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FEDERAL REGISTER

Vol. 77 Tuesday,

No. 219 November 13, 2012

Pages 67533–67742

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

Printed on recycled paper.

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Presidential Documents

Title 3—

The President

Proclamation 8902 of November 7, 2012

Veterans Day, 2012

By the President of the United States of America

A Proclamation

Whether they fought in Salerno or Samarra, Heartbreak Ridge or Helmand, Khe Sanh or the Korengal, our veterans are part of an unbroken chain of men and women who have served our country with honor and distinction. On Veterans Day, we show them our deepest thanks. Their sacrifices have helped secure more than two centuries of American progress, and their legacy affirms that no matter what confronts us or what trials we face, there is no challenge we cannot overcome, and our best days are still ahead.

This year, we marked the 200th anniversary of the War of 1812. We began to commemorate the 50th anniversary of the Vietnam War. We welcomed our veterans back home from Iraq, and we continued to wind down operations in Afghanistan. These milestones remind us that, though much has changed since Americans first took up arms to advance freedom's cause, the spirit that moved our forebears is the same spirit that has defined each generation of our service members. Our men and women in uniform have taught us about strength, duty, devotion, resolve—cornerstones of a commitment to protect and defend that has kept our country safe for over 200 years. In war and in peace, their service has been selfless and their accomplishments have been extraordinary.

Even after our veterans take off the uniform, they never stop serving. Many apply the skills and experience they developed on the battlefield to a life of service here at home. They take on roles in their communities as doctors and police officers, engineers and entrepreneurs, mothers and fathers. As a grateful Nation, it is our task to make that transition possible—to ensure our returning heroes can share in the opportunities they have given so much to defend. The freedoms we cherish endure because of their service and sacrifice, and our country must strive to honor our veterans by fulfilling our responsibilities to them and upholding the sacred trust we share with all who have served.

On days like this, we are called to reflect on immeasurable burdens that have been borne by so few. We pay tribute to our wounded, our missing, our fallen, and their families—men and women who have known the true costs of conflict and deserve our deepest respect, now and forever. We also remember that our commitments to those who have served are commitments we must honor not only on Veterans Day, but every day. As we do so, let us reaffirm our promise that when our troops finish their tours of duty, they come home to an America that gives them the benefits they have earned, the care they deserve, and the fullest opportunity to keep their families strong and our country moving forward.

With respect for and in recognition of the contributions our service members have made to the cause of peace and freedom around the world, the Congress has provided (5 U.S.C. 6103(a)) that November 11 of each year shall be set aside as a legal public holiday to honor our Nation's veterans.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim November 11, 2012, as Veterans Day. I encourage all Americans to recognize the valor and sacrifice of our veterans

through appropriate public ceremonies and private prayers. I call upon Federal, State, and local officials to display the flag of the United States and to participate in patriotic activities in their communities. I call on all Americans, including civic and fraternal organizations, places of worship, schools, and communities to support this day with commemorative expressions and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of November, 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. 2012–27630
Filed 11–9–12; 8:45 am]
Billing code 3295–F3

Rules and Regulations

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

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FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590–AA49

2012–2014 Enterprise Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Final rule.

SUMMARY: The Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act) requires the Federal Housing Finance Agency (FHFA) to establish annual housing goals for mortgages purchased by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, the Enterprises). FHFA previously established housing goals for the Enterprises through 2011. This final rule establishes new levels for the housing goals for 2012 through 2014, consistent with the requirements of the Safety and Soundness Act.

DATES: This rule is effective December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Paul Manchester, Principal Economist, (202) 649–3115; Ian Keith, Senior Program Analyst, (202) 649–3114; Office of Housing and Regulatory Policy; Jay Schultz, Senior Economist, (202) 649–3117, Office of National Mortgage Database; Kevin Sheehan, Assistant General Counsel, (202) 649–3086, Office of General Counsel. These are not toll-free numbers. The mailing address for each contact is: Office of General Counsel, Federal Housing Finance Agency, Eighth Floor, 400 Seventh Street SW., Washington, DC 20024. The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

The Safety and Soundness Act, as amended by the Housing and Economic Recovery Act of 2008 (HERA), provides for the establishment, monitoring and enforcement of housing goals for Fannie Mae and Freddie Mac.[1] FHFA previously established housing goals for the Enterprises for 2010 and 2011 through a final rule published on September 14, 2010.[2]

Section 1332(a) of the Safety and Soundness Act requires FHFA to establish three single-family owner-occupied purchase money mortgage goals, one subgoal, and one single-family refinancing mortgage goal. The single-family housing goals target:

- Home purchase mortgages for
  - Low-income families,
  - Families that reside in low-income areas (goal and subgoal), and
  - Very low-income families; and
- Refinancing mortgages for low-income families.[3]

Section 1333(a) of the Safety and Soundness Act requires FHFA to establish one multifamily special affordable housing goal, as well as providing for a multifamily special affordable housing subgoal. These target multifamily housing affordable to:

- Low-income families, and
- Very low-income families.[4]

B. Conservatorship

On September 6, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises to maintain the Enterprises in a safe and sound financial condition and to help assure performance of their public mission. The Enterprises remain under conservatorship at this time.

Although the Enterprises' substantial market presence has been key to retaining market stability, neither company is capable of serving the mortgage market today without the ongoing financial support provided by the U.S. Department of the Treasury (Treasury) under their respective Senior Preferred Stock Purchase Agreements (Agreements). FHFA has projected a range of substantial cumulative draws in Treasury support under the Agreements through 2014. While reliance on the Treasury Department will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Minimize losses on the mortgages already on their books; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) limit their risk exposure by avoiding new products and lines of business.

While the Enterprises are in conservatorship, all Enterprise activities, including those in support of affordable housing, must be consistent with the requirements of conservatorship under the Safety and Soundness Act, as amended by HERA. If FHFA determines that the Enterprise housing goals cannot be achieved consistent with the goals and requirements of conservatorship or in light of market conditions, FHFA, as conservator for each Enterprise, may take additional action, including suspension of the Enterprise housing goals until they can be achieved and in a manner consistent with the conservatorships. In the meantime, FHFA is continuing with the existing structure of the housing goals, including the market-based approach that was adopted for 2010 and 2011, with new benchmark levels in place through 2014.

C. Prospective and Market-Based Approach

The current housing goals regulation sets forth single-family housing goals for 2010–2011 that include: (1) An assessment of Enterprise performance, as compared to the actual share of the market that meets the criteria for each goal; and (2) a benchmark level to measure Enterprise performance. For the single-family housing goals, an Enterprise has met a goal if it achieves the benchmark level for that goal, even if the actual market size for the year is higher than the benchmark level. An Enterprise has failed to meet a goal if its annual performance falls below both the benchmark level and the actual share of the market that meets the criteria for a particular goal for that year. FHFA determined that this approach is appropriate in light of recent market turmoil, especially while the Enterprises are operating in conservatorship, and in light of the difficulty of making

[1] *See* 12 U.S.C. 4561–4566.

[2] *See* 75 FR 55892 (September 14, 2010).

[3] *See* 12 CFR 1282.12.

[4] *See* 12 CFR 1282.13.

projections accurately even in more stable economic environments. For those reasons too, and because the correspondence between available market data and the Enterprises' actual goals-qualifying activity is not exact, FHFA reserves some flexibility in determining whether an Enterprise has substantially complied with one or more goals.

II. Proposed Rule

On June 11, 2012, FHFA published in the **Federal Register** a proposed rule to establish new levels for the Enterprise housing goals for 2012 through 2014. The 45-day comment period closed July 26, 2012.[5]

A. Summary of Comments

FHFA received a total of 23 comments on the proposed rule; all are available on FHFA's Web site, *http://www.fhfa.gov.* Comments were received from six trade associations, ten housing or other advocacy organizations, five individuals, and both Enterprises. A number of the comments addressed issues specific to this rulemaking, including comments on the proposed benchmark levels for the single-family housing goals, comments on the proposed levels for the multifamily housing goals, and comments on the treatment of certain multifamily properties under the housing goals. These comments are discussed in more detail in the sections below pertaining to each of these issues.

FHFA also received comments on issues that were outside the scope of this rulemaking. For example, FHFA received comments recommending, among other things: (1) That chattel (personal property) mortgages on manufactured housing should count toward the housing goals; (2) that FHFA should award goals credit to the Enterprises for ''prioritizing their relationship'' with housing finance agencies; (3) that FHFA should establish a subgoal to the low-income refinance goal for low-income loan modifications; and (4) that FHFA should take into account forthcoming regulations with regard to ''qualified mortgages'' and ''qualified residential mortgages.'' In addition, FHFA received comments addressing issues not related to the Enterprise housing goals. FHFA has reviewed all comments received in response to the proposed rule, but comments that raised issues beyond the scope of the proposed rule are not addressed in this final rule.

B. Use of Term ''Minority''

FHFA received one comment letter from an advocacy organization questioning the use of the term ''minority'' in the proposed rule. FHFA has determined that the consideration of race in establishing the housing goals is appropriate and necessary to address specific provisions in the Safety and Soundness Act.

Specifically, section 1332(a) of the Safety and Soundness Act requires the Director to establish a single-family housing goal for families that reside in low-income areas, which are defined in section 1303 of the Safety and Soundness Act to include low- and moderate-income families in census tracts where at least 30 percent of the population consists of minorities. In order for FHFA to establish the housing goal for families that reside in low-income areas, it is necessary for FHFA to consider the distribution of minorities among different census tracts.

III. Summary of Final Rule

The final rule establishes new benchmark levels for the single-family housing goals for 2012, 2013 and 2014.[6] The final rule lowers the benchmark levels for these goals from those in effect for 2010 and 2011, but raises the low-income home purchase goal level above the level in the proposed rule, and lowers the low-income refinance goal level from that in the proposed rule. The final rule also establishes new levels for the multifamily housing goals for 2012–2014. Both Enterprises exceeded the multifamily housing goal levels for 2011, and the final rule increases those goal levels above the 2010–2011 levels. However, in light of uncertainty about the multifamily market, and the Enterprises' role in that market, the goal levels for 2013 are set below the 2012 level, and are further decreased for 2014. The final rule does not make any other changes to the housing goals that have been in effect since 2010.

Specifically, the proposed and final goals are:

	2012	2013	2014
Low-income home purchase goal:			
Proposed rule	.....	20%	.....
Final rule	.....	23%	.....
Very-low income home purchase goal:			
Proposed rule	.....	7%	.....
Final rule	.....	7%	.....
Low-income areas home purchase subgoal:			
Proposed rule	.....	11%	.....
Final rule	.....	11%	.....
Low-income areas home purchase goal:			
Proposed rule	20%	NA	NA
Final rule	20%	NA	NA
Low-income refinance goal:			
Proposed rule	.....	21%	.....
Final rule	.....	20%	.....
Multifamily special affordable goals (low-income units):			

[5] *See* 77 FR 34263 (June 11, 2012).

[6] The low-income areas goal in a given year includes Federally-declared disaster areas from the previous three years, thus this goal will not be determined for 2013 until January 2013 and for 2014 until January 2014.

	2012	2013	2014
Fannie Mae:			
Proposed rule	251,000	245,000	223,000
Final rule	285,000	265,000	250,000
Freddie Mac:			
Proposed rule	191,000	203,000	181,000
Final rule	225,000	215,000	200,000

Multifamily special affordable subgoals (very low-income units):

	2012	2013	2014
Fannie Mae:			
Proposed rule	60,000	59,000	53,000
Final rule	80,000	70,000	60,000
Freddie Mac:			
Proposed rule	32,000	31,000	27,000
Final rule	59,000	50,000	40,000

IV. Single-Family Housing Goals

A. Analysis of Factors for Single-Family Housing Goals

Section 1332(e)(2) of the Safety and Soundness Act requires FHFA to consider the following seven factors in setting the single-family housing goals:

(1) National housing needs;

(2) Economic, housing, and demographic conditions, including expected market developments;

(3) The performance and effort of the Enterprises toward achieving the housing goals under this section in previous years;

(4) The ability of the Enterprise to lead the industry in making mortgage credit available;

(5) Such other reliable mortgage data as may be available;

(6) The size of the purchase money conventional mortgage market, or refinance conventional mortgage market, as applicable, serving each of the types of families described, relative to the size of the overall purchase money mortgage market or the overall refinance mortgage market, respectively; and

(7) The need to maintain the sound financial condition of the Enterprises.[7]

FHFA's consideration of the size of the market for each housing goal includes consideration of the percentage of goal-qualifying mortgages under each housing goal, as calculated based on Home Mortgage Disclosure Act (HMDA) data for the three most recent years for which data is available.[8] FHFA's analysis of each of the factors, which has been updated since the proposed rulemaking, is set forth below.

[7] 12 U.S.C. 4562(e)(2).

[8] *See* 12 U.S.C. 4562(e)(2)(A).

1. National Housing Needs

The recent single-family housing market has been characterized by falling homeownership rates, high vacancy rates, weak sales, lower home prices, high foreclosure rates, and stricter underwriting. These trends are likely to continue in the near term. In many instances, they have had differing impacts for homeowners and home seekers of different ethnicities. Despite demand spurred by the ''First Time'' and ''Move Up Home Buyer'' tax credits in 2009 and 2010, the seasonally adjusted overall U.S. homeownership rate was 65.6 percent in the second quarter of 2012, after peaking at 69.1 percent in 2004. The homeownership rate for non-Hispanic whites declined from a peak of 76 percent in 2004 to 73.5 percent in the second quarter of 2012. For black households, the decline was more pronounced, going from a peak of 49.1 percent in 2004 to 43.8 percent in the second quarter of 2012. The homeownership rate for Hispanic households also had a noticeable decline, going from a peak of 49.7 percent in 2006 and 2007 to 46.5 percent in the second quarter of 2012.

The homeowner vacancy rate—the proportion of housing inventory for homeowners that is vacant and for sale—dropped slightly to 2.1 percent in the second quarter of 2012, from a record high of 2.9 percent in 2008. But the vacancy rate may not fully capture the inventory of distressed and at-risk homes that have not yet completed the foreclosure process, but will add to the housing supply.[9]

[9] *See generally,* Daniel Indiviglio, ''The 'Shadow' Foreclosure Inventory,'' The Atlantic (Sept. 23, 2009), available at *http://www.theatlantic.com/business/archive/2009/09/the-shadow-foreclosure-inventory/27093/.*

First-time homebuyers have experienced lower-priced housing. According to the 2011 National Association of Realtors (NAR) survey of homebuyers and sellers, the median age for first-time homebuyers was 31 years, and the median income was $62,400. The typical first-time homebuyer purchased a $155,000 home, up from $152,000 in the 2010 survey. Fifty-four percent of entry-level buyers financed their purchase with a Federal Housing Administration (FHA) loan, and 6 percent used the Veterans Administration (VA) loan program.

For 2011, NAR reported that existing home sales were up by 1.7 percent from 2010, and sales through August 2012 are running an additional 7.4 percent above the 2011 level. New home sales for 2011, as reported by the Census Bureau, were down by 5.3 percent from 2010, but sales through August 2012 are running at a rate of 18.1 percent above the 2011 level. A composite index of housing affordability for July 2012 showed that families earning the median income had 182.0 percent of the income needed to purchase a median-priced existing single-family home, which is very high by historical standards.

HMDA data for 2011, the most recent year for which such data are available, indicated that in comparison with 2010, applications for conventional home purchase loans from black borrowers fell by 1 percent, following a 31 percent decrease in 2010. Applications by Hispanic borrowers increased by 2 percent in 2011, following a 34 percent decrease in 2010. Applications from white borrowers were unchanged in 2011, following a 23 percent decrease in 2010.

