEAS, OCTOBER–DECEMBER 2012

| Species | Water depth | | Total |
|---|---|---|---|
| | 200–1,000 m | >1,000 m | |
| Beluga whale | 417 | 500 | 917 |
| Harbor porpoise | 0 | 2 | 2 |
| Bowhead whale | 1 | 2 | 3 |
| Gray whale | 0 | 2 | 2 |
| Minke whale | 0 | 2 | 2 |
| Ringed seal | 273 | 8 | 281 |
| Bearded seal | 2 | 8 | 10 |
| Spotted seal | 0 | 2 | 2 |
| Ribbon seal | 0 | 2 | 2 |

*Potential Number of Takes by Level B TTS and Level A Harassment*

In the past, because of the likelihood that that individuals will avoid exposure at received levels and lengths of time associated with PTS, and because of the anticipated effectiveness of mitigation in the daytime and in open water, applicants have not requested authorization for Level A harassment of marine mammals. However, as noted previously, due to the more limited effectiveness of monitoring and mitigation measures for animals under ice cover and during long lowlight hours, but still considering the likelihood that most individuals will avoid exposure at higher levels and the lower densities of some species, NMFS is proposing to authorize takes of a small number of marine mammals by PTS (Level A harassment or injury) when exposed to received noise levels above 180 and 190 dB re 1 μPa (rms) for prolonged period, although this is unlikely to occur.

The methods used below for estimating the number of individuals potentially exposed to sounds >180 or >190 dB re 1 μPa (rms), which are based on over-estimated densities and do not consider avoidance or mitigation are therefore corrected to account for avoidance and mitigation to estimate a more reasonable number that could incur PTS (Level A take) although, for reasons described here and further below, NMFS does not anticipate that marine mammals will be injured or harmed by the proposed project.

Only two cetacean species, beluga and bowhead, may be present in the Alaskan Beaufort Sea late in the survey period or where extensive ice cover is present. Gray whale vocalizations have been recorded throughout one winter (2003–2004) in the western Alaskan Beaufort Sea near Pt. Barrow (Moore *et al.* 2006). However, the presence of gray whales in October and November in the Alaskan Beaufort Sea does not appear to be a regular occurrence or involve a significant number of animals when it does occur. NMFS therefore does not anticipate exposures of cetacean species, other than belugas or bowheads, to received sound levels ≥180 dB during periods of ION's in-ice seismic survey.

Beluga whales have shown avoidance of icebreaking sounds at relatively low

received levels. In the Canadian Arctic, belugas showed initial avoidance of icebreaking sounds at received levels from 94–105 dB in the 20—1,000 Hz band, although some animals returned to the same location within 1–2 days and tolerated noise levels as high as 120 dB in that band (Finley *et al.,* 1990). Playback experiments of icebreaker sounds resulted in 35% of beluga groups showing avoidance at received levels between 78–84 dB in the 1/3-octave band centered at 5,000 Hz, or 8–14 dB above ambient levels (Richardson *et al.,* 1995b). Based on these results, it was estimated that reactions by belugas to an actual icebreaker would likely occur at ~10 km (6.2 mi) under similar conditions. Erbe and Farmer (2000) estimated that zones of disturbance from icebreaking sounds could extend 19–46 km (12–28.6 mi) depending on various factors. Erbe and Farmer (2000) also estimated that a beluga whale would have to remain within 2 km (1.2 mi) of an icebreaker backing and ramming for over 20 min to incur small TTS (4.8 dB), and within 120 m for over 30 min to incur more significant TTS (12–18 dB). Therefore, we expect that the probability of a beluga whale to experience TTS is extremely low.