Denial rates for black and Hispanic applicants, however, decreased from 2009 to 2011. For black applicants, the denial rate dropped from 32.3 percent in 2009 to 30.9 percent in 2010 and 2011, while the denial rate for Hispanics dropped from 25.6 percent in 2009 to 22.9 percent in 2010 and 21.7 percent in 2011.[10]

Low housing prices impacted existing homeowners as the number of foreclosures and underwater mortgages—where a homeowner owes more than the value of the home—remained at elevated levels. Although the number of homes with foreclosure filings fell 34 percent relative to 2010, 1.9 million homes were foreclosed on in 2011.[11] Foreclosure figures likely would have been higher in 2011 had it not been for processing slowdowns as a result of concerns about foreclosure practices and documentation, including some state foreclosure rules that significantly lengthen foreclosure times. Some housing analysts project higher foreclosure rates in 2012, with a downward trend beginning in 2013. As of the second quarter of 2012, the share of underwater mortgages was at a near-record high of 22.3 percent, and 4.7 percent of mortgaged homes had less than 5 percent equity.[12] The concentration of underwater borrowers is even higher for non-Enterprise loans. FHFA has estimated that less than 10 percent of borrowers with Enterprise loans had negative equity in their homes (9.9 percent in June 2011), whereas loans backing private label securities were more than three times more likely to have negative equity (35.5 percent in June 2011).[13]

According to the Mortgage Bankers Association (MBA), single-family mortgage activity totaled $363 billion in the first quarter of 2012, compared to $302 billion in the first quarter of 2011. Total originations in 2011 were $1,262 billion, with 68 percent of the total being refinancings.[14]

One result of the mortgage crisis is that the mortgage market now has stricter and less flexible lending standards. According to the Board of Governors of the Federal Reserve System's Senior Loan Officer Opinion Survey, underwriting standards tightened beginning in late 2006 and have not significantly eased since that time.[15] In the near term, underwriting standards can be expected to continue to be conservative. In addition, high vacancy rates, foreclosures and unemployment may continue to dampen the housing recovery.

FHFA has considered the above data in assessing national housing needs as required by the Safety and Soundness Act. FHFA has concluded that it is not necessary to adjust the benchmark levels based specifically on this factor.

2. Economic, Housing and Demographic Conditions

Increased role of FHA in the marketplace. The composition of the affordable conventional mortgage market is also influenced by FHA's market share. FHA loans generally are pooled into mortgage-backed securities (MBS) guaranteed by the Government National Mortgage Association (GNMA). Enterprise purchases of mortgages insured by FHA and mortgages guaranteed by VA generally do not receive housing goals credit. As a result, a higher FHA share of the market results in a smaller proportion of affordable loans among loans that can be counted for purposes of the housing goals. FHA's share of the market rose significantly during 2008 through 2010, reaching a share of the home purchase mortgage market of nearly 40 percent in 2010 before falling to 30 percent in 2011, as measured by HMDA data. FHA announced last year an annual mortgage insurance (MI) premium increase of 25 basis points, effective April 18, 2011.[16]

High unemployment. In addition to being an indicator of the health of the economy in general, labor market conditions affect the housing market more directly because buying a house is considered a large investment and a long-term commitment that requires stable employment. Nonfarm payroll employment increased by 114,000 in September 2012, following increases of 181,000 in July and 142,000 in August. The unemployment rate has steadily fallen from 9.1 percent in August 2011 to 7.8 percent in September 2012. NeighborWorks, a national network of community-based organizations actively involved in foreclosure mitigation counseling, has estimated that the two leading causes of mortgage default rates were a reduction in income (37 percent of defaults) and loss of income (21 percent of defaults).[17] To the extent that high unemployment rates impact lower-income wage earners more than higher-income wage earners, there could be fewer mortgage originations for goal-qualifying borrowers and, therefore, fewer such mortgages available for purchase by the Enterprises.

State of the refinance market. The size of the refinance mortgage market has an impact on the share of affordable refinance mortgages. Historically, refinance mortgage volume increases when the refinancing of mortgages is motivated by low interest rates, *i.e.,* ''rate and term refinances,'' and this increased volume is dominated by higher-income borrowers. As a result, in periods of low interest rates, the share of lower-income borrowers will decrease. Likewise, refinancings that occurred when interest rates were high tended to have a higher proportion of lower-income homeowners who were consolidating their debts or who were drawing equity out of their homes for other uses. While there are fewer mortgage refinancings for both lower-income and higher-income borrowers during high interest rate periods, the decrease is larger for higher-income borrowers.

In the current economic environment, lower-income homeowners tend to have less equity—or negative equity—in their homes because the prices of lower-valued homes have fallen more than the prices of higher-valued homes.[18] At the same time, lenders have tightened underwriting requirements, requiring higher down payments and higher credit scores. As a result, fewer lower-income homeowners may be able to refinance in 2012 and 2013. In addition,

[10] *See* Board of Governors of the Federal Reserve, ''The 2009 HMDA Data: The Mortgage Market in a Time of Low Interest Rates and Economic Distress,'' Federal Reserve Bulletin, available at *http://www.federalreserve.gov/pubs/bulletin/2010/pdf/2009_HMDA_final.pdf;* ''The Mortgage Market in 2010: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' available at *http://www.federalreserve.gov/pubs/bulletin/2011/pdf/2010_HMDA_final.pdf;* and ''The Mortgage Market in 2011: Highlights from the Data Reported under the Home Mortgage Disclosure Act,'' available at *http://www.federalreserve.gov/pubs/bulletin/2012/pdf/2011_HMDA.pdf.*

[11] *See* ''2011 Year-End Foreclosure Report: Foreclosures on the Retreat (January 9, 2012), available at *http://www.realtytrac.com/content/foreclosure-market-report/2011-year-end-foreclosure-market-report-6984.*

[12] *See* CoreLogic ''Q22012 Negative Equity Report,'' available at: *http://www.corelogic.com/about-us/researchtrends/asset_upload_file486_16724.pdf.*

[13] *See http://www.fhfa.gov/webfiles/23056/PrincipalForgivenessltr12312.pdf.*

[14] *See http://www.mbaa.org/ResearchandForecasts/ForecastsandCommentary.*

[15] Board of Governors of the Federal Reserve System, *Senior Loan Officer Opinion Survey* (November 7, 2011).

[16] *See* U.S. Dept. of Housing and Urban Development., Mortgagee Letter 11–10 (Feb. 14, 2011), available at *http://portal.hud.gov/hudportal/documents/huddoc?id=11-10ml.pdf.*

[17] *See* NeighborWorks, ''National Foreclosure Mitigation Counseling Program—Congressional Update—Activity Through January 31, 2010'' p. 41 (May 28, 2010), available at *http://www.nw.org/network/nfmcp/documents/CongressionalReportandAppendices.pdf.*

[18] *See* The Joint Center for Housing Studies of Harvard University, ''The State of the Nation's Housing, 2011,'' p. 40 (2011) (Table A–8), available at *http://www.jchs.harvard.edu/research/publications/state-nation%E2%80%99s-housing-2011.*

programs established in the wake of the financial crisis have affected refinancings. The Home Affordable Refinance Program (HARP), which became effective in March 2009 and was expanded in 2011, is an effort to enhance the opportunity for owners to refinance. Homeowners whose mortgages are owned or guaranteed by Fannie Mae or Freddie Mac and who are current on their mortgages have the opportunity to reduce their monthly mortgage payments to take advantage of historically low mortgage interest rates. An essential element of this program is the permission to carry forward into the new loan any existing MI from prior mortgages or, if no MI existed, none would be required for the refinanced mortgage. Even under favorable interest rate conditions, however, refinancings may not mirror previous years, thus FHFA is reducing the low-income refinance goal from 21 percent in the proposed rule to 20 percent in this final rule.

3. The Performance and Effort of the Enterprises Toward Achieving the Single-Family Housing Goals in Previous Years

Section 1332(a) of the Safety and Soundness Act, as amended by section 1128(b) of HERA, requires FHFA to establish three single-family owner-occupied home purchase mortgage goals for the Enterprises: A goal for low-income families; a goal for families that reside in low-income areas; and a goal for very low-income families. Section 1332(a) also requires FHFA to establish a goal for single-family refinancing mortgages for low-income families. The following section discusses the Enterprises' performance on these single-family goals in 2010–2011 and, to provide perspective, reviews what performance would have been on these four single-family goals had they been in effect from 2006 through 2009.

The figures shown in Tables 1–4 for 2010 and 2011 are official performance results as determined by FHFA, based on loan-level information submitted by the Enterprises. The housing goals in the Safety and Soundness Act, as amended, apply to the Enterprises' acquisitions of ''conventional, conforming, single-family, purchase money mortgages financing owner-occupied housing'' for the targeted groups. The figures exclude units financed by Enterprise purchases of private label securities (PLS), since such units were not counted toward the goals in 2010 or 2011.

Low-Income Families Home Purchase Goal. The low-income families home purchase goal applies to mortgages made to ''low-income families,'' defined as families with incomes no greater than 80 percent of area median income (AMI).[19] As indicated in Table 1, Fannie Mae's performance in 2011 (25.8 percent) was comparable to its performance in 2010 (25.1 percent) and to what it would have been in 2009 (25.5 percent), somewhat higher than it would have been in 2008 (23.1 percent), and somewhat lower than it would have been in 2006 and 2007 (27.7 percent and 26.0 percent). Freddie Mac's performance in 2011 (23.3 percent) was below its performance in 2010 (26.8 percent) but comparable with what it would have been in any year from 2006–2009 (22.1 percent–25.4 percent).

Very Low-Income Families Home Purchase Goal. The very low-income families home purchase goal applies to mortgages made to ''very low-income families,'' defined as families with incomes no greater than 50 percent of AMI. In essence, this operates as a subgoal of the low-income families housing goal, which applies to families with incomes no greater than 80 percent of AMI.

As indicated in Table 2, Fannie Mae's performance in 2011 (7.6 percent) was comparable to its performance in 2010 (7.2 percent) and to what it would have been in 2009 (7.3 percent), higher than it would have been in 2007 and 2008 (6.4 percent and 5.5 percent), and lower than it would have been in 2006 (7.7 percent). Freddie Mac's performance in 2011 (6.6 percent was below its performance in 2010 (7.9 percent), but comparable with what it would have been in the 2006–2009 period (5.3 percent–7.2 percent).

[19] *See* 12 U.S.C. 4502(14).

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Table 1
GSE Past Performance on the Low-Income Home Purchase Goal, 2006-11

Year	Type of Home Purchase (HP) Mortgages	Benchmark	Enterprise		Market Share (HMDA)
			Fannie Mae	Freddie Mac	
2011	Low-Income HP Mortgages		120,597	60,682	
	Total HP Mortgages		467,066	260,796	
	Low-Inc. % of HP Mortgages	27%	25.8%	23.3%	26.5%
2010	Low-Income HP Mortgages		120,430	82,443	
	Total HP Mortgages		479,200	307,555	
	Low-Inc. % of HP Mortgages	27%	25.1%	26.8%	27.2%
2009	Low-Income HP Mortgages		148,423	105,719	
	Total HP Mortgages		582,673	415,897	
	Low-Inc. % of HP Mortgages	NA	25.5%	25.4%	29.6%
2008	Low-Income HP Mortgages		226,290	158,896	
	Total HP Mortgages		977,852	655,156	
	Low-Inc. % of HP Mortgages	NA	23.1%	24.3%	25.5%
2007	Low-Income HP Mortgages		383,129	248,434	
	Total HP Mortgages		1,471,242	1,008,064	
	Low-Inc. % of HP Mortgages	NA	26.0%	24.6%	26.1%
2006	Low-Income HP Mortgages		359,609	197,900	
	Total HP Mortgages		1,295,956	895,049	
	Low-Inc. % of HP Mortgages	NA	27.7%	22.1%	24.2%

Source: Official performance as determined by FHFA for 2010-11; performance if the goal had been in effect, as calculated by FHFA, for 2006-09. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Note--As indicated, both Enterprises' official performance for 2011 fell short of the benchmark level of 27 percent. To determine whether an Enterprise's performance exceeded or fell short of the goal, FHFA has also compared official performance figures with the low-income share of conventional conforming home purchase mortgages originated in the primary mortgage market in 2011, based on FHFA analysis of data submitted by lenders to the Federal Financial Institutions Examination Council (FFIEC), in accordance with the Home Mortgage Disclosure Act (HMDA).
These results are shown in the last column.

Table 2
GSE Past Performance on the Very Low-Income Home Purchase Goal, 2006-11

Year	Type of Home Purchase (HP) Mortgages	Benchmark	Enterprise		Market Share (HMDA)
			Fannie Mae	Freddie Mac	
2011	Very Low-Income HP Mortgages		35,443	17,303	
	Total HP Mortgages		467,066	260,796	
	Very Low-Inc. % of HP Mortgages	8%	7.6%	6.6%	8.0%
2010	Very Low-Income HP Mortgages		34,673	24,276	
	Total HP Mortgages		479,200	307,555	
	Very Low-Inc. % of HP Mortgages	8%	7.2%	7.9%	8.1%
2009	Very Low-Income HP Mortgages		42,571	29,870	
	Total HP Mortgages		582,673	415,897	
	Very Low-Inc. % of HP Mortgages	NA	7.3%	7.2%	8.8%
2008	Very Low-Income HP Mortgages		54,263	40,009	
	Total HP Mortgages		977,852	655,156	
	Very Low-Inc. % of HP Mortgages	NA	5.5%	6.1%	6.5%
2007	Very Low-Income HP Mortgages		93,543	60,549	
	Total HP Mortgages		1,471,242	1,008,064	
	Very Low-Inc. % of HP Mortgages	NA	6.4%	6.0%	6.2%
2006	Very Low-Income HP Mortgages		100,148	47,008	
	Total HP Mortgages		1,295,986	895,049	
	Very Low-Inc. % of HP Mortgages	NA	7.7%	5.3%	5.9%

Source: Official performance as determined by FHFA for 2010-11; performance if the goal had been in effect, as calculated by FHFA, for 2006-09. "Very Low-income" refers to borrowers with incomes no greater than 50 percent of Area Median Income (AMI).

Note: As indicated, both Enterprises' official performance for 2011 fell short of the benchmark level of 8 percent. To determine whether an Enterprise's performance exceeded or fell short of the goal, FHFA has also compared official performance figures with the very low-income share of conventional conforming home purchase mortgages originated in the primary mortgage market in 2011, based on FHFA analysis of data submitted by lenders to the Federal Financial Institutions Examination Council (FFIEC), in accordance with the Home Mortgage Disclosure Act (HMDA).
These results are shown in the last column.

Low-Income Areas Home Purchase Goal and Subgoal. Three categories of mortgages qualify for the low-income areas housing goal:

(1) Home purchase mortgages for families in low-income census tracts, defined as tracts with median family income no greater than 80 percent of AMI;

(2) Home purchase mortgages for families with incomes no greater than 100 percent of AMI who reside in minority census tracts, defined as tracts with minority population of at least 30 percent and a median family income less than 100 percent of AMI; and

(3) Home purchase mortgages for families with incomes no greater than 100 percent of AMI who reside in Federally-declared disaster areas (regardless of the minority share of the population in the tract or the ratio of tract median family income to AMI).

FHFA established an overall goal for this category of home purchase mortgages of 24 percent for 2010–2011. As indicated in Table 3, Fannie Mae's performance in 2011 (22.4 percent) was below its performance in 2010 (24.0 percent) and also lower than it would have been in 2009 (26.9 percent) and in 2008 (25.5 percent). Freddie Mac's performance in 2011 (19.2 percent) was much lower than in 2010 (23.0 percent) and also much lower than it would have been in 2009 (25.0 percent) and in 2008 (25.5 percent).

The 2010–2011 final rule also established a subgoal for the low-income and high-minority census tracts components of the goal. For 2010 and 2011, FHFA set the benchmark level for this subgoal at 13 percent.[20] As indicated in Table 3, Fannie Mae's performance on the subgoal in 2011 (11.6 percent) was somewhat lower than in 2010 (12.4 percent) and also lower than it would have been in 2009 (13.3 percent) and in 2008 (15.1 percent). Freddie Mac's performance on the subgoal in 2011 (9.2 percent) was lower than in 2010 (10.4 percent) and also lower than it would have been in 2009 (11.6 percent) and in 2008 (15.2 percent).

[20] Affordability levels in low-income and high-minority areas, but not for disaster areas, can be adequately modeled using econometric time series forecast models.

Table 3
GSE Past Performance on the Low-Income Areas Home Purchase Goal and Subgoal, 2009-11, Based on 2000 Census Tracts

Year	Type of Home Purchase (HP) Mortgages	Benchmark	Enterprise		Market Share (HMDA)
			Fannie Mae	Freddie Mac	
2011	Low-Income Tract HP Mortgages		40,736	18,270	
	High-Minority Tract HP Mortgages		13,549	5,632	
	Subgoal Qualifying Mortgages		54,285	23,902	
	Total HP Mortgages		467,070	260,796	
	Subgoal Qualifying % of Mortgages	13%	11.6%	9.2%	11.4%
	Disaster Area HP Mortgages		50,209	26,232	
	Goal-Qualifying Mortgages		104,494	50,134	
	Goal Qualifying % of Mortgages	24%	22.4%	19.2%	22.0%
2010	Low-Income Tract HP Mortgages		44,467	23,928	
	High-Minority Tract HP Mortgages		14,814	8,161	
	Subgoal Qualifying Mortgages		59,281	32,089	
	Total HP Mortgages		479,201	307,556	
	Subgoal Qualifying % of Mortgages	13%	12.4%	10.4%	12.1%
	Disaster Area HP Mortgages		56,076	38,898	
	Goal-Qualifying Mortgages		115,357	70,876	
	Goal Qualifying % of Mortgages	24%	24.1%	23.0%	24.0%
2009	Low-Income Tract HP Mortgages		59,150	37,138	
	High-Minority Tract HP Mortgages		18,349	11,259	
	Subgoal Qualifying Mortgages		77,499	48,397	
	Total HP Mortgages		582,673	415,897	
	Subgoal Qualifying % of Mortgages	NA	13.3%	11.6%	13.0%
	Disaster Area HP Mortgages		79,255	55,565	
	Goal-Qualifying Mortgages		156,754	103,962	
	Goal Qualifying % of Mortgages	NA	26.9%	25.0%	28.1%

Source: Official performance as determined by FHFA for 2010-11; performance if the goal had been in effect, as calculated by FHFA, for 2009. See definition of "Low-income Area" in text. The goal and subgoal were set for 2010-11 based on low-income and high-minority tracts from the 2000 census, and official performance was also calculated on this basis. The goal and subgoal for 2012-14 are based on low-income and high-minority tracts from the 2010 census.

Note: As indicated, both Enterprises' official performance on the goal for 2011 fell short of the benchmark of 24 percent, and their official performance on the 2011 subgoal also fell short of the benchmark of 13 percent.

To determine whether an Enterprise's performance exceeded or fell short of the 2011 goal and subgoal, FHFA has also compared official performance figures with the corresponding shares of conventional conforming home purchase mortgages originated in the primary mortgage market in 2011, based on FHFA analysis of data submitted by lenders to the Federal Financial Institutions Examination Council (FFIEC), in accordance with the Home Mortgage Disclosure Act (HMDA). These results are shown in the last column.

Low-Income Families Refinancing Housing Goal. The refinancing housing goal is targeted to low-income families, *i.e.,* families with incomes no greater than 80 percent of AMI, and applies to mortgages that are given to pay off or prepay an existing loan secured by the same property. Thus, the goal does not apply to home equity or home purchase loans.

Qualifying permanent modifications of loans for low-income families under the Administration's Home Affordable Modification Program (HAMP) are counted toward the refinancing housing goal. The impact of such modifications on goal performance is shown in Table 4.

Table 4 shows the Enterprises' performance on this goal for 2010–11, as well as what performance would have been if the goal had been in effect for the preceding four years. Performance shown for all years excludes units financed by Enterprise purchases of PLS, because such units were not counted toward the goals in 2010 or 2011.

As indicated in Table 4, Fannie Mae's performance in 2011 (23.1 percent) was higher than in 2010 (20.9 percent) and comparable with what it would have been in 2006–2009 (23.0 percent–26.6 percent). Freddie Mac's performance in 2011 (23.4 percent) was higher than in 2010 (22.0 percent) and in 2009 (21.7 percent), but comparable with what it would have been in 2006–2008 (23.2 percent–26.0 percent).

Table 4
GSE Past Performance on the Low-Income Refinance Goal, 2006-11

Year	Type of Mortgage or Modification	Benchmark	Enterprise		Market Share (HMDA)
			Fannie Mae	Freddie Mac	
2011	Low-Income Refinance Mortgages		384,598	231,948	
	Total Refinance Mortgages		1,802,131	1,092,894	
	Low-Inc. % of Refinance Mortgages	NA	21.3%	21.2%	21.5%
	Low-Income Loan Modifications		45,656	35,625	
	Total Loan Modifications		64,124	52,910	
	Low-Inc. % of Loan Modifications	NA	71.2%	67.3%	NA
	Low-Income Total		430,254	267,573	
	Refinance plus Modification Total		1,866,255	1,145,804	
	Low-Inc. % of Refi. plus Loan Mod Total	21%	23.1%	23.4%	NA
2010	Low-Income Refinance Mortgages		373,105	286,741	
	Total Refinance Mortgages		1,934,270	1,378,578	
	Low-Inc. % of Refinance Mortgages	NA	19.3%	20.8%	20.2%
	Low-Income Refinance Loan Modifications		44,343	25,244	
	Total Refinance Loan Modifications		63,428	37,411	
	Low-Inc. % of Refinance Loan Modificatic	NA	69.9%	67.5%	NA
	Low-Income Refinance Total		417,448	311,985	
	Refinance Total		1,997,698	1,415,989	
	Low-Inc. % of Refinance Total	21%	20.9%	22.0%	NA
2009	Low-Income Refinance Mortgages		479,631	326,912	
	Total Refinance Mortgages		2,415,169	1,708,676	
	Low-Inc. % of Refinance Mortgages	NA	19.9%	19.1%	20.9%
	Low-Income Refinance Loan Modifications		114,390	63,708	
	Total Refinance Loan Modifications		168,437	94,062	
	Low-Inc. % of Refinance Loan Modificatic	NA	67.9%	67.7%	NA
	Low-Income Refinance Total		594,021	390,620	
	Refinance Total		2,583,606	1,802,738	
	Low-Inc. % of Refinance Total	NA	23.0%	21.7%	NA
2008	Low-Income Refinance Mortgages		335,864	215,016	
	Total Refinance Mortgages		1,455,287	927,816	
	Low-Inc. % of Refinance Mortgages	NA	23.1%	23.2%	23.4%
2007	Low-Income Refinance Mortgages		351,739	252,889	
	Total Refinance Mortgages		1,421,342	1,005,519	
	Low-Inc. % of Refinance Mortgages	NA	24.7%	25.2%	24.3%
2006	Low-Income Refinance Mortgages		301,995	217,882	
	Total Refinance Mortgages		1,133,684	838,104	
	Low-Inc. % of Refinance Mortgages	NA	26.6%	26.0%	24.8%

Source: Official performance as determined by FHFA for 2010-11; performance if the goal had been in effect, as calculated by FHFA, for 2006-09. "Low-income" refers to borrowers with incomes no greater than 80 percent of Area Median Income (AMI).

Note: As indicated, both Enterprises' official performance, including loan modifications, for 2011 exceeded the goal benchmark of 21 percent.

4. The Ability of the Enterprises To Lead the Industry in Making Mortgage Credit Available

Leading the industry in making mortgage credit available includes making mortgage credit available to primary market borrowers at differing income levels with varying credit profiles living in various markets. Leadership also relates to the Enterprises' loss mitigation efforts, implementation of loan modification and refinance programs and support for state and local housing finance agencies.

The Enterprises, along with FHA and VA, now lead the market in making mortgage credit available. In 2011, the Enterprises remained the largest issuers of MBS, guaranteeing 72 percent of single-family MBS. Policymakers have expressed concern with the extent of

government support for housing. The Enterprises' losses have depleted their capital and resulted in their being sustained only by infusions of capital from the U.S. Treasury under the Senior Preferred Stock Purchase Agreements. FHFA as conservator exercises statutory authority to conserve and preserve the Enterprises' assets, and to place the Enterprises in a sound and stable condition. Consistent with those responsibilities, FHFA has announced a number of steps to encourage more private participation in the mortgage market. FHFA has taken into account all of the foregoing considerations in assessing the Enterprises' ability to lead the industry in making mortgage credit available as required by the Safety and Soundness Act. FHFA has concluded that it is not necessary to adjust the benchmark levels based specifically on this factor.

5. Other Mortgage Data

HMDA data reported by loan originators is the primary source of reliable mortgage data for establishing the single-family housing goals. In setting the housing goal benchmark levels, FHFA evaluates the Enterprises' performance with respect to leading or lagging the housing market under specific goals and compares HMDA data with mortgage purchase data provided by the Enterprises. FHFA also uses other reliable data sources including: The American Housing Survey (AHS); U.S. Census Bureau demographics; commercial sources such as Moody's; and other industry and trade research sources, *e.g.,* MBA, Inside Mortgage Finance Publications, NAR, National Association of Home Builders (NAHB), and the Commercial Mortgage Securities Association. The FHFA Monthly Interest Rate Survey (MIRS) is used to complement forecast models for home purchase loan originations by making intra-annual adjustments prior to the public release of HMDA mortgage data.

In the development of economic forecasts, FHFA uses data and information from Wells Fargo, PNC, Fannie Mae, Freddie Mac, and The Wall Street Journal Survey. In addition, FHFA uses market and economic data from the Bureau of Labor Statistics, the Federal Reserve Board, the Department of Commerce Bureau of Economic Analysis, and FedStats.

6. Market Size

Expectations for the 2012 and 2013 single-family mortgage market are for slow growth. Quantifiable factors influencing FHFA's outlook for the mortgage market include general growth in the economy, employment, inflation, and the interest rate environment. Industry observers expect subprime mortgage market activity to remain minimal through 2013. The FHA-insured mortgage market share is expected by industry observers to continue to be a major factor in the affordability levels in the conventional market as FHA loans will continue to be an attractive option for low-income homebuyers.[21] The effects of unemployment, FHA market share, and refinancing have been discussed previously (*see* Section 2). The effects of interest rates, house prices, the overall housing market, manufactured housing, and the market outlook are discussed below.

Market outlook. Industry observers' economic and mortgage market forecasts are presented in Tables 5 and 6. On average, industry forecasters project the economy to continue to grow in 2012 and 2013, with Real Gross Domestic Product (GDP) growing at rates of just over 2.0 percent over the period. These industry observers also expect the unemployment rate to remain just above 8.0 percent during the remainder of 2012, and falling to 7.8 percent in the fourth quarter of 2013.

[21] FHFA monitors the economic, housing and mortgage market forecasts of 12 industry and government entities. These entities are referred to as ''industry observers.'' For more information, and specifically which economic indicators each entity forecasts, *see* ''Market Estimation Model for the 2012–2014 Enterprise Single-Family Housing Goals'' published at FHFA's Web site, *www.fhfa.gov.*

Table 5

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Low-Income Borrower HP Share	27.2%	24.2%	24.0%	26.0%	25.3%	29.6%	27.2%	26.5%	27.0%	26.3%
Very Low-Income Borrower HP Share	6.6%	5.5%	5.9%	6.1%	6.5%	8.8%	8.1%	8.0%	8.3%	8.2%
Low-Income Area HP Share	16.7%	15.3%	15.8%	16.2%	14.1%	13.0%	12.1%	11.4%	11.8%	11.9%
Low-Income Borrower Refi. Share	28.0%	26.0%	24.7%	24.2%	23.4%	20.8%	21.5%	21.5%	19.9%	22.6%
Real GDP	3.5%	3.1%	2.7%	1.9%	-0.3%	-3.1%	2.4%	1.8%	2.2%	2.1%
Nominal GDP	6.4%	6.5%	6.0%	4.9%	1.9%	-2.2%	3.8%	4.0%	4.0%	4.0%
Real Personal Consumption	3.3%	3.4%	2.8%	2.3%	-0.6%	-1.9%	1.8%	2.5%	1.9%	2.0%
Real Residential Construction	9.8%	6.2%	-7.4%	-18.7%	-23.9%	-22.4%	-3.7%	-1.4%	11.3%	9.8%
Inflation Rate (CPI, Y/Y % Change)	3.3%	3.7%	1.9%	4.0%	1.6%	1.4%	1.3%	3.3%	2.5%	2.1%
Core Infl. Rate (CPI, Y/Y % Change)	2.1%	2.1%	2.6%	2.3%	2.0%	1.7%	0.7%	2.2%	2.1%	1.9%
Core Infl. Rate (PCE, Y/Y % Change)	2.2%	2.3%	2.3%	2.4%	2.0%	1.7%	1.0%	1.8%	1.8%	1.9%
Unemployment Rate	5.5%	5.1%	4.6%	4.6%	5.8%	9.3%	9.6%	8.9%	8.2%	7.9%
10-Year Treasury Yield	4.3%	4.3%	4.8%	4.6%	3.7%	3.3%	3.2%	2.8%	1.8%	2.0%
1-Year Treasury Yield	1.9%	3.6%	4.9%	4.5%	1.8%	0.5%	0.3%	0.2%	0.2%	0.3%
Prime Rate	4.3%	6.2%	8.0%	8.1%	5.1%	3.3%	3.3%	3.3%	3.2%	3.3%
Federal Funds Target Rate	1.35%	3.22%	4.97%	5.02%	1.93%	0.16%	0.18%	0.10%	0.16%	0.20%
Consumer Confidence	96.1	100.3	105.9	103.3	57.9	45.4	53.4	58.0	n.a.	n.a.

Note: Shaded area indicates forecasted values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial, the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

n.a. Not available at this time.

Table 6

Economic and Mortgage Market Outlook

	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Housing Starts [1]	1,951	2,071	1,810	1,341	899	554	585	613	748	906
Housing Starts, 1-Unit [1]	1,605	1,718	1,472	1,035	616	443	471	435	517	616
Total Home Sales [2]	7,929	8,356	7,563	5,805	4,588	4,710	4,506	4,590	4,938	5,285
New Home Sales [1]	1,201	1,279	1,049	768	482	374	321	307	370	464
Existing Home Sales [1]	6,727	7,077	6,514	5,037	4,106	4,336	4,185	4,283	4,590	4,824
Single-Family Originations [3]	$2,919	$3,120	$2,979	$2,430	$1,500	$1,815	$1,572	$1,262	$1,533	$1,187
Refinance Mortgage Share [4]	54%	49%	48%	51%	51%	66%	65%	68%	72%	52%
FHA Home Purchase Market Share [5]	7%	4%	4%	6%	25%	36%	35%	30%	29%	23%
ARM Market Share	34%	30%	21%	11%	7%	4%	5%	5%	6%	9%
Investor Share	11%	13%	13%	12%	12%	8%	9%	11%	10%	10%
30-Year Mortgage Fixed Rate [6]	5.8%	5.9%	6.4%	6.3%	6.0%	5.0%	4.7%	4.5%	3.7%	3.8%
1-Year ARM Rate [6]	3.9%	4.5%	5.5%	5.6%	5.2%	4.7%	3.8%	3.0%	2.8%	2.9%
Change in Housing Prices (FHFA ALL) [7]	10.2%	11.2%	4.7%	-0.8%	-6.4%	-4.7%	-1.6%	-2.9%	0.2%	3.2%
Change in Housing Prices (FHFA PO) [8]	11.6%	10.1%	3.1%	-2.3%	-9.6%	-1.6%	-4.0%	-2.3%	1.2%	1.4%
Change in Housing Prices (CS HPI) [9]	19.1%	16.1%	1.4%	-8.3%	-19.2%	-4.5%	-0.6%	-3.8%	1.5%	1.6%
Housing Affordability Index [10]	126	114	108	117	139	172	174	186	198	196
Median Sales Price - New Homes [11]	$218	$234	$243	$244	$230	$215	$221	$224	$230	$234
Median Sales Price - Existing Homes [11]	$193	$218	$222	$217	$197	$173	$172	$165	$174	$176

Note: Shaded area indicates forecasted values. Forecasts are an average forecast of Mortgage Bankers Association (MBA), Fannie Mae, Freddie Mac, National Association of Realtors, Wells Fargo, PNC Financial, the National Association of Home Builders, Standard and Poor's, the Wall Street Journal Survey, the Conference Board and the Federal Open Market Committee.