Aerial and vessel based monitoring of seismic surveys in the central Beaufort Sea showed significant avoidance of active airguns by belugas. Results of the aerial monitoring suggested an area of avoidance out to 10–20 km (6.2–12.4 mi) around an active seismic source with higher than expected sighting rates observed at distances 20–30 km (12.4–18.6 mi) from the source (Miller *et al.* 1999; 2005). The nearest aerial ''transect'' beluga sighting during seismic activity was at a distance of 7.8 km (4.8 mi). Only seven beluga sightings were recorded from the survey vessel during the entire study, three of which occurred during airgun activity. Two of the seismic period sightings were made at the beginning of active airgun periods and the other was during seismic testing of a limited number of guns. These sightings occurred at distances between 1.54 km and 2.51 km from the vessel. Similarly, few beluga whales were observed near seismic surveys in the Alaskan Beaufort Sea in 1996–1998 (Richardson 1999), although the beluga migration corridor is typically well offshore of where most of the seismic survey occurred. Observers on seismic and associated support vessels operating in the Alaskan Beaufort Sea during 2006–2008 seasons reported no beluga sightings during seismic or non-seismic periods, suggesting avoidance of both seismic and vessel sounds (Savarese *et al.,* 2010). No mitigation measures during seismic operations (power down or shut down of airgun arrays) have been required as a result of beluga sightings during surveys in the Chukchi or Beaufort seas in 2006–2009 (Ireland *et al.,* 2007a, 2007b; Patterson *et al.,* 2007, Funk *et al.,* 2008, Ireland *et al.,* 2009b, Reiser *et al.,* 2010).

Based on the reported avoidance of vessel, icebreaking, and seismic sounds by beluga whales, and the low and seasonally decreasing density during the time of the proposed survey, the likelihood of beluga whales occurring within the ≥180 dB zone during the proposed project is extremely low. A cautionary estimate that assumes 10% of belugas will show no avoidance of the 180 dB zone results in an estimate of 23 beluga whales exposed to sounds ≥180 dB (based on the densities described above and the area of water that may be ensonified to ≥180 dB) during the proposed project.

Bowhead whales have shown similar avoidance of vessel and seismic sounds. Less information is available regarding avoidance of icebreaking sounds; however, avoidance of the overall activity was noted during intensive icebreaking around drill sites in the Alaskan Beaufort Sea in 1992. Migrating bowhead whales appeared to avoid the area of drilling and icebreaking by ~25 km (15.5 mi) (Brewer *et al.,* 1993). Also, monitoring of drilling activities in a previous year, during which much less icebreaking occurred, showed avoidance by migrating bowheads out to ~20 km (12.4 mi). Therefore, the relative influence of icebreaking versus drilling sounds is difficult to determine.

Similarly, migrating bowheads avoided the area within ~20 km (12.4 mi) of nearshore seismic surveys, and showed less avoidance extending to ~30 km (18.6 mi) (Miller *et al.,* 1999). Only 1 bowhead was observed from the survey vessel during the three seasons (1996–1998) when seismic surveys continued into September. Bowheads not actively engaged in migration have shown less avoidance of seismic operations. During seismic surveys in the Canadian Beaufort Sea in late August and early September bowhead whales appeared to avoid an area within ~2 km (1.2 mi) of airgun activity (Miller and Davis, 2002) and sightings from the survey vessel itself were common (Miller *et al.,* 2005). Vessel based sightings showed a statistically significant difference of ~600 m (1,969 ft) in the mean sighting distances of bowheads (relative to the survey vessel) between periods with and without airgun activity. This, along with significantly lower sighting rates of bowhead whales during periods of airgun activity, suggests that bowheads still avoided close approach to the area of seismic operation (Miller and Davis, 2002). Results from vessel-based and aerial monitoring in the Alaskan Beaufort Sea during 2006–2008 were similar to those described above (Funk *et al.,* 2010). Sighting rates from seismic vessels were significantly lower during airgun activity than during non-seismic periods. Support vessels reported 12 sightings of bowhead whales in areas where received levels from seismic were ≥160 dB (Savarese *et al.,* 2010). Aerial surveys reported bowhead whales feeding in areas where received levels of seismic sounds were up to 160 dB. Bowheads were not observed in locations with higher received levels (Christie *et al.,* 2010). Based on four direct approach experiments in northern Alaskan waters, Ljungblad *et al.* (1988) reported total avoidance of seismic sounds at received sound levels of 152, 165, 178, and 165 dB.