[1] Thousands of units

[2] Thousands of units, forecasted amount does not equal the sum of the existing plus new home sales because differences in forecasts.

[3] MBA, Billions of dollars

[4] The refinance shares for 2004-2009 are calculated from Home Mortgage Disclosure Act (HMDA) data. Estimates for 2010 include refinance rates reported by MBA.

[5] The FHA market shares for 2008 are calculated from HMDA data. Preliminary estimates for 2009 are the FHA endorsements (FHA Outlook) share of home sales (Census Bureau), scaled to match the mortgage market FHA market share.

[6] Freddie Mac, Primary Mortgage Market Survey

[7] FHFA House Price Index, all transactions (Q4/Q4 % Change)

[8] FHFA House Price Index, purchase transactions only (Q4/Q4 % Change)

[9] Standard & Poor's Case-Shiller 10 City Index (Q4/Q4 % Change)

[10] National Association of Realtors

[11] Thousands of dollars

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Interest rates. Affordability in the mortgage market depends in part on the interest rate environment. Mortgage interest rates are impacted by many factors. Interest rates on longer term financial instruments such as mortgages typically follow the fluctuations of the 10-Year Treasury note yield, with approximately a 190 basis point spread reflecting the differences in liquidity and credit risk in 2012 and 180 basis point spread expected in 2013. With uncertainty in the financial markets of the European Union, the U.S. financial markets have seen increased demand as financial instruments here are seen as a ''safe haven.'' Overall, interest rates in the United States are heavily influenced by the monetary policies of the Federal Reserve Board's Federal Open Market Committee (FOMC). During the current economic environment, since mid-2008, the FOMC has maintained an accommodative monetary policy in support of its dual mandate of fostering maximum employment and price stability. In its September 12–13, 2012 meeting, the FOMC stated that it is committed to a low federal funds rate policy (at 0 to 0.25 percent) through mid-2015: ''[t]o support continued progress toward maximum employment and price stability, the Committee expects that a highly accommodative stance of monetary policy will remain appropriate for a considerable time after

the economic recovery strengthens.'' [22] This monetary policy, combined with the international demand for U.S. financial instruments, has led to historically low interest rates in the mortgage market. The longer term 30-year fixed-rate mortgage interest rate has fallen from 4.9 percent at the beginning of 2011 to 3.49 percent in Freddie Mac's September 20, 2012 Primary Mortgage Market Survey. Shorter term fixed- and adjustable-rate mortgage interest rates remain at historical lows, for example, on September 20, 2012, Freddie Mac reported that the average one-year adjustable-rate mortgage rate was 2.61 percent. As a major contributor to the cost of mortgage financing, lower interest rates directly affect the affordability of buying a home or refinancing a mortgage. As the economic recovery strengthens in the near future and if the European situation stabilizes, it is expected that interest rates, particularly longer term interest rates, will rise. For the 2012–2013 period, as shown in Table 6, forecasts show that all interest rates are expected to remain at historical lows, including the interest rate on a 30-year fixed-rate mortgage, which is expected to remain near 3.6 percent in the fourth quarter of 2012 and to only reach 3.9 percent by the fourth quarter of 2013.

House prices. Trends in house prices influence the housing and mortgage markets. In periods of house price appreciation, home sales and mortgage originations increase as the expected return on investment rises. In periods of price depreciation or price uncertainty, home sales and mortgage originations decrease as risk-averse homebuyers are reluctant to enter the market. House prices fell during 2009 through 2011, but are expected to end 2012 up slightly from the fourth quarter 2011. House prices are expected to continue with modest increases through 2013 (*see* Table 6).

Housing market. An active housing market is generally good for the affordable home market. When there are more homes for sale, potential home buyers have more options, prices tend to be more competitive and the search costs to find affordable housing decrease. Historical volumes for sales of both new and existing houses are shown in Table 6, along with forecasts for 2012–2013. Total home sales reached a 10-year annual low in 2010 at 4.5 million units. Home sales increased slightly in 2011 to 4.6 million units, and industry observers expect that home sales will increase to 4.9 million units in 2012 and to 5.3 million units in 2013—well below 2004–2006 levels.

During 2009 and early 2010, special homebuyers tax credits were available for first-time and repeat homebuyers. Mortgages to first-time homebuyers tend to be more likely to qualify for housing goals than those for repeat homebuyers, who tend to be older and have higher incomes. Many first-time homebuyers whose mortgages might otherwise have been available to receive goal-qualifying loans for home purchases in 2012–2014 instead bought their homes in 2009 or 2010 to take advantage of the first-time homebuyers tax credit.

Manufactured housing loans. Between 2009 and 2011, 63 percent of manufactured housing loans were higher priced, according to HMDA data. Because chattel-financed loans do not count towards achievement of the housing goals, it was necessary to adjust the HMDA figures with respect to market estimates to account for this part of the manufactured housing market. Accordingly, FHFA down-weighted the average 2009 to 2011 manufactured housing contribution to the goals market estimates by 80 percent for the home purchase mortgage goals and 40 percent for the refinance mortgage goal. This resulted in the market estimate for the low-income home purchase housing goal being reduced by 1.4 percent, the very low-income home purchase housing goal and the low-income areas home purchase housing goal by 0.6 percent, and the low-income borrower refinance housing goal by 0.2 percent. The projected market estimates in Table 5 reflect these adjustments.

Housing goal outlook. FHFA's estimates of the market performance for the two single-family owner-occupied home purchase housing goals and one subgoal, and the refinancing mortgage housing goal, are provided in Table 5. For 2012 and 2013, FHFA estimates that the low-income borrower shares of the home purchase mortgage market will be 27.0 percent and 26.3 percent, respectively. FHFA estimates that the very low-income borrower share of the home purchase mortgage market will be 8.3 percent for 2012 and 8.2 percent for 2013. FHFA estimates that the share of subgoal-qualifying mortgages in low-income areas in the home purchase mortgage market, excluding designated disaster areas, will be 11.8 percent in 2012 and 11.9 percent in 2013.

The refinance share of the market, as measured by the MBA, averaged 68 percent in 2011. With interest rates projected to rise during 2012–2013, industry observers expect the refinance share of total originations to decrease. Generally speaking, decreasing refinance share leads to a higher percentage of refinance originations made up of lower-income borrowers. Accordingly, with a projected refinance share of 72 percent in 2012 and 52 percent in 2013, FHFA's market model estimates that 19.9 percent of refinance mortgages will be made to low-income borrowers in 2012 and 22.6 percent in 2013. These estimates are reflective of historical lending patterns and trends. However, as evidenced by the Federal Reserve Bank of Philadelphia's *Community Outlook Survey,* the tightening of underwriting standards will impact the access to credit of lower-income borrowers. In this survey of organizations servicing low- and moderate-income populations (those with incomes less than 80 percent of AMI), only 2 percent of the respondents saw an increase in the access to credit in the second quarter of 2012, and only 4 percent of the respondents saw an increase in the access to credit in the first quarter of 2012.[23]

To arrive at the market estimates, FHFA used an econometric state space methodology to extend the trends of the market performance for each goal, based on a monthly time series database provided by the Federal Financial Institutions Examination Council (FFIEC) and the Federal Reserve Board. For the low-income areas goal, this model produced the market estimates for only the subgoal. The remainder of the market estimates for this goal relates to the designated disaster areas. FHFA will provide the 2012–14 estimates of the share of home purchase mortgages that will qualify for the designated disaster areas portion of the low-income areas goal to the Enterprises in January of each year.

7. Need To Maintain the Sound Financial Condition of the Enterprises

FHFA's duties as conservator require the conservation and preservation of the Enterprises' assets. While reliance on the Treasury's backing will continue until legislation produces a final resolution to the Enterprises' future, FHFA is monitoring the activities of the Enterprises to: (a) Limit their risk exposure by avoiding new lines of business; (b) ensure profitability in the new book of business without deterring market participation or hindering market recovery; and (c) minimize losses on the mortgages already on their books. Given the importance of the Enterprises to the housing market, any goal-setting must be closely linked to

[22] Federal Open Market Committee, *Press Release,* September 13, 2012.

[23] Federal Reserve Bank of Philadelphia, *Second Quarter 2012 Community Outlook Survey,* August 2012.

putting the Enterprises in sound and solvent condition.

B. Single-Family Housing Goal Benchmark Levels

FHFA used all relevant information when determining the benchmark levels for the 2012 and 2013 housing goals. While the tightening of underwriting standards is not included in the market estimates calculation, it was considered in the determination of the benchmark levels. FHFA attempts to use the most current data possible when estimating market size, including information from FHFA's MIRS and combined Fannie Mae and Freddie Mac refinance goal performance data to extend HMDA performance data. FHFA used estimated market series of goal-qualifying shares provided by Freddie Mac that are based on MIRS data from January 2004 to May 2012. In addition, FHFA used the combined Enterprise performance data from January 2001 to July 2012 to inform the market estimates for the refinance goal. Guidance for calculating market size using historical HMDA data is provided in the ''Market Estimation Model for the 2012–2014 Enterprise Single-Family Housing Goals'' published by FHFA on its Web site.[24]

Summary of comments. FHFA received a number of comments on the benchmark levels of the single-family housing goals that were in the proposed rule. Three housing advocacy groups and one trade association stated that the proposed level for the low-income home purchase goal benchmark (20 percent) was too low. They pointed out that it was considerably below actual performance by both Enterprises in 2010 and 2011, which ranged from 23.3 percent to 26.8 percent. One of the advocacy groups said that a low level of this benchmark could become a ''self-fulfilling prophecy.''

One advocacy organization argued that FHFA should not use the lower end of the projected range of market estimates in setting this goal, and that it should ''supplement its econometric state space model with other forecasting techniques.'' A trade association stated that its forecast of the housing market is more positive than that projected by FHFA at the time of the proposed rule. An advocacy group noted that FHA's market share had declined between 2009 and 2011, and felt that this could lead to more goal-qualifying mortgages in the conventional market. Also, a trade association stated that the proposed low-income refinance goal (21 percent) was low relative to FHFA's market forecast for 2013.

FHFA determination. FHFA has updated its forecasts of the goal-qualifying shares of conventional conforming mortgages in 2012–2014, as explained elsewhere in this final rule. Based on new housing data, more recent forecasts from outside experts, and the factors described above, § 1282.12 of the final rule establishes the benchmark levels for the single-family housing goals for 2012, 2013, and 2014 as follows:

Housing goal for low-income families. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for low-income families is 23 percent of the total number of such mortgages purchased by that Enterprise, an increase from the 20 percent level in the proposed rule. This increase is supported by the fact that one of the statutory factors to be used in setting goals is past performance, which, as shown in Table 1, significantly exceeded the proposed goal level of 20 percent in 2010–2011.

Housing goal for very low-income families. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for low-income families is 7 percent of the total number of such mortgages purchased by that Enterprise, as in the proposed rule.

Housing subgoal for families in low-income areas. The 2012–2014 benchmark level of the annual subgoal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income census tracts and for low- and moderate-income families in minority census tracts is 11 percent of the total number of such mortgages purchased by that Enterprise, as in the proposed rule.

Housing goal for families in low-income areas. The benchmark level of the annual goal for each Enterprise's purchases of purchase money mortgages on owner-occupied single-family housing for families in low-income areas is set annually by notice from FHFA. The benchmark level is based on the benchmark level for the low-income areas subgoal, plus an adjustment factor that reflects the incremental percentage share that mortgages for low- and moderate-income families in designated disaster areas had in the most recent year for which data is available. For 2012, this adjustment factor is 9 percentage points.

Impact of 2010 Census. This subgoal and goal were established for 2010–2011 based on data from the 2000 census. FHFA has also used 2000 census data in its modeling for forecasting the benchmark levels for the single-family housing goals. However, the Enterprises are in the process of transitioning from 2000 census data to 2010 census data as the basis for reporting performance on this goal and subgoal. Due to inadequate data, FHFA has not formulated this goal and subgoal in terms of 2010 census data, but FHFA notes that there was an increase in the number of low-income tracts and, especially, high-minority tracts between 2000 and 2010. Thus, FHFA anticipates that this transition will increase performance on this goal and subgoal.

Housing goal for refinancing mortgages. The benchmark level of the annual goal for each Enterprise's purchases of refinancing mortgages on owner-occupied single-family housing for low-income families is 20 percent of the total number of such mortgages purchased by that Enterprise, a slight reduction from the 21 percent level in the proposed rule.

V. Multifamily Housing Goals

A. Analysis of Factors for Multifamily Housing Goals

Section 1333(a)(4) of the Safety and Soundness Act requires FHFA to consider the following six factors in setting the multifamily special affordable housing goals:

(1) National multifamily mortgage credit needs and the ability of the Enterprise to provide additional liquidity and stability for the multifamily mortgage market;

(2) The performance and effort of the Enterprise in making mortgage credit available for multifamily housing in previous years;

(3) The size of the multifamily mortgage market for housing affordable to low-income and very low-income families, including the size of the multifamily markets for housing of a smaller or limited size;

(4) The ability of the Enterprise to lead the market in making multifamily mortgage credit available, especially for multifamily housing affordable to low-income and very low-income families;

(5) The availability of public subsidies; and

(6) The need to maintain the sound financial condition of the Enterprise.[25]

FHFA's analysis of each of the factors is set forth below.

1. National Multifamily Mortgage Credit Needs

In 2011, total multifamily mortgage originations increased by 60 percent as

[24] *See http://www.fhfa.gov/Default.aspx?Page=72.*

[25] 12 U.S.C. 4563(a)(4).

commercial banks and thrifts significantly increased their multifamily lending, according to MBA survey data.[26] This trend has continued in the first half of 2012. Life insurance companies, and to a limited extent, commercial mortgage-backed securities (CMBS) issuers, increased their lending volumes in the first half of 2012 compared to the first half of 2011. As a result of traditional multifamily lenders re-entering the market, the Enterprises' market share in terms of dollars returned to pre-2008 levels.[27]

Record low interest rates and robust performance by the multifamily market have attracted banks and thrifts back to multifamily lending. Banks and thrifts have helped to fill in the void left by the exit of conduit lenders from multifamily lending in 2008. FHFA expects that in 2012 the Enterprises will likely see a decrease in their market share of originations, based on second quarter 2012 loan origination data provided by the MBA.[28] Freddie Mac's first half 2012 multifamily production was about $12 billion in financing, which is about 67 percent higher than in the first half of 2011. Likewise, Fannie Mae has seen a sharp increase in first half 2012 multifamily production volume. Through June 30, 2012, Fannie Mae had purchased around $14 billion in multifamily loans, compared to $10.5 billion in the first half of 2011. The Enterprises' market share should continue to decline over the 2013–2014 period, although the overall multifamily mortgage market should slowly grow as the economy recovers. In arriving at this conclusion, FHFA considered, among other factors, vacancy rates, demand for multifamily housing, interest rates, property values, and new multifamily starts.

Vacancy rates and demand for multifamily housing. Declining vacancy rates are usually associated with increased rents and greater investor interest in multifamily properties. According to the U.S. Census Bureau, rental vacancy rates fell from 9.2 percent in the second quarter of 2011 to 8.6 percent in the second quarter of 2012. ''Effective rents,'' which are the rents that tenants actually pay, increased at an annual rate of over 4 percent in markets tracked by Axiometrics, a provider of commercial real estate data.[29] Although vacancy rates decreased and property values and rents increased, multifamily construction permits were issued at an annualized rate of 274,000 in July 2012, which is still well below historical levels. Continued low interest rates and increased demand for multifamily housing should spur further increases in new multifamily construction. Likewise, the lack of new units coming onto the market and the prevailing low interest rates should continue to encourage multifamily property owners to refinance. However, a rise in interest rates would likely temper any increase in multifamily mortgage activity in 2013–2014.