The available information summarized above suggests that bowhead whales are very likely to avoid areas where received levels are ≥180 dB re 1 μPa (rms). Again, making a cautionary assumption that as many as 10% of bowheads may not avoid the 180 dB zone around the airguns, we calculate that 6 individuals could be exposed to ≥180 dB (based on the densities described above and the area of water that may be ensonified to ≥180 dB). During seismic surveys in the Alaskan Beaufort Sea in 2007 and 2008, 5 power downs of the full airgun array were made due to sightings of bowhead or unidentified mysticete whales (8 total individuals) within the ≥180 dB exclusion zone. These sightings occurred during >8000 km (4,971 mi) of survey effort in good conditions plus additional effort in poor conditions (Savarese *et al.,* 2010), resulting in an estimated 0.625 sightings within the 180 dB distance per 1,000 km (620 mi) of seismic activity. Even without allowance for the reduced densities likely to be encountered in October and especially November, or for the fact that observers will be on duty during all daylight hours and will call for mitigation actions if whales are sighted within or near the 180 dB distance, this rate would suggest that fewer than 8 bowheads may occur within the ≥180 dB zone during the proposed survey.

For seals (principally ringed seals), the proportion exhibiting avoidance is lower than for cetaceans, and thus the received level at which avoidance becomes evident is higher. However, some survey results have shown a statistically significant avoidance of the

190 dB re 1 μPa (rms) zone, and an assumption that numbers exposed to ≥190 dB could be calculated from ''non-seismic'' density data is not inappropriate. Using similar reasoning as described above for cetaceans, we have limited these estimates to ringed seals as the presence of other pinniped species is very unlikely during the times and locations when exposures to ≥190 dB may have an increased likelihood of occurrence.

Monitoring work in the Alaskan Beaufort Sea during 1996–2001 provided considerable information regarding the behavior of seals exposed to seismic pulses (Harris *et al.,* 2001; Moulton and Lawson, 2002). The combined results suggest that some seals avoid the immediate area around seismic vessels. In most survey years, ringed seal sightings averaged somewhat farther away from the seismic vessel when the airguns were operating than when they were not (Moulton and Lawson, 2002). Also, seal sighting rates at the water surface were lower during airgun array operations than during no-airgun periods in each survey year except 1997. However, the avoidance movements were relatively small, on the order of 100 m (328 ft) to (at most) a few hundreds of meters, and many seals remained within 100–200 m (328–656 ft) of the trackline as the operating airgun array passed by.

During more recent seismic surveys in the Arctic (2006–2009), Reiser *et al.* (2009) also reported a tendency for localized avoidance of areas immediately around the seismic source vessel along with coincident increased sighting rates at support vessels operating 1–2 km (0.62–1.2 mi) away. However, pinnipeds were sighted within the 190 dB zone around the operating airguns more frequently than were cetaceans within the 180 dB zone. Assuming that 25% of the ringed seals encountered may not avoid the 190 dB zone as the airguns approach, we calculate that ~277 individuals could be exposed to ≥190 dB (based on the densities described above and the area of water that may be ensonified to ≥190 dB). As an alternative estimate, during the same >8,000 km (4,971 mi) of monitoring effort in the Alaskan Beaufort Sea reported above regarding bowhead whales, 42 observations of seals within the 190 dB zone caused power downs of the airguns. This was ~5.25 power downs per 1,000 km (620 mi) of seismic survey effort. Even without allowance for the reduced densities of seals likely to be encountered in October–November or for the fact that observers will be on duty during all daylight hours and will call for mitigation actions if necessary, this rate would suggest that as many as 38 seals may occur within the ≥190 dB zone during the proposed survey.

However, as stated earlier, in most circumstances marine mammals would avoid areas where intense noise could cause injury, including PTS. Although approximately 23 beluga whales, 8 bowhead whales, and 38 seals (presumably all ringed seals) could theoretically be exposed to received levels above 180 dB re 1 μPa (for whales) and 190 dB re 1 μPa (for seals), most of them are likely to avoid areas of intense noise and would not incur TTS or PTS (injury). In the unlikely case a small number of individuals animals did not avoid the intense noise, then TTS or even PTS could occur. Assuming that 10% of the individuals that were initially exposed to received levels above 180 dB re 1 μPa (for beluga and bowhead whales) and 190 dB re 1 μPa (for ringed seals) do not vacate the area, and subsequent exposure leads to some degree of PTS, then approximately 3 beluga whales, 1 bowhead whale, and 4 ringed seals could be taken by Level A harassment. However, NMFS considers this estimate to be very conservative as explained above.

*Estimated Take Conclusions*

Cetaceans—Effects on cetaceans are generally expected to be restricted to avoidance of an area around the seismic survey and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment,'' and possibly mild TTS (Level B harassment), or PTS (Level A harassment), though the latter is not likely.

Using the 160 dB (for pulse) and 120 dB (for non-pulse) criteria, the average estimates of the numbers of individual cetaceans exposed to sounds >160 dB and 120 dB re 1 μPa (rms) represent varying proportions of the populations of each species in the Beaufort Sea and adjacent waters. For species listed as ''endangered'' under the ESA, the estimates include approximately 284 bowheads. This number is approximately 1.86% of the Bering-Chukchi-Beaufort population of >15,233 assuming 3.4% annual population growth from the 2001 estimate of >10,545 animals (Zeh and Punt 2005). For other cetaceans that might occur in the vicinity of the marine seismic survey in the Chukchi Sea, they also represent a very small proportion of their respective populations. The average estimates of the number of beluga whales, harbor porpoises, gray whales, and minke whales that might be exposed to >160 dB and 120 dB re 1 μPa (rms) are 5,232, 23, 23, and 23, when the secondary alternative for refueling is being considered. These numbers represent 13.33%, 0.05%, 0.12%, and 1.87% of these species' respective populations in the proposed action area. If ION selects the preferred alternative for refueling, the estimated takes for beluga would be reduced to 4,888 animals, or 12.45% of the population, which are still based on overestimated densities of these animals for the winter season.

Seals—A few seal species are likely to be encountered in the study area, but ringed seal is by far the most abundant in this area. The average estimates of the numbers of individuals exposed to sounds at received levels >160 dB and 120 dB re 1 μPa (rms) during the proposed icebreaking seismic survey are as follows: ringed seals (60,574), bearded seals (95), spotted seals (23), and ribbon seals (23), when the secondary alternative for refueling is being considered. These numbers represent 24.33%, 0.04%, 0.04%, and 0.05% of Alaska stocks of ringed, bearded, spotted, and ribbon seals. If ION selects the preferred alternative for refueling, the estimated takes for ringed, bearded, spotted, and ribbon seals would drop to 60,477, 89, 22, and 22, respectively, which in turn represent 24.29%, 0.04%, 0.04%, 0.04% of Alaska stocks of these species, based on overestimated densities of these animals for the winter season.

**Negligible Impact and Small Numbers Analysis and Determination**

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''* * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.'' In making a negligible impact determination, NMFS considers a variety of factors, including but not limited to: (1) The number of anticipated mortalities; (2) the number and nature of anticipated injuries; (3) the number, nature, intensity, and duration of Level B harassment; and (4) the context in which the takes occur.

Most of the takes from ION's proposed icebreaking seismic surveys are expected to be Level B harassment, *i.e.,* behavioral disturbance with a slight likelihood of mild TTS. However, it is possible that PTS (Level A harassment) given the lowered effectiveness of monitoring measures are during extensive ice coverage and prolonged periods of darkness. Although it is possible that some individual marine mammals may be exposed to sounds from marine survey activities more than

once, this is not expected to happen extensively since both the animals and the survey vessels will be moving constantly in and out of the survey areas. Therefore, the degree of TTS and PTS, if incurred, is expected to be minor (low intensity—a few dBs of loss at certain frequencies), and the TTS is expected to be brief (minutes to hours) before full recovery. No serious injury or mortality is expected as a result of the proposed seismic survey, and neither is proposed to be authorized.