Property values. As of the end of June 2012, multifamily property values were up over 24 percent from their low point in the third quarter of 2009.[30] However, multifamily property values are still below peak levels reached in 2007. FHFA anticipates a continued rise in multifamily property values in most markets for the rest of 2012 and for the subsequent two years. Rising multifamily property values usually spur increased refinancings, property sales, and new construction activity.

2. The Performance and Effort of the Enterprises in Making Mortgage Credit Available for Multifamily Housing in Previous Years

Multifamily Low-Income Housing Goal. The multifamily low-income housing goal includes units affordable to low-income families (those with incomes no greater than 80 percent of AMI, as defined in HERA). Both Enterprises played major roles in funding multifamily units for low-income families between 2006 and 2009, as shown in Table 7. Fannie Mae financed an average of 346,000 such units over this period, peaking at 447,000 units in 2008, while Freddie Mac financed an average of 226,000 such units over this period, peaking at 298,000 units in 2007. The Enterprises followed different approaches to providing financing for affordable multifamily properties, with Freddie Mac relying to a significant extent on the purchase of CMBS or the issuance of Tax-Exempt Bond Securitizations, while Fannie Mae depended to a greater extent on the direct purchase of multifamily loans originated by its Delegated Underwriting and Servicing (DUS) lenders.

In the final rule establishing the housing goals for 2010–2011, FHFA set the minimum goal for Fannie Mae at 177,750 low-income multifamily units per year, and the minimum goal for Freddie Mac at 161,250 such units per year, which were below the Enterprises' average levels of purchases in 2006–2009. FHFA determined that in 2010 Fannie Mae financed 214,997 low-income multifamily units, or 121 percent of its goal, while Freddie Mac financed 161,500 such units, or 100.2 percent of its goal. In 2011, Fannie Mae financed 301,244 low-income multifamily units, or 169 percent of its goal, while Freddie Mac financed 229,001 such units, or 142 percent of its goal.

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[26] MBA Analysis Pegs 2011 Multifamily Lending at $110.1 Billion, Up 60% from 2010, MBA October 4, 2012, *http://www.mortgagebankers.org/NewsandMedia/PressCenter/82273.htm.*

[27] Mortgage Bankers' Commercial/Multifamily Originations up 55 Percent to $184.3 Billion in 2011, MBA April 11, 2012, *http://www.mortgagebankers.org/NewsandMedia/PressCenter/80430.htm.*

[28] Second Quarter Commercial/Multifamily Mortgage Originations Up 25 Percent from Q2 2011, MBA July 31, 2012, *http://www.mortgagebankers.org/NewsandMedia/PressCenter/81459.htm.*

[29] ''Axiometrics: National Effective Rents Up Slightly In July,'' *MortgageOrb.com* (August 28, 2012), available at *http://www.mortgageorb.com/e107_plugins/content/content.php?content.12282.*

[30] ''June Swoon: CRE Pricing Recovery Hits Soft Patch,'' CoStar (August 2012), available at *http://www.costar.com/News/Article/June-Swoon-CRE-Pricing-Recovery-Hits-Soft-Patch/140696.*

Table 7

GSE Past Performance on the Low-Income Multifamily Goal, 2006-11

	Fannie Mae		Freddie Mac	
Year	Goal	Performance	Goal	Performance
2011	177,750	301,224	161,250	229,001
2010	177,750	214,997	161,250	161,500
2009	NA	234,492	NA	166,680
2008	NA	446,797	NA	265,699
2007	NA	391,768	NA	297,711
2006	NA	311,088	NA	173,331

Source: Official performance as determined by FHFA for 2010-11; performance if the goal had been in effect, as calculated by FHFA, for 2006-09.
"Low-income" refers to units affordable to renters with incomes no greater than 80 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS). Data on units financed including and excluding CMBS for 2001-09 are contained in the final rule establishing the housing goals for 2011, as published in the *Federal Register*, Table 7, 9/14/10, p. 55918.

Multifamily Very Low-Income Subgoal. The multifamily very low-income housing subgoal includes units affordable to very low-income families (those with incomes no greater than 50 percent of AMI, as defined in HERA). Enterprise financing of rental units for very low-income families over the 2006–2011 period is reported in Table 8. On average, from 2006 to 2009, Fannie Mae financed 83,000 such units each year, peaking at 95,000 units in 2008, and Freddie Mac financed 39,000 such units each year, peaking at 59,000 units in 2007. The 2010–2011 housing goals regulation set the minimum subgoal for Fannie Mae at 42,750 very low-income multifamily units, and for Freddie Mac at 21,000 such units, which were below the Enterprises' average levels of loan purchases in 2006–2009. FHFA determined that, in 2010, Fannie Mae financed 53,908 very low-income multifamily units, or 126 percent of its subgoal, while Freddie Mac financed 29,650 such units, or 141 percent of its subgoal. In 2011, Fannie Mae financed 84,244 very low-income multifamily units, or 197 percent of its subgoal, while Freddie Mac financed 35,471 such units, or 169 percent of its subgoal.

Table 8

GSE Past Performance on the Very Low-Income Multifamily Subgoal, 2006-11

	Fannie Mae		Freddie Mac	
Year	Goal	Performance	Goal	Performance
2011	42,750	84,244	21,000	35,471
2010	42,750	53,908	21,000	29,656
2009	NA	60,466	NA	20,302
2008	NA	95,308	NA	42,835
2007	NA	88,369	NA	59,490
2006	NA	86,894	NA	34,256

Source: Official performance as determined by FHFA for 2010-11; performance if the goal had been in effect, as calculated by FHFA, for 2006-09. "Very low-income" refers to units affordable to renters with incomes no greater than 50 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS). Data on units financed including and excluding CMBS for 2001-09 are contained in the final rule establishing the housing goals for 2011, as published in the *Federal Register*, Table 8, 9/14/10, p. 55919.

Financing of low-income units in small multifamily properties. Section 1333(a)(3) of the Safety and Soundness Act provides that the Director shall require each Enterprise to report on its purchases of mortgages on multifamily housing ''of a smaller or limited size that is affordable to low-income families.'' [31] Consistent with industry practice, FHFA has defined small multifamily properties as those containing 5 to 50 units.

Small multifamily properties play an important role as a source of affordable rental housing. According to the 2007 American Housing Survey, multifamily properties containing 5–50 units constituted 77 percent of all multifamily units and 74 percent of the multifamily units constructed in the previous 4 years. Table 9 reports information on low-income units in small multifamily properties that were financed by the Enterprises in 2006–2011.

[31] 12 U.S.C. 4563(a)(3).

Table 9

GSE Funding of Low-Income Units in Small Multifamily Properties, 2006-11

("Small multifamily properties" are those with 5-50 units)

Year	Enterprise	
	Fannie Mae	Freddie Mac
2011	13,480	691
2010	12,552	365
2009	13,417	528
2008	42,668	1,682
2007	58,931	2,147
2006	40,587	773

Source: Funding as calculated by FHFA for all years.

"Low-income" refers to units affordable to renters with incomes no greater than 80 percent of Area Median Income (AMI), based on a rental proxy.

Note: Figures do not include units financed by the purchase of commercial mortgage-backed securities (CMBS). Data on units financed including and excluding CMBS for 2001-09 are contained the final rule establishing the housing goals for 2010-11, as published in the *Federal Register*, Table 9, 9/14/10, p. 55920.

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Both Enterprises have decreased their purchases of small multifamily mortgages in the past few years due to a lack of CMBS issuances available for sale and a decline in the overall volume of small multifamily loans available for purchase. Fannie Mae financed 58,931 low-income units in small multifamily properties in 2007, and an average of 38,901 such units per year over the 2007–2009 period. This number declined to only 12,460 units in 2010 but rebounded to 22,382 units in 2011. Freddie Mac has played a smaller role in the small multifamily market, financing 2,147 low-income units in small multifamily properties in 2007, an average of 1,283 units per year in 2007–2009, but only 459 units in 2010. Freddie Mac increased its small multifamily purchases to 2,172 in 2011. These figures do not include any units in small multifamily properties financed by the acquisition of CMBS, which are not eligible for housing goals credit in accordance with the 2010–2011 housing goals regulation. One trade association criticized the Enterprises for their lack of support for mortgages on small multifamily properties, and recommended reinstituting Department of Housing and Urban Development's 2001–2003 ''bonus points'' for purchase of such mortgages. It also stated that the Enterprises could do more work with state housing finance agencies in this area.

FHFA does not believe expansion of small multifamily lending would be appropriate during conservatorship given the increased risks, resources and origination costs required to serve this market and given that FHFA is striving to gradually shrink the Enterprises' footprint in the market and shift credit risk to private capital. FHFA will continue to require the Enterprises to report on their financing of low-income unit in such properties, but this final rule does not establish explicit goals for such mortgage purchases.

3. Multifamily Mortgage Market Size

With demand for multifamily housing increasing, the multifamily mortgage market should continue to grow, both in terms of total financing activity provided and total new multifamily units constructed. The number of new multifamily units completed in 2011 was 129,000, according to the U.S. Census Bureau. The Census Bureau estimates that, as of August 2012, the annualized number of new multifamily completions was 209,000, a significant increase over 2011.[32] As stated previously, MBA estimates that multifamily mortgage originations totaled about $110 billion in 2011. Based on part year 2012 survey data from the MBA, FHFA anticipates there will be about a 25 percent increase in total multifamily originations in 2012, which would put the market size at almost $137 billion. Thereafter, multifamily originations should decline to near levels seen from 2000 to 2008.

As in prior years, multifamily housing goals are set separately for each Enterprise and are measured in units rather than in dollar volume. Several factors support continuing to establish different goal levels for each Enterprise. First, loan maturities will be increasing for both Fannie Mae and Freddie Mac from 2012 to 2014, but the increase for Fannie Mae will be much greater than for Freddie Mac, thus allowing Fannie Mae more opportunities to refinance maturing loans currently in its portfolio which can be counted towards future housing goals. Second, consistent with the 2010–2011 housing goals regulation, multifamily units financed through CMBS purchases are not goals-eligible. Historically, Freddie Mac has relied more heavily on purchasing CMBS to obtain goals-eligible units than has Fannie Mae, so the exclusion of CMBS purchases has a greater impact on Freddie Mac's goals performance.

[32] ''New Residential Construction in August 2012,'' U.S. Census Bureau, (Sept. 19, 2012), *http://www.census.gov/construction/nrc/pdf/newresconst_201208.pdf.*

4. Ability of the Enterprises To Lead the Market in Making Multifamily Mortgage Credit Available

The multifamily housing market has continued to improve in many geographic areas during 2012 (*e.g.,* decreasing vacancy rates, increasing rents, rising property net operating income and rising property values). As discussed above, FHFA expects this improvement to continue through 2014. Fannie Mae and Freddie Mac have recently represented a larger than usual portion of the multifamily mortgage market. For example, the Enterprises estimate their average share of the multifamily mortgage market, excluding FHA-insured loans, was 37 percent in the period from 2004 to 2007, before it jumped to 87 percent in 2009.

By 2011, however, the Enterprises' multifamily mortgage market share declined to about 57 percent as traditional competitors such as life insurance companies, pension funds and banks re-entered multifamily lending. The decline in Enterprise multifamily mortgage market share should continue through 2013–2014, as these traditional competitors increase their presence in the multifamily mortgage market.

5. Availability of Public Subsidies

Public subsidies for multifamily housing have been affected by the mortgage credit crisis. The value of low-income housing tax credits (LIHTCs), the most important source of equity for new low-income housing development, fell in 2009 but has since recovered to a point where the LIHTC market is substantially healthier. Total equity raised through the sale of LIHTCs in 2011 was estimated to be about $8 billion as compared to approximately $4.5 billion in 2009.[33] In 2007, before the mortgage crisis, about $9 billion in equity was raised through LIHTCs. Demand for LIHTCs should continue in strong rental markets and in markets where bank investors seek to meet Community Reinvestment Act (CRA) goals. As LIHTC investments return to pre-2008 volumes, opportunities for the Enterprises to finance LIHTC properties with goals-eligible units should increase.

6. Need To Maintain the Sound Financial Condition of the Enterprises

The financial condition of both Enterprises is discussed in more detail above. FHFA has considered the multifamily housing goals in light of the importance of the Enterprises to the housing market and in light of FHFA's duties as conservator to conserve and preserve the assets of the Enterprises. The multifamily housing goal levels for 2012–2014 in the final rule are aligned with safe and sound practices, and market realities.

B. Multifamily Housing Goal Levels

Summary of comments. FHFA received a number of comments on the levels of the multifamily housing goals in the proposed rule. While most commenters thought the proposed goals were appropriate, several commenters said the goals should be increased, especially for very low-income units.

Three housing advocacy groups and one trade association supported the proposed levels of the low-income multifamily goals. One of these commenters and another housing advocacy group recommended that these goal levels be reexamined and possibly adjusted at a later date. However, one trade association doubted that FHFA would raise these goals at a later date.

One trade association and two housing advocacy groups stated that the proposed levels of both the low-income and very low-income multifamily housing goals were too low. One commenter specifically stated that the goals for 2014 should be increased. Fannie Mae stated that the proposed very low-income multifamily goal for Freddie Mac was very low, relative to its own goal. Freddie Mac made no comment on the proposed multifamily goals.

Fannie Mae presented detailed arguments to support its case that the proposed multifamily goals might be too high, relative to the 2010–2011 goals, and that they might be unattainable for 2013 and 2014 (though not for 2012), especially if the overall market is flat and its share of the market declines, as it anticipates, with the return of more private capital to the market.

Fannie Mae also stated that multifamily refinance volumes are likely to remain ''muted'' through 2014, following the heavy concentration of refinances in the 2005–2007 period.

FHFA determination. FHFA believes that the Enterprises' share of multifamily mortgage originations in 2012 and 2013 will remain near or somewhat above 2011 levels, because of the return of banks and thrifts to multifamily lending. The CMBS market may rebound in 2013 and 2014 if investors are willing to purchase the subordinated or ''B'' tranches of these securities.

FHFA notes that both Enterprises' low-income multifamily goal and very low-income multifamily subgoal performance last year exceeded the goals then in effect by wide margins. The Enterprises' 2011 performance also exceeded the levels of all of the proposed goals and subgoals for 2012–2014, by significant margins. FHFA also notes that interest rates on multifamily properties have been very low, and are likely to remain low in light of the policies of the Federal Reserve Board. New construction of multifamily properties has also increased in recent months.

In addition, both Enterprises have many multifamily mortgages that will mature and require refinancing over the next several years. Specifically, Fannie Mae's maturing multifamily mortgage volume is projected to be $10.2 billion in 2012, $18.1 billion in 2013, and $14.3 billion in 2014. For Freddie Mac, maturing multifamily mortgage volume is projected to be $3.3 billion in 2012, $6.6 billion in 2013, and $8.4 billion in 2014.

Based on partial 2012 results, FHFA estimates that both Fannie Mae and Freddie Mac will surpass the goals in the proposed rule by 20 percent or more. Freddie Mac should more than double its projected financing of very low-income units, while Fannie Mae's very low-income performance should be 50 percent above the proposed goal. As a result, in the final rule, FHFA has revised upward both the low-income and very low-income multifamily goal and subgoal levels for 2012 through 2014, measured in qualifying units financed, as follows:

Multifamily low-income housing goal. Under the final rule, the annual goal for Fannie Mae's purchases of mortgages on multifamily housing affordable to low-income families is at least 285,000 units in 2012; 265,000 units in 2013; and 250,000 units in 2014. The annual goal for Freddie Mac's purchases of mortgages on multifamily housing affordable to low-income families is at least 225,000 units in 2012; 215,000 units in 2013; and 200,000 units in 2014. These goal levels reflect the Enterprises' increased financing activity and the slow return of other sources of capital to the multifamily mortgage market. The percentage increases in the goals for Freddie Mac are greater than for Fannie Mae over the 2012–2014 period because part year data for 2012 show Freddie Mac closing the gap in financing low-income multifamily units.