Of the nine marine mammal species likely to occur in the proposed marine survey area, only the bowhead whale is listed as endangered under the ESA. This species is also designated as ''depleted'' under the MMPA. Despite these designations, the Bering-Chukchi-Beaufort stock of bowheads has been increasing at a rate of 3.4 percent annually for nearly a decade (Allen and Angliss, 2010). Additionally, during the 2001 census, 121 calves were counted, which was the highest yet recorded. The calf count provides corroborating evidence for a healthy and increasing population (Allen and Angliss, 2010), even in the face of ongoing industrial activity and subsistence harvest. There is no critical habitat designated in the U.S. Arctic for the bowhead whale. Certain stocks or populations of gray and beluga whales and spotted seals are listed as endangered or are proposed for listing under the ESA; however, none of those stocks or populations occur in the proposed activity area. On December 10, 2010, NMFS published a notice of proposed threatened status for subspecies of the ringed seal (75 FR 77476) and a notice of proposed threatened and not warranted status for subspecies and distinct population segments of the bearded seal (75 FR 77496) in the **Federal Register**. Neither of these two ice seal species is currently considered depleted under the MMPA.

*Level B Behavioral Harassment*

Most of the bowhead whales encountered during the summer will likely show overt disturbance (avoidance) only if they receive airgun sounds with levels ≥160 dB re 1 μPa (rms). Odontocete reactions to seismic energy pulses are usually assumed to be limited to shorter distances from the airgun(s) than are those of mysticetes, probably in part because odontocete low-frequency hearing is assumed to be less sensitive than that of mysticetes. However, at least when in the Canadian Beaufort Sea in summer, belugas appear to be fairly responsive to seismic energy, with few being sighted within 6–12 mi (10–20 km) of seismic vessels during aerial surveys (Miller *et al.,* 2005). Both belugas and bowhead whales are expected to occur in much smaller numbers in the vicinity of the proposed seismic survey area during the proposed survey. In addition, due to the constant movement of the seismic survey vessel, the duration of the cetaceans' exposure to noise from seismic impulses would be brief. For the same reason, it is unlikely that any individual animal would be exposed to high received levels multiple times.

Taking into account the mitigation measures that are planned, effects on cetaceans are generally expected to be restricted to avoidance of a limited area around the survey operation and short-term changes in behavior, falling within the MMPA definition of ''Level B harassment,'' with only limited potential occurrences of TTS (Level B harassment) and PTS (Level A harassment).

Furthermore, the estimated numbers of animals potentially exposed to sound levels sufficient to cause appreciable disturbance are small percentages of the population sizes in the Bering-Chukchi-Beaufort seas, as described above.

Finally, as discussed above, since ION is not likely to start its proposed in-ice seismic survey until mid- to late-October when most of the cetaceans (especially bowhead whales) have moved out of the area, the actual take numbers are expected to be much lower.

The many reported cases of apparent tolerance by cetaceans from seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled vessel speed, dedicated PSOs, non-pursuit, and shutdowns or power downs when marine mammals are seen within defined ranges will further reduce short-term reactions and minimize any effects on hearing sensitivity. In all cases, the effects are expected to be short-term, with no lasting biological consequence.

Some individual pinnipeds may be exposed to sound from the proposed marine surveys more than once during the time frame of the project. However, as discussed previously, due to the constant movement of the survey vessel, the probability of an individual pinniped being exposed multiple times is much lower than if the source is stationary. Therefore, NMFS has determined that the pinnipeds' exposure to sounds produced by the proposed marine seismic survey in the Beaufort and Chukchi Seas is mostly expected to result in no more than Level B harassment and is anticipated to have no more than a negligible impact on the animals.

The estimated Level B behavioral takes proposed to be authorized represent up to 12.45% of the Beaufort Sea population of approximately 39,258 beluga whales (Allen and Angliss, 2010), up to 0.04% of Bering Sea stock of approximately 48,215 harbor porpoises, 0.12% of the Eastern North Pacific stock of approximately 19,126 gray whales, 1.86% of the Bering-Chukchi-Beaufort population of 15,233 individuals assuming 3.4 percent annual population growth from the 2001 estimate of 10,545 animals (Zeh and Punt, 2005), and 1.78% of the Alaska stock of approximately 1,233 minke whales. The take estimates presented for ringed, bearded, spotted, and ribbon seals represent up to 24.29, 0.04, 0.04, and 0.04 percent of U.S. Arctic stocks of each species, respectively. These estimates represent the percentage of each species or stock that could be taken by Level B behavioral harassment if each animal is taken only once. Although we have estimated that up to 24.29% of ringed seals could be taken as a result of the proposed seismic survey activity, it is important to note that the population densities for marine mammals within the proposed survey area are overestimates. As explained above, because of the lack of fall/winter data, NMFS and ION had to rely on the summer/fall density data to calculate expected densities of marine mammals and potential take estimates. Our analysis has led us to conclude that in the case of ringed seals (and several other species), the number of ringed seals that would occur in the project area during the proposed survey period is expected to be much lower and thus, far fewer ringed seals are actually expected to be taken as a result of ION's in-ice seismic survey in the Beaufort Sea. Furthermore, it is likely that individual animals could be taken multiple times and be counted as different individuals, thus inflating the percentage of unique individuals that would be affected. Finally, as discussed earlier, the effects to marine mammals that would result from Level B behavioral harassment are expected to be minor and brief, and mostly involve animals temporarily changing their behavior and vacating the proximity of the survey area briefly as the survey vessel and icebreaker approach. Marine mammals are expected to resume their normal activities and reoccupy the area as soon as the vessels move away. Additionally, since the proposed in-ice seismic survey is planned outside the breeding season of marine mammals, no impacts on calves or pups are expected. Further, there is no known marine

mammal feeding activity during the period of ION's in-ice seismic survey activities. Therefore, any effects to marine mammals are not expected to be biologically significant on either the individual or population level for thess species. In addition, the mitigation and monitoring measures (described previously in this document) included in the IHA are expected to further reduce any potential disturbance to marine mammals.

*Hearing Impairment (TTS, Level B Harassment, or PTS, Level A Harassment)*

Most cetaceans (and particularly Arctic cetaceans) show relatively high levels of avoidance when received sound pulse levels exceed 160 dB re 1 µPa (rms), and it is uncommon to sight Arctic cetaceans within the 180 dB radius, especially for prolonged duration. Results from monitoring programs associated with seismic activities in the Arctic indicate that cetaceans respond in different ways to sound levels lower than 180 dB. These results have been used by agencies to support monitoring requirements within distances where received levels fall below 160 dB and even 120 dB. Thus, very few animals would be exposed to sound levels of 180 dB re 1 µPa (rms) regardless of detectability by PSOs. Avoidance varies among individuals and depends on their activities or reasons for being in the area, and occasionally a few individual Arctic cetaceans will tolerate sound levels above 160 dB. Tolerance of levels above 180 dB is infrequent regardless of the circumstances, and marine mammals exposed to levels this high are expected to avoid the source, thereby minimizing the probability of TTS. Therefore, a calculation of the number of cetaceans potentially exposed to >180 dB that is based simply on density would be a gross overestimate of the actual numbers exposed to 180 dB. Such calculations would be misleading unless avoidance response behaviors were taken into account to estimate what fraction of those originally present within the soon-to-be ensonified to >180 dB zone (as estimated from density) would still be there by the time levels reach 180 dB.

It is estimated that up to 1 bowhead whale and 3 beluga whales could be exposed to received noise levels above 180 dB re 1 µPa (rms), and 4 ringed seals could be exposed to received noise levels above 190 dB re 1 µPa (rms) for durations long enough to cause TTS if the animals are not detected in time to have mitigation measures implemented (or even PTS if such exposures occurred repeatedly). None of the other species are expected to be exposed to received sound levels anticipated to cause TTS or PTS.

Marine mammals that are taken by TTS are expected to receive minor (in the order of several dBs) and brief (minutes to hours) temporary hearing impairment because (1) animals are not likely to remain for prolonged periods within high intensity sound fields, and (2) both the seismic vessel and the animals are constantly moving, and it is unlikely that the animal will be moving along with the vessel during the survey. Although repeated experience to TTS could result in PTS (Level A harassment), for the same reasons discussed above, even if marine mammals experience PTS, the degree of PTS is expected to be mild, resulting in a few dB elevation of hearing threshold. Therefore, even if a few marine mammals receive TTS or PTS, the degree of these effects are expected to be minor and, in the case of TTS, brief, and are not expected to be biologically significant for the population or species.