Multifamily very low-income housing subgoal. Under the final rule, the annual subgoal for Fannie Mae's purchases of mortgages on multifamily housing affordable to very low-income families is at least 80,000 units in 2012, 70,000

[33] ''LIHTC Market in 2012, A Rosy Path Ahead,'' Tax Credit Advisor, February 2012.

in 2013, and 60,000 in 2014. The annual subgoal for Freddie Mac's purchase of mortgages on multifamily housing affordable to very low-income families is at least 59,000 units in 2012, 50,000 in 2013, and 40,000 in 2014. These very low-income goal levels for both Enterprises are substantially higher than in the proposed rule, because their actual financing of very low-income units has been significantly higher than what was forecast in the proposed rule.

VI. Special Counting Requirements—Multifamily Property Conversions

Section 1282.15(d) requires the Enterprises to use tenant income to determine the affordability of rental units, when such information is available, and to use rent levels where tenant income information is not available. Some commenters on the proposed 2010–2011 housing goals rule raised concerns that using current rent information could lead to counting a multifamily mortgage as ''affordable'' in cases where the property is expected to convert from affordable rents to market rate rents. In the final 2010–2011 rule, FHFA indicated that it expected to address this issue in a subsequent rulemaking.[34] In the proposed 2012–2014 housing goals rule, FHFA did not propose any change to the existing counting rules for determining affordability for multifamily mortgages, but requested comment on whether the counting rules should be revised to require the Enterprises to use ''projected rents'' to determine affordability, if such projected rents are available.

Summary of comments. Six commenters and both Enterprises addressed this issue. Two housing advocacy groups and one trade association stated that FHFA should take steps to avoid awarding credit toward the housing goals for properties which are subsequently converted from affordable rents to market rents. On the other hand, two other housing advocacy groups, a trade association and both Enterprises stated that any such adjustments would be costly to implement, and that it would be very difficult to use ''projected rents'' in measuring the affordability of rental units which might be converted from affordable to market rate units.

Fannie Mae commented that the requirements to monitor such conversions would be burdensome and impractical, and based on its experience, it believes that such conversions are relatively rare. Fannie Mae further stated that it does not structure permanent loans using projected rents under its underwriting standards, and it raised concerns that such a provision could discourage capital expenditures to improve the condition of properties. In addition, Fannie Mae discussed the operational issues involved in collecting projected rents and the certification of projected rent rolls.

This issue was the only one discussed by Freddie Mac in its comments on the proposed rule. Freddie Mac stated that its underwriting is based on actual rents, not projected rents, referring to this as a ''matter of fundamental credit risk discipline.'' Freddie Mac added that use of projected rents could constrain the flow of Enterprise capital projects to geographic areas or specific projects for which rents might increase due to market forces. Freddie Mac also commented that if projected rents were used in determining affordability, logically such rents should be compared with projected incomes, thereby introducing additional subjectivity and costs into the process.

FHFA determination. The arguments made by the Enterprises and several other commenters against the use of ''projected rents'' are compelling, and the operational issues involved could discourage the Enterprises from financing multifamily housing where these issues might arise. Thus, FHFA has decided to continue its current counting rules, which rely on the rent rolls at the time of mortgage origination, in determining the affordability of rental units in multifamily properties.

The Enterprises' underwriting standards for multifamily properties use actual rents, as provided on the property rent roll at the time of underwriting, rather than post-closing projected rents. This limits the likelihood that an Enterprise will purchase a multifamily mortgage where the financing depends on a higher net operating income due to projected increases in current rents. The Enterprises may still purchase such loans indirectly through purchases of CMBS. For example, in one well-publicized case in New York City, rent-regulated properties were purchased by investors planning on raising rents to market levels. Both Enterprises invested in the private label CMBS that financed the purchases and they received housing goals credit for these transactions under the housing goals regulation then in effect. In the past, almost all affordable rent to market rate conversions involving the participation of the Enterprises were facilitated through their purchases of CMBS. However, FHFA's current regulation specifies that purchases of private label securities, including CMBS, are ineligible for housing goals credit, removing any incentive for the Enterprises to purchase CMBS to reach their multifamily housing goals. Accordingly, these transactions would not have received goals credit under the current regulation. Furthermore, in the New York City example, subsequent litigation resulted in significant restrictions on the new owners' ability to convert from rent-regulated to market rents, which illustrates the difficulty of projecting whether currently affordable rents can actually be raised.

VII. Paperwork Reduction Act

The final rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the final rule under the Regulatory Flexibility Act.

The General Counsel of FHFA certifies that the final rule is not likely to have a significant economic impact on a substantial number of small entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons stated in the **SUPPLEMENTARY INFORMATION**, under the authority of 12 U.S.C. 4511, 4513, and 4526, FHFA amends part 1282 of title 12 of the Code of Federal Regulations as follows:

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

■ 1. The authority citation for part 1282 is revised to read as follows:

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561–4566.

[34] *See* 75 FR 55926.

■ 2. Amend § 1282.12 by revising paragraphs (c)(2), (d)(2), (f)(2) and (g)(2) to read as follows:

§ 1282.12 Single-family housing goals.

* * * * *

(c) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 23 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(d) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 7 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

* * * * *

(f) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 11 percent of the total number of purchase money mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

(g) * * *

(2) The benchmark level, which for 2012, 2013 and 2014 shall be 20 percent of the total number of refinancing mortgages purchased by that Enterprise in each year that finance owner-occupied single-family properties.

■ 3. Amend § 1282.13 by revising paragraphs (b) and (c) to read as follows:

§ 1282.13 Multifamily special affordable housing goal and subgoal.

* * * * *

(b) *Multifamily low-income housing goal.*—(1) For the year 2012, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 285,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 225,000 such dwelling units.

(2) For the year 2013, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 265,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 215,000 such dwelling units.

(3) For the year 2014, the goal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to low-income families shall be, for Fannie Mae, at least 250,000 dwelling units affordable to low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 200,000 such dwelling units.

(c) *Multifamily very low-income housing subgoal.*—(1) For the year 2012, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 80,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 59,000 such dwelling units.

(2) For the year 2013, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 70,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 50,000 such dwelling units.

(3) For the year 2014, the subgoal for each Enterprise's purchases of mortgages on multifamily residential housing affordable to very low-income families shall be, for Fannie Mae, at least 60,000 dwelling units affordable to very low-income families in multifamily residential housing financed by mortgages purchased by that Enterprise, and for Freddie Mac, at least 40,000 such dwelling units.

Dated: October 31, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2012–27121 Filed 11–9–12; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2012–0959; Special Conditions No. 25–473–SC]

Special Conditions: ATR–GIE Avions de Transport Regional, Models ATR42–500 and ATR72–212A Airplanes; Aircraft Electronic System Security Protection From Unauthorized External Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the ATR–GIE Avions de Transport Regional Models ATR42–500 and ATR72–212A airplanes. These airplanes will have novel or unusual design features associated with the architecture and connectivity capabilities of the airplanes' computer systems and networks, which may allow access to or by external computer systems and networks. Connectivity to, or access by, external systems and networks may result in security vulnerabilities to the airplanes' systems. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 5, 2012. We must receive your comments by December 13, 2012.

ADDRESSES: Send comments identified by docket number FAA–2012–0959 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/and* follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC, 20590–0001.
- *Hand Delivery or by Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 8 a.m. and 5 p.m., Monday through Friday, except federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov/*, including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov/*.

Docket: Background documents or comments received may be read at

http://www.regulations.gov/at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Varun Khanna, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone 425–227–1298; facsimile 425–227–1149.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

Background

On January 22, 2009, ATR–GIE Avions de Transport Regional (hereafter referred to as ''ATR–GIE'') applied for a change to FAA Type Certificate No. A53EU to install a new avionics suite that includes connectivity capabilities between airplane computer systems and networks and external systems and networks in their Models ATR42–500 and ATR72–212A airplanes. Both airplanes are two-engine, turbo-propeller driven. The Model ATR42–500 has a maximum takeoff weight of 41,005 pounds and an emergency exit arrangement to support a maximum of 60 passengers. The Model ATR72–212A has a maximum takeoff weight of 49,603 pounds and an emergency exit arrangement to support a maximum of 72 passengers.

Type Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.101, ATR–GIE must show that the Models ATR42–500 and ATR72–212A, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A53EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' In addition, the certification basis includes certain special conditions, exemptions, and equivalent safety findings that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Models ATR42–500 and ATR72–212A airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model.

In addition to the applicable airworthiness regulations and special conditions, the Models ATR42–500 and ATR72–212A airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Features

The Models ATR42–500 and ATR72–212A airplanes will incorporate the following novel or unusual design features: Digital systems architecture composed of several connected networks. The proposed architecture and network configuration may be used for, or interfaced with, a diverse set of functions, including:

- Flight-safety related control, communication, display, monitoring, and navigation systems (aircraft control functions);
- Airline business and administrative support (airline information services);
- Passenger information and entertainment systems (passenger entertainment services); and,
- The capability to allow access to or by systems external to the airplane.

Discussion

The Models ATR42–500 and ATR72–212A architecture and network configuration may allow increased connectivity to, or access by, external airplane sources, airline operations, and maintenance systems to the aircraft control functions and airline information services. The aircraft control functions and airline information services perform functions required for the safe operation and maintenance of the airplane. Previously these functions and services had very limited connectivity with external sources. The architecture and network configuration may allow the exploitation of network security vulnerabilities resulting in intentional or unintentional destruction, disruption, degradation, or exploitation of data, systems, and networks critical to the safety and maintenance of the airplane. The existing regulations and guidance material did not anticipate these types of airplane system architectures. Furthermore, 14 CFR regulations and current system safety assessment policy and techniques do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane systems, data buses, and servers. Therefore, these special conditions are issued to ensure that the security (i.e., confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections.

Applicability

As discussed above, these special conditions are applicable to the ATR–GIE Avions de Transport Regional Models ATR42–500 and ATR72–212A airplanes. Should ATR–GIE apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on two models of airplanes. It is not a rule of general applicability.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived

without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. Therefore, because a delay would significantly affect the certification of the airplane, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for ATR–GIE Avions de Transport Regional Models ATR42–500 and ATR72–212A airplanes.

1. Airplane Electronic System Security Protection from Unauthorized External Access. The applicant must ensure airplane electronic system security protection from access to or by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the aircraft is maintained, including all post-type-certification modifications that may have an impact on the approved electronic system-security safeguards.

Issued in Renton, Washington, on November 5, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27517 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0335; Directorate Identifier 2011–NM–252–AD; Amendment 39–17211; AD 2011–21–07 R1]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; all Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; all Model CL–600–2D15 (Regional Jet Series 705) airplanes; and all Model CL–600–2D24 (Regional Jet Series 900) airplanes. That AD currently requires replacing certain water accumulator assemblies having a certain part installed on the pitot and static lines of the air data computer (ADC). This new AD corrects an erroneous service document number and removes the other erroneously cited service document from that AD. This new AD was prompted by an error that was discovered in one service document number, and a determination that credit for accomplishing actions in another erroneously cited service document should be removed from that AD. We are issuing this AD to prevent pitot-static tubing from becoming partially or completely blocked by water, which could result in erroneous airspeed and altitude indications and consequent loss of control of the airplane.

DATES: This AD becomes effective December 18, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of November 23, 2011 (76 FR 64801, October 19, 2011).

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe & Mechanical Systems Branch, ANE–171, New York Aircraft Certification Office (ACO), FAA, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 18, 2012 (77 FR 23169), and proposed to revise AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011). That NPRM proposed to correct an unsafe condition for the specified products.

Since we issued AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), an error was discovered in the document number specified in paragraph (i), ''Credit for Actions Accomplished in Accordance with Previous Service Information,'' of that AD. The citation in that paragraph should have read ''Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009.'' Additionally, we have determined that ''Bombardier Service Bulletin 670BA–34–147, dated April 1, 2009,'' was incorrectly included in AD 2011–21–07 and should be removed from paragraph (i) of that AD.

Comments

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

Request for Credit for Previous Actions

Air Wisconsin (AWI) requested that we revise the NPRM (77 FR 23169, April 18, 2012) to continue to give credit for previous actions for airplanes modified using Bombardier Service Bulletin 601R–34–147, dated April 1, 2009. AWI provided the following reasons for its request.

• AWI stated that in the original issue of Bombardier Service Bulletin 601R–34–147, dated April 1, 2009, for airplane serial numbers (S/N) 7003 through 7890, this service information called for the use of a parts kit that was different from the parts kit used for airplane S/Ns 7891 and subsequent. AWI stated that it discovered, during the use of that service information, that there was no difference between the two groups of airplanes. AWI stated that airplane S/Ns 7891 and subsequent needed to use the same parts kit as airplane S/Ns 7003 through 7890, with the only difference being that the kit for airplane S/Ns 7891 and subsequent lacked two tee fittings, part number AS1033W040406, which were contained in the kits for airplane S/Ns 7003 through 7891. AWI stated that, as a result of its discovery,

Bombardier Service Bulletin 601R–34–147, dated April 1, 2009, was revised to Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009, eliminating the reference to these two different groups of airplanes and correcting the materials kit to include the tee fittings.

• AWI stated that Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009, does nothing to change parts kits or instructions for airplane S/Ns 7003 through 7890, but only makes the correction for airplane S/Ns 7891 and subsequent.

• AWI stated that airplane S/Ns 7891 and subsequent modified with the use of Bombardier Service Bulletin 601R–34–147, dated April 1, 2009, that used the additional tee fittings are in compliance with Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009.

• AWI stated that it has completed this modification on its fleet of 71 affected airplanes and that airplane S/Ns 7891 and subsequent used the necessary tee fittings called for in Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009.

• AWI stated that Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009, clearly states on the transmittal, ''The changes in this revision have no effect on aircraft that have incorporated a previous issue of the service bulletin.''

We do not agree to provide credit for previous actions done using Bombardier Service Bulletin 601R–34–147, dated April 1, 2009. We issued the NPRM (77 FR 23169, April 18, 2012) due to an error that was discovered in AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), in a service document number, and also due to a provision incorrectly giving credit for accomplishing previous actions in another erroneously cited service document. Credit for previous actions using Bombardier Service Bulletin 601R–34–147, dated April 1, 2009, is not appropriate because a modification kit requiring tee fittings was missing from that service information. In order to comply with the intent of the AD, Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009, corrected the kit error, and hence, is mandated by this revised AD to correct the unsafe condition. Under the provisions of paragraph (j) of this AD, however, we will consider requests for approval of an alternative method of compliance (AMOC) if sufficient data are submitted to substantiate that a different method of compliance would provide an acceptable level of safety. We have not changed the AD in this regard.

Conclusion

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

• Are consistent with the intent that was proposed in the NPRM (77 FR 23169, April 18, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 23169, April 18, 2012).

Costs of Compliance

We estimate that this AD will affect about 1,041 products of U.S. registry. The new requirements of this AD add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators. The actions that are required by AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $1,200 per product. Based on these figures, the estimated cost of the currently required actions is $1,370 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (77 FR 23169, April 18, 2012). The regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16830 (76 FR 64801, October 19, 2011), and adding the following new AD:

2011–21–07 R1 Bombardier, Inc.: Amendment 39–17211. Docket No. FAA–2012–0335; Directorate Identifier 2011–NM–252–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective December 18, 2012.

(b) Affected ADs

This AD revises AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011).

(c) Applicability

This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 through 7067 inclusive, 7069 through 7990 inclusive, 8000 through 8107 inclusive, and subsequent; all Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes; all Model CL–600–2D15 (Regional Jet Series 705) airplanes; and all Model CL–600–2D24 (Regional Jet Series 900) airplanes; certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Reason

This AD was prompted by reports of airspeed mismatch between the pilot and co-pilot's airspeed indicators. We are issuing this AD prevent pitot-static tubing from becoming partially or completely blocked by water, which could result in erroneous airspeed and altitude indications and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Replacement

This paragraph restates the requirements of paragraph (g) of AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011). Within 9 months after November 23, 2011 (the effective date of AD 2011–21–07), do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, as applicable.

(1) For Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes identified in Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011: Replace water accumulator assemblies having part numbers (P/N) 50029–001, 9435015, 50030–001, and 9435014 installed on the pitot and static lines of the air data computer (ADC) with new or serviceable water accumulator assemblies having P/N 50036–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011.