*Effects on Marine Mammal Habitat*

Potential impacts to marine mammal habitat were discussed previously in this document (see the ''Anticipated Effects on Habitat'' section). Although some disturbance is possible to food sources of marine mammals, the impacts are anticipated to be minor enough as to not affect rates of recruitment or survival of marine mammals in the area. Based on the vast size of the Arctic Ocean where feeding by marine mammals occurs versus the localized area of the marine survey activities, any missed feeding opportunities in the direct project area would be minor based on the fact that other feeding areas exist elsewhere. For bowhead whales, the majority of the population would have migrated past many of the feeding areas of the central Beaufort Sea prior to the initiation of activities by ION.

The effects of icebreaking activity are not expected to result in significant modification to marine mammal habitat. Although it is expected that the ice coverage would be 8/10th to 10/10th, the ice in the proposed project area is loose annual ice during the time of the proposed in-ice seismic survey activity. Therefore, ice floes being broken and pushed aside from the icebreaker are expected to rejoin behind the seismic survey path. In addition, no ice seal lairs are expected during the period of ION's in-ice seismic survey in the Beaufort and Chukchi Seas.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS finds that ION's 2012 in-ice seismic survey in the Beaufort and Chukchi Seas may result in the incidental take of small numbers of marine mammals, by Level A and Level B harassment only, and that the taking from the seismic surveys will have a negligible impact on the affected species or stocks.

**Unmitigable Adverse Impact Analysis and Determination**

NMFS has determined that ION's 2012 in-ice marine seismic survey in the Beaufort and Chukchi Seas will not have an unmitigable adverse impact on the availability of species or stocks for taking for subsistence uses. This determination is supported by information contained in this document and ION's CAA and POC. ION has adopted a spatial and temporal strategy for its Beaufort and Chukchi Seas in-ice seismic survey operation that is intended to avoid subsistence activities. ION plans to start its seismic survey after the fall bowhead harvests have concluded for the communities of Kaktovik and Nuiqsut, and its seismic survey is expected to occur far offshore from regular ringed seal hunts. Although hunting may still be occurring in Barrow, ION has agreed to work in the eastern part of the survey area first so as not to overlap with areas used by hunters in Barrow. The late November bowhead harvests on St. Lawrence Island should not be affected by ION's vessel transits through the Bering Strait, which would not occur until the conclusion of the survey in early to mid-December. No other subsistence activity is expected to occur during ION's proposed seismic survey period.

Based on the measures described in ION's POC and CAA, the proposed mitigation and monitoring measures (described earlier in this document), and the project design itself, NMFS has determined there will not be an unmitigable adverse impact on subsistence uses from ION's icebreaking marine seismic survey in the Beaufort and Chukchi Seas.

**Endangered Species Act (ESA)**

The bowhead whale is the only marine mammal species currently listed as endangered under the ESA that could occur during ION's proposed in-ice seismic survey period. In addition, there are two marine mammal species that are currently being proposed for listing under the ESA with confirmed occurrence in the proposed project area: ringed and bearded seals. NMFS'

Permits and Conservation Division consulted with NMFS' Alaska Regional Office Division of Protected Resources under section 7 of the ESA on the issuance of an IHA to ION under section 101(a)(5)(D) of the MMPA for this activity. A Biological Opinion was issued on October 17, 2012, which concludes that issuance of the IHA is not likely to jeopardize the continued existence of the ESA-listed marine mammal species and species proposed for ESA-listing. NMFS will issue an Incidental Take Statement under this Biological Opinion which contains reasonable and prudent measures with implementing terms and conditions to minimize the effects of take of listed species.

**National Environmental Policy Act (NEPA)**

NMFS prepared an EA that includes an analysis of potential environmental effects associated with NMFS' issuance of an IHA to ION to take marine mammals incidental to conducting in-ice seismic survey in the Beaufort and Chukchi Seas during fall/winter 2012. NMFS has finalized the EA and prepared a FONSI for this action. Therefore, preparation of an EIS is not necessary.