(2) For Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes: Replace water accumulator assemblies having P/N 50033–001 installed on the pitot and static lines of the ADC with new or serviceable water accumulator assemblies having P/N 50036–001, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010.

(h) Parts Installation Prohibition

As of November 23, 2011 (the effective date of AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011)), no person may install on any airplane a water accumulator assembly, P/N 50029–001, 9435015, 50030–001, or 9435014 for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes; or P/N 50033–001 for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes; on the pitot and static lines of the ADC.

(i) Credit for Previous Actions

This paragraph restates the provisions of paragraph (i) of AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011), with corrections.

(1) This paragraph provides credit for the replacement required by paragraph (g)(1) of this AD, if the replacement was performed before November 23, 2011 (the effective date of AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011)), using Bombardier Service Bulletin 601R–34–147, Revision A, dated November 3, 2009 (for Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes).

(2) This paragraph provides credit for the replacement required by paragraph (g)(2) of this AD, if the replacement was performed before November 23, 2011 (the effective date of AD 2011–21–07, Amendment 39–16830 (76 FR 64801, October 19, 2011)), using Bombardier Service Bulletin 670BA–34–030, dated April 1, 2009; or Revision A, dated November 3, 2009 (for Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, Model CL–600–2D15 (Regional Jet Series 705) airplanes, and Model CL–600–2D24 (Regional Jet Series 900) airplanes).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone: (516) 228–7300; fax: (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on November 23, 2011 (76 FR 64801, October 19, 2011).

(i) Bombardier Service Bulletin 601R–34–147, Revision B, dated March 8, 2011.

(ii) Bombardier Service Bulletin 670BA–34–030, Revision B, dated March 23, 2010.

(4) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; phone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet: *http://www.bombardier.com.*

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

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

Issued in Renton, WA, on September 28, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–26890 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0360; Directorate Identifier 2010–CE–061–AD; Amendment 39–17023; AD 2012–08–06]

RIN 2120–AA64

Airworthiness Directives; Univair Aircraft Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is correcting an airworthiness directive (AD) that published in the **Federal Register**. That AD applies to certain Univair Aircraft Corporation Models (ERCO) 415–C, 415–CD, 415–D, E, G; (Forney) F–1 and F–1A; (Alon) A–2 and A2–A; and (Mooney) M10 airplanes. All references to Ercoupe Service Memorandum No. 20, Revision A, dated September 1, 2008, in the non-regulatory preamble and the regulatory text of the AD are incorrect because it is a service bulletin

instead of a memorandum. This document corrects these errors. In all other respects, the original document remains the same.

DATES: This correction is effective November 13, 2012. The effective date of AD 2012–08–06, amendment 39–17023 (77 FR 52205, August 29, 2012) remains October 3, 2012.

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

FOR FURTHER INFORMATION CONTACT: Roger Caldwell, Aerospace Engineer, FAA, Denver ACO, 26805 East 68th Ave., Room 214, Denver, Colorado 80249–6361; telephone: (303) 342–1086; fax: (303) 342–1088; email: *roger.caldwell@faa.gov*.

SUPPLEMENTARY INFORMATION: Airworthiness Directive 2012–08–06, amendment 39–17023 (77 FR 52205, August 29, 2012), currently requires inspections of the ailerons, aileron balance assembly, and aileron rigging for looseness or wear; requires repair or replacement of parts as necessary; and requires a report of the inspection results. Reference to Ercoupe Service Memorandum No. 20, Revision A, dated September 1, 2008, is made in several places throughout the AD for Univair Aircraft Corporation Models (ERCO) 415–C, 415–CD, 415–D, E, G; (Forney) F–1 and F–1A; (Alon) A–2 and A2–A, and (Mooney) M10 airplanes. The service information is actually a bulletin and is incorrectly referenced as a memorandum.

No other part of the preamble or regulatory information has been changed; therefore, only the changed portion of the final rule is being published in the **Federal Register**.

The effective date of this AD remains October 3, 2012.

Correction of Non-Regulatory Text

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) is corrected as follows:

On page 52206, in the 3rd column, under the comment heading ''Request to Reference Ercoupe Service Bulletin No. 20 for the Aileron Balance Assembly Requirements,'' on line 2, change ''Memorandum'' to ''Bulletin.''

On page 52206, in the 3rd column, the 2nd paragraph under the comment heading ''Request to Reference Ercoupe Service Bulletin No. 20 for the Aileron Balance Assembly Requirements,'' on line 2, change ''Memorandum'' to ''Bulletin.''

Correction of Regulatory Text

§ 39.13 [Corrected]

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52208, paragraph (g), in the 3rd column of Table 1 of paragraph (g)—Required Actions, paragraph (g)(2), on lines 1 and 2, change ''Follow Ercoupe Service Memorandums No. 20, 56, and 57, * * *'' to ''Follow Ercoupe Service Bulletin No. 20 and Ercoupe Service Memorandums 56 and 57* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52208, paragraph (g), in the 3rd column of Table 1 of paragraph (g)—Required Actions, paragraph (g)(3), on lines 1 and 2, change ''Follow Ercoupe Service Memorandums No. 20, 56, and 57, * * *'' to ''Follow Ercoupe Service Bulletin No. 20 and Ercoupe Service Memorandums 56 and 57* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52208, paragraph (g), in the 3rd column of Table 1 of paragraph (g)—Required Actions, paragraph (g)(4), on lines 1 and 2, change ''Follow Ercoupe Service Memorandums No. 20, 56, and 57, * * *'' to ''Follow Ercoupe Service Bulletin No. 20 and Ercoupe Service Memorandums 56 and 57* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52208, paragraph (g), in the 3rd column of Table 1 of paragraph (g)—Required Actions, paragraph (g)(5), on lines 1 and 2, change ''Follow Ercoupe Service Memorandums No. 20, 56, and 57, * * *'' to ''Follow Ercoupe Service Bulletin No. 20 and Ercoupe Service Memorandums 56 and 57* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52209, paragraph (g), in the 3rd column of Table 1 of paragraph (g)—Required Actions, paragraph (g)(6), on lines 1 and 2, change ''Follow Ercoupe Service Memorandums No. 20, 56, and 57, * * *'' to ''Follow Ercoupe Service Bulletin No. 20 and Ercoupe Service Memorandums 56 and 57* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52209, paragraph (g), in the 3rd column of Table 1 of paragraph (g)—Required Actions, paragraph (g)(7), on lines 1 and 2, change ''Follow Ercoupe Service Memorandums No. 20, 56, and 57, * * *'' to ''Follow Ercoupe Service Bulletin No. 20 and Ercoupe Service Memorandums 56 and 57* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52210, paragraph (g), in the 1st column of Figure 1 of paragraph (g)(10) of this AD ''Reporting Form'' under the heading ''For Ercoupe Service Memorandum No. 57, Revision A, dated September 1, 2008'' in the 4th box down, 3rd line, change ''Memorandum No. 20 (Ailerons-* * *'' to ''* * *Bulletin No. 20 (Ailerons-* * *''

* * * * *

In the **Federal Register** of August 29, 2012, AD 2012–08–06; Amendment 39–17023 (77 FR 52205, August 29, 2012) on page 52212, in the 1st column, paragraph (k)(v), 1st line change from ''Ercoupe Service Memorandum No. 20* * *'' to Ercoupe Service Bulletin No. 20* * *''

* * * * *

Issued in Kansas City, Missouri, on November 5, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27457 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 5, 16, 33, 34, 35, 157, 348, 375, 385 and 388

[Docket No. RM12–2–000; Order No. 769]

Filing of Privileged Materials and Answers to Motions; Correction

AGENCY: Federal Energy Regulatory Commission. DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission is correcting a

final rule that appeared in the **Federal Register** of October 29, 2012 (77 FR 65463). In this final rule, the Commission is revising its rules and regulations relating to the filing of privileged material in keeping with the Commission's efforts to comply with the Paperwork Reduction Act, the Government Paperwork Elimination Act and the E-Government Act of 2002.

DATES: The effective date of this rule is December 28, 2012.

FOR FURTHER INFORMATION CONTACT:

Christopher Cook (Technology/Procedural Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8102;

Richard M. Wartchow (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, Telephone: (202) 502–8744.

SUPPLEMENTARY INFORMATION:

Need for Correction

In **Federal Register** Document 2012–26126 of October 29, 2012 (77 FR 65463); the final rule entitled ''Filing of Privileged Materials and Answers to Motions'' erroneously stated in the preamble that the Model Protective Order was developed by the Commission ''Office of Administrative Litigation'' instead of ''Office of Administrative Law Judges''.

Correction

On page 65466, footnote 25; remove the title ''Office of Administrative Litigation'' and add in its place ''Office of Administrative Law Judges''

On page 65468, in the third sentence of paragraph 29; remove the title ''Office of Administrative Litigation'' and add in its place ''Office of Administrative Law Judges''.

On page 65468, in the second sentence of paragraph 36; remove the title ''Office of Administrative Litigation'' and add in its place ''Office of Administrative Law Judges''.

Dated: November 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27496 Filed 11–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0925]

Special Local Regulation; Annual Marine Events on the Colorado River, Between Davis Dam (Bullhead City, AZ) and Headgate Dam (Parker, AZ) Within the San Diego Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce special local regulations during the Blue Water Resort and Casino Thanksgiving Regatta, on the waters of Lake Moovalya, Parker, Arizona, from November 23 through November 24, 2012. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1102 will be enforced on November 23 through November 24, 2012 from 6:30 a.m. until 6:00 p.m. each day. If the event is delayed by inclement weather, these regulations will also be enforced on November 25, 2012, from 6:30 a.m. to 6:00 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Deborah Metzger, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *D11-PF-MarineEventsSanDiego@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1102 in support of the annual Blue Water Resort and Casino Thanksgiving Regatta (Item 9 on Table 1 of 33 CFR 100.1102). The Coast Guard will enforce the special local regulations in that portion of Lake Moovalya, Parker, AZ between the northern and southern boundaries of La Paz County Park on November 23 through November 24, 2012 from 6:30 a.m. to 6:00 p.m. each day. If the event is delayed by inclement weather, these regulations will also be enforced on November 25, 2012, from 6:30 a.m. to 6:00 p.m. The Blue Water Resort and Casino Thanksgiving Regatta will set up the course on November 22 and race on November 23 through November 24, 2012. Groups will be broken up into different classes and compete in designated heats. There will be 40 heats per day.

Under the provisions of 33 CFR 100.1102, persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 100.1102 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with extensive advance notification of this enforcement period via the Local Notice to Mariners, state, or local agencies.

Dated: October 18, 2012.

S.M. Mahoney,

Acting, Captain of the Port San Diego, United States Coast Guard.

[FR Doc. 2012–27537 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0343]

RIN 1625–AA11

Regulated Navigation Area—New Haven Harbor, Quinnipiac River, Mill River, New Haven, CT; Pearl Harbor Memorial Bridge (Interstate 95) Construction

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the existing regulated navigation area in the navigable waters of New Haven Harbor, Quinnipiac River and Mill River. The current RNA pertains only to the operation of tugs and barges. The changes allow periodic, temporary closure of the area which will be needed during construction of the new Pearl Harbor Memorial Bridge, and which could be needed at other times as well. This revision allows the Coast Guard to suspend all vessel traffic through the RNA during periods of temporary closure. This rule is necessary to provide for the safety of life in the regulated area.

DATES: This rule is effective December 13, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0343]. 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 Petty Officer Joseph Graun, Prevention Department, U.S. Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil*; or Lieutenant Isaac M. Slavitt, Waterways Management Division, U.S. Coast Guard First District, (617) 223–8385, *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

On August 8, 2012 we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area—New Haven Harbor, Quinnipiac River, Mill River, New Haven, CT; Pearl Harbor Memorial Bridge (Interstate 95) Construction, in the **Federal Register** (77 FR 47331).

One comment was received and no requests for a public meeting were received.

B. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are hazardous or in which hazardous conditions are determined to exist. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The purpose of this rulemaking is to provide for safety on the navigable waters in the regulated area, and to update some of the terminology used in describing the boundaries of the RNA. This rule gives the Captain of the Port Sector Long Island Sound (COTP) the authority to temporarily close the RNA to vessel traffic in any circumstance, whether currently planned or unforeseen, that the COTP determines creates an imminent hazard to waterway users in the RNA. Temporary closures are currently foreseeable in connection with the reconstruction of the Pearl Harbor Memorial Bridge (sometimes referred to as the I–95 Bridge, Quinnipiac Bridge, or ''Q'' Bridge), which has begun and is scheduled for completion in 2015. Terminology updates reflect the current names of local landmarks to make them more easily identifiable for mariners, but do not change the location or dimensions of the RNA.

C. Discussion of Comments, Changes and the Final Rule

We received one comment from the National Oceanic and Atmospheric Administration. Their comment stated the Latitude and Longitudes are written in North American datum (NAD) 1927 format. They requested we reference the format in the text or convert the coordinates to NAD 1983 format. In response to the comment we converted the coordinates to NAD 1983 format and referenced the format. The converted coordinates and format reference can be found in the regulatory text. Otherwise, the final rule is unchanged from what we proposed in the NPRM.

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.

The Coast Guard determined that this rulemaking will not be a significant regulatory action for the following reasons: vessel traffic will only be restricted from the RNA for limited durations and the RNA covers only a small portion of the navigable waterways. Furthermore, entry into this RNA during a closure may be authorized by the COTP Sector Long Island Sound or designated representative.

Advanced public notifications will be made to local mariners through appropriate means, which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

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 will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: the RNA will be of limited size and any waterway closures will be of short duration, and entry into this RNA during a closure is possible if the vessel has Coast Guard authorization. Additionally, before the effective period of a waterway closure, notifications will be made to local mariners through appropriate means which may include but are not limited to the Local Notice to Mariners and Broadcast Notice to Mariners.

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** section of this preamble.

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 does 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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not 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 restricting vessel movement within a regulated navigation area. 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**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In § 165.150 revise paragraphs (a) and (b)(8), and add new paragraph (b)(9) to read as follows:

§ 165.150 New Haven Harbor, Quinnipiac River, Mill River.

(a) *Boundaries.* The following is a regulated navigation area: The waters surrounding the Tomlinson Bridge and Pearl Harbor Memorial Bridge (I–95 Bridge) located within a line extending from a point A at 41°17′50.35″ N, 072°54′34.37″ W (the southeast corner of the Magellan Pink Tanks Terminal dock) thence along a line 126°T to point B at 41°17′42.35″ N, 072°54′19.37″ W (the southwest corner of the Gulf facility) thence north along the shoreline to point C at 41°17′57.35″ N, 072°54′04.37″ W (the northwest corner of the R & H Terminal dock) thence along a line 303°T to point D at 41°18′05.35″ N, 072°54′21.37″ W (the west bank of the mouth of the Mill River) thence south along the shoreline to point of origin. All coordinates are North American Datum 1983.

(b) * * *

(8) The Captain of the Port Sector Long Island Sound (COTP) may issue an authorization to deviate from any regulation in paragraph (b) of this section if the COTP determines that an alternate operation can be done safely.

(9) The COTP may temporarily close the RNA for any situation the COTP determines would create an imminent hazard to waterway users in the RNA. Entry into the RNA during temporary closure is prohibited unless authorized by the COTP or the COTP's designated representative. The COTP or designated representative may order the removal of any vessel or equipment within the RNA. To assure wide advance notice of each closure among affected mariners, the COTP may use means including, but not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The COTP will announce the dates and

times of the closure and whether exceptions will be authorized for emergency or other specific vessel traffic.

Dated: October 24, 2012.

J.B. McPherson,

Captain, U.S. Coast Guard Acting Commander, First Coast Guard District.

[FR Doc. 2012–27488 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0623]

RIN 1625–AA11

Regulated Navigation Area; Thames River Degaussing Range Replacement Operations; New London, CT

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily establishing a regulated navigation area (RNA) on the navigable waters of the Thames River in New London Harbor, New London, CT. The RNA will establish speed and wake restrictions and allow the Coast Guard to prohibit all vessel traffic through the RNA during degaussing range replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. This rule is necessary to provide for the safety of life on the navigable waters during the replacement of the degaussing range and its supporting system.

DATES: This rule is effective in the Code of Federal Regulations from December 13, 2012 until October 31, 2014 and is effective with actual notice from November 1, 2012 until October 31, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2012–0623]. 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 Petty Officer Joseph Graun, Prevention Department, U.S. Coast Guard Sector Long Island Sound, (203) 468–4544, *Joseph.L.Graun@uscg.mil*; or Lieutenant Isaac M. Slavitt, Waterways Management, U.S. Coast Guard First District, (617) 223–8385, *Isaac.M.Slavitt@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP Captain of the Port
DHS Department of Homeland Security
FR **Federal Register**
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

A. Regulatory History, Basis, and Purpose

The Coast Guard published a notice of proposed rulemaking (NPRM) for this temporary final rule on September 5, 2012 (77 FR 54495). We received two public comments on the NPRM, and no request for a public meeting.

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

This rule establishes speed and wake restrictions and allows the Coast Guard to prohibit all vessel traffic through the RNA during degaussing range replacement operations, both planned and unforeseen, that could pose an imminent hazard to persons and vessels operating in the area. The Coast Guard is not now planning (and will actively avoid) full closures of the waterway; however, given the nature of the work it is important that this regulatory tool be available if circumstances change. This rule is necessary to provide for the safety of life on the navigable waters during the replacement of the degaussing range and its supporting system.

B. Discussion of Comments, Changes and the Temporary Final Rule

The Coast Guard received two public comments on the NPRM.

One comment was from the Connecticut Department of Energy and Environmental Protection. The department requested the RNA's Slow-No-Wake wording be modified slightly to match up with the State definition of Slow-No-Wake providing consistency to mariner. The Coast Guard agrees with this comment and has modified the rule to be consistent with the State, changing the maximum speed from 5 knots to 6 knots and allowing higher minimum speed when necessary to maintain steerageway.

The other comment was from a local ferry service. First, they commented that a 5 knot speed restriction would not allow their vessels to maintain steerageway. They requested the ability to operate at a higher speed that maintains steerage and creates a minimum wake. The Coast Guard agrees with this comment and has changed the Slow-No-Wake verbiage to allow all vessels to maintain higher minimum speed when necessary to maintain steerageway. Second, they commented that the contractor should be required to make SECURITE calls during critical crane or diver operations so vessels could take further measures to ensure safety. The Coast Guard agrees with this recommendation and will instruct the contractor to make SECURITE calls during all crane and dive operations. Third, they commented that the contractor should be required to plan the project with a commitment that a portion of the waterway always be available for commercial traffic. This is not feasible, but every effort will be made to minimize closure periods. In addition they asked who will ensure the contractor has done their due diligence to prevent a need to close the waterway. The Captain of the Port (COTP) will monitor this operation. The COTP will enforce the RNA only during degaussing range replacement operations, both planned and unforeseen, that the COTP recognizes as posing an imminent hazard to persons and vessels operating in the area. The COTP will suspend enforcement of the RNA during periods in which enforcement is not necessary for the safety of life on the navigable waters.

C. 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.

The Coast Guard determined that this rulemaking is not a significant regulatory action for the following reasons: vessel traffic will only be excluded from the RNA for limited durations (if at all), speed and wake restrictions are not unduly restrictive, and the RNA covers a small geographic area. Advanced public notifications will also be made to local mariners through appropriate means, which could include, but will not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard 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 vessels intending to enter or transit within the regulated area during a vessel restriction period.

The RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: vessel traffic will only be excluded from the RNA for limited durations (if at all), speed and wake restrictions are not unduly restrictive, and the RNA covers a small geographic area. Additionally, before the effective period of a waterway closure, advanced public notifications will be made to local mariners through appropriate means, which could include, but would not be limited to, Local Notice to Mariners and Broadcast Notice to Mariners.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not 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 restricting vessel movement within a regulated navigation area. 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**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T01–0623 to read as follows:

§ 165.T01–0623 Regulated Navigation Area: Thames River New London, CT.

(a) *Location.* The following area is a regulated navigation area: All navigable waters of the Thames River adjacent to Fort Trumbull State Park in New London, CT, from surface to bottom bounded to the north by a line connecting the following points: Point ''1'', 41°20′40″ N, 072°05′32″ W east to point ''2'', 41°20′40″ N, 072°05′15″ W then southeast to point ''3'', 41°20′31.8″ N, 072°05′03″ W then south to point ''4'', 41°20′28″ N, 072°05′03″ W then east to point ''5'', 41°20′30″ N, 072°04′48″ W; bounded to the east by following the shoreline south from point ''5'' to point ''6'', 41°20′19″ N, 072°04′46″ W; bounded to the south by a line connecting the following points: point ''6'' west to point ''7'', 41°20′17″ N, 072°05′13″ W then north to point ''8'' 41°20′27.2″ N, 072°05′15″ W then northwest to point ''9'' 41°20′29.5″ N, 072°05′17″ W then west to point ''10'' 41°20′29.5″ N, 072°05′30″ W then northwest to point ''11'' 41°20′31″ N, 072°05′34″ W; bounded to the west by following the shoreline north from point ''11'' back to the start, point ''1''.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within this zone, during periods of enforcement, is prohibited unless authorized by the Captain of the Port Long Island Sound (COTP) or the COTP's designated representative.

(3) During periods of enforcement, a ''Slow-No-Wake'' speed limit will be in effect. Vessels may not produce more than a minimum wake and may not attain speeds greater than six knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by the vessel be such that it would create a danger of injury to persons, or damage to vessels or structures.

(4) During periods of enforcement, SECURITE calls must be made by all persons and vessels conducting crane or dive operations.

(5) During periods of enforcement, all persons and vessels must comply with all orders and directions from the COTP or the COTP's designated representative.

(6) During periods of enforcement, upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed.

(7) Persons and vessels may request permission to enter the zone during periods of enforcement on VHF–16 or via phone at 203–468–4401.

(8) Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR Part 84—Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

(c) *Effective period.* This rule is effective until October 31, 2014.

(d) *Enforcement period.* (1) Except when suspended in accordance with paragraph (d)(2) of this section, this regulated navigation area is in force 24 hours a day until October 31, 2014.

(2) Notice of suspension of enforcement: The COTP may suspend enforcement of the regulated navigation area. If enforcement is suspended, the COTP will cause notice of the suspension of enforcement to be made by all appropriate means to the affected segments of the public. Such means of notification may include, but are not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. Such notifications will include the date and time that enforcement is suspended as well as the date and time that enforcement will resume.

(3) Violations of this regulated navigation area must be reported to the COTP, at 203–468–4401 or on VHFs–Channel 16. Persons in violation of this regulated navigation area may be subject to civil or criminal penalties.

Dated: October 24, 2012.

J.B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012–27489 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0950]

RIN 1625–AA11

Regulated Navigation Area; East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels; New York, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is temporarily establishing a regulated navigation area (RNA) comprising all waters between the New York City Department of Sanitation Marine Transfer Stations (MTSs) on Gowanus Bay and Flushing Bay. While the temporary interim rule is in effect, the Coast Guard may restrict or prohibit vessel traffic within the RNA to accommodate the load-out and transit of four gantry cranes that will pose an imminent hazard to vessels operating in the area.

DATES: This rule is effective with actual notice for purposes of enforcement from November 1, 2012 through November 30, 2012, and effective in the Code of Federal Regulations from November 13, 2012 through November 30, 2012. Comments and related material must be received by the Coast Guard on or before November 30, 2012. Requests for public meetings must be received by the Coast Guard on or before November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2012–0950. 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.

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. Jeff Yunker, Waterways Management Division at Coast Guard Sector New York, telephone (718) 354–4195, email *Jeff.M.Yunker@uscg.mil* or Lieutenant Isaac Slavitt, First Coast Guard District Waterways Management Division, Boston, MA, telephone (617) 223–8385, email *Isaac.M.Slavitt@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

APA Administrative Procedure Act
DHS Department of Homeland Security
FR **Federal Register**
MTS New York City Department of Sanitation Marine Transfer Station
NPRM Notice of Proposed Rulemaking
RNA Regulated Navigation Area

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 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 8 ½; 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 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

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under the Administrative Procedure Act (APA) (5 U.S.C. 553). Section 553(b) provides that a general notice of proposed rulemaking (NPRM) must be published ''unless persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law.'' This rule identifies the persons who will be subject to the RNA regulations: mariners in or seeking to enter a defined area of the Port of New York and New Jersey between November 1, 2012, and November 30, 2012. Each of these persons will be given actual notice of any restrictions or prohibitions imposed on them by this rule. Section 553(b)(B) authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking with respect to this rule because the Coast Guard received the specific request to establish a no-wake zone around the load out and transits from the contractor on September 6, 2012. There was insufficient time and therefore it was impracticable to issue an NPRM and conduct a prior notice and comment period. This rule is necessary to protect the safety of both the gantry crane load out and transit crews and the waterway users operating in the vicinity of the RNA. The proposed movement of the gantry cranes creates a significant hazard for waterway users and crane workers. Any delay or cancellation of the ongoing New York City Department of Sanitation MTS facility upgrades would be contrary to the public interest as it would delay necessary operations and increase costs to the public. Additionally, the dynamic nature of the gantry crane loading and transit operations necessitate that all mariners navigate at a safe speed within the RNA, as the barge and gantry crane and construction equipment at the two MTS facilities will change on a daily basis. In order to address any further public concerns, this rule is available for public comment until November 30, 2012.

C. Basis and Purpose

Under the Ports and Waterways Safety Act, the Coast Guard has the authority to establish RNAs in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. See 33 U.S.C. 1231 and Department of Homeland Security Delegation No. 0170.1.

The offloading and transit of gantry cranes involves large machinery and construction vessel operations above and in the navigable waters of the Port of New York and New Jersey. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial traffic as well as the construction crews. In order to mitigate the inherent risks involved in these operations, it is necessary to control vessel movement through the area.

The purpose of this rule is to ensure the safety of waterway users, the public, and construction workers for the duration of the gantry crane load-outs and transits during the effective period. The RNA will also protect vessels desiring to transit the area by ensuring that vessels are only permitted to transit at No-wake speed.

D. Discussion of the Interim Rule

The New York City Department of Sanitation is upgrading Marine Transfer Stations throughout the City to containerized operations. This upgrade requires installation of gantry cranes at the Gowanus Bay and Flushing Bay MTS facilities. Four gantry cranes will be delivered to the Red Hook Container Terminal in Brooklyn, NY on Buttermilk Channel. Two of these gantry cranes will be delivered by the Cheseapeake 1000 to the Gowanus Bay MTS on Gowanus Bay, approximately 3.0 nautical miles to the southeast. The other two gantry cranes will be offloaded onto barges for transit and offloading to the Flushing Bay MTS on Flushing Bay, approximately 13.0 nautical miles to the northeast.

The load out and transit of these gantry cranes involves large machinery and construction vessel operations above and upon the navigable waters between Gowanus Bay, Red Hook and Buttermilk Channels, East River, and Flushing Bay. Heavy-lift operations are sensitive to water movement, and wake from passing vessels could pose significant risk of injury or death to construction workers. The ongoing operations are, by their nature, hazardous and pose risks both to recreational and commercial vessel traffic and the barge and load out crews. In order to mitigate the inherent risks involved in the construction, it is necessary to control vessel movement through the area.

This action is intended to restrict vessel traffic on a portion of the waterways between Gowanus Bay and Flushing Bay in the Port of New York and New Jersey while gantry cranes are loaded onto barges at Red Hook Container Terminal on Buttermilk Channel and transit to the MTS facilities on Gowanus and Flushing Bays.

These operations are tentatively scheduled to take place starting on November 1, 2012 and lasting several days, but this rule will be made effective through November 30, 2012 to account for any unforeseen delays. Vessels will be required to transit at No Wake speed when meeting or overtaking the vessels carrying these gantry cranes.

The Coast Guard will notify mariners of planned waterway transit restrictions via Marine Information Broadcasts, Coast Guard Advisory Notices, and at *http://homeport.uscg.mil/newyork.*

The Sector New York Captain of the Port will cause notice of enforcement or suspension of enforcement, of this RNA to be made by all appropriate means to achieve the widest distribution among the affected segments of the public. Such means of notification will include, but is not limited to, Marine Information Broadcasts, Coast Guard Advisory Notices, and at *http://homeport.uscg.mil/newyork.*

E. 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.

2. Impact on Small Entities

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the waters of the Gowanus Bay, Red Hook and Buttermilk Channels, East River, and Flushing Bay during the effective period.

This RNA will not have a significant economic impact on a substantial number of small entities for the following reasons: The RNA will only require vessels to transit at No-wake speed when meeting or over-taking the Chesapeake 1000 crane barge or other barges used to carry the gantry cranes from the Red Hook Container Terminal to the MTSs on Gowanus and Flushing Bays. The RNA will only be in effect for approximately three hours for operations between Red Hook Container Terminal and Gowanus Bay and for approximately seven hours between Red Hook Container Terminal and Flushing Bay. Although the RNA would apply to the entire width of the waterways, traffic would be allowed to pass through the RNA at No Wake speed. Before the activation of the zone, we will issue maritime advisories widely available to users of the port.

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 INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

This rule will not 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 From Environmental Health Risks

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 a regulated navigation area which requires vessels to transit at No Wake speed. 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.l04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T01–0950 to read as follows:

§ 165.T01–0950 Regulated Navigation Area; East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels; New York, NY.

(a) *Regulated area.* The following area is a regulated navigation area: All navigable waters of the East River, Flushing and Gowanus Bays, and Red Hook and Buttermilk Channels, between the New York City Department of Sanitation Marine Transfer Station (MTS) at 40°40′09.48″ N, 073°59′55.75″ W (about 260 yards south of the Hamilton Avenue Bridge) on Gowanus Bay and the MTS at 40°46′11.00″ N, 073°50′58.75″ W (about 270 yards south of the Cape Ruth) on Flushing Bay.

(b) *Effective dates and enforcement periods.* This rule is effective and enforceable with actual notice from November 1, 2012 through November 30, 2012.

(c) *Definitions.* The following definitions apply to this section:

Designated representative means any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port Sector New York (COTP), to act on his or her behalf. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF–FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.11, 33 CFR 165.13, as well as the following regulations, apply.

(2) During periods of enforcement, all vessels must transit at a No-wake speed to minimize surge when transiting past the Weeks Marine and Witte Barges carrying the gantry cranes.

(3) During periods of enforcement, all persons and vessels given permission to enter or operate in the regulated area must comply with the instructions of the COTP or the designated representative. Upon being hailed by an

official patrol vessel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(4) Vessel operators desiring to enter or operate within the regulated area must contact the COTP or the designated representative via VHF channel 16 or 718–354–4088 (Sector New York Vessel Traffic Center) to obtain permission to do so.

Dated: October 26, 2012.

J.B. McPherson,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 2012–27490 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Part 280

[Docket ID ED–2010–OII–0003]

RIN 1855–AA07

Magnet Schools Assistance Program

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Final regulations.

SUMMARY: This document adopts as final a March 2010 interim final rule by which the Secretary amended the regulations governing the Magnet Schools Assistance Program (MSAP) to provide greater flexibility to school districts designing MSAP programs for the FY 2010 competition. The amendments removed provisions in the regulations that require districts to use binary racial classifications and prohibit the creation of magnet schools that result in minority group enrollments in magnet and feeder schools exceeding the district-wide average of minority group students. We sought comments on the amendments because we adopted them through an interim final rule. We have reviewed the comments we received and retain the amendments without change for competitions going forward.

DATES: These regulations are effective December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Brittany Beth, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W252, Washington, DC 20202. Telephone: (202) 453–6653 or via email: *brittany.beth@ed.gov.*

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

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

SUPPLEMENTARY INFORMATION: On March 4, 2010, the Department published an interim final rule (IFR) with a request for public comment in the **Federal Register** (75 FR 9777). The IFR, applicable only to the FY 2010 competition