**Authorization**

As a result of these determinations, NMFS has issued an IHA to ION to take marine mammals incidental to its in-ice seismic survey in the Beaufort and Chukchi Seas, Alaska, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 17, 2012.

**Helen M. Golde,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2012–26103 Filed 10–23–12; 8:45 am]

**BILLING CODE 3510–22–P**

# FEDERAL REGISTER

Vol. 77 Wednesday,
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Part III

## The President

Proclamation 8891—National Character Counts Week, 2012
Proclamation 8892—National Forest Products Week, 2012

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# Presidential Documents

**Title 3—**

## The President

**Proclamation 8891 of October 19, 2012**

## National Character Counts Week, 2012

**By the President of the United States of America**

**A Proclamation**

With every step in our journey toward a more perfect Union, Americans have drawn strength from the values that bind us together as one people. Personal integrity, mutual respect, commitment to service—these timeless ideals have guided our Nation's progress for centuries, inspiring us not only to see the best in each other, but also to seek the best in ourselves. During National Character Counts Week, we celebrate the principles that keep our country moving forward and renew our commitment to sharing them with our sons and daughters.

As parents, teachers, mentors, and neighbors, it is up to all of us to empower our children with a sense of excellence in everything they do—from the classroom through careers and community involvement. We must instill in them the creativity and imagination it takes to envision a dream, and the drive and discipline it takes to realize one. We should also underscore the values of responsibility and service that have sustained our national life for generations. With these qualities, all of us can seek out new horizons and opportunities with confidence, secure in the knowledge that we can overcome the challenges and setbacks that confront us.

To ensure that each and every American has the chance to fulfill their promise, we must also teach our children to practice kindness and respect. Many students across our country have experienced bullying and harassment at school, online, or in their communities, eroding their ability to thrive and feel that they belong. This week, let us reaffirm our responsibility to make our schools and communities safe places that nurture not only our students' talents and intelligence, but also their sense of empathy and regard for one another.

During National Character Counts Week, we reflect on the principles that give us strength to reach for our own dreams and vision to boost others toward theirs. As we mark this important occasion, let us rededicate ourselves to preserving and passing on those basic American values in the years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim October 21 through October 27, 2012, as National Character Counts Week. I call upon public officials, educators, parents, students, and all Americans to observe this week with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–26342
Filed 10–23–12; 11:15 am]
Billing code 3295–F3

# Presidential Documents

**Proclamation 8892 of October 19, 2012**

## National Forest Products Week, 2012

**By the President of the United States of America**

**A Proclamation**

Since our Nation's founding, America's forests have played an essential role in powering our progress. These rich spaces have provided clean air and water for our communities, building materials for our homes, reliable growth for our economy, and vibrant environments for us to explore. During National Forest Products Week, we celebrate sustainable uses of the lands we share and recommit to protecting them for generations to come.

Our forests are an essential part of an economy built to last. Woodlands encourage tourism and recreation that create jobs and growth in our rural communities. They provide the raw materials for products we use every day, and they help produce clean, renewable bioenergy that puts us on the path toward a secure energy future. Meeting the economic, environmental, and energy challenges we face will require active forest management that promotes conservation and encourages landowners to keep their lands forested. Through my Administration's work to increase timber production and forest restoration, as well as efforts like the America's Great Outdoors Initiative, we continue to engage partners in government, the private sector, and communities nationwide in implementing a robust strategy to protect our forests and boost job creation.

America's expansive landscapes have contributed immensely to making our Nation what it is today, and they remain vital to our progress in the years ahead. This week, let us rededicate ourselves to managing our forests responsibly, encouraging sustainable forest use, and passing on a safer, healthier environment for the next generation.

To recognize the importance of products from our forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim October 21 through October 27, 2012, as National Forest Products Week. I call on the people of the United States to join me in recognizing the dedicated individuals who are responsible for the stewardship of our forests and for the preservation, management, and use of these precious natural resources for the benefit of the American people.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of October, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2012–26343
Filed 10–23–12; 11:15 am]
Billing code 3295–F3

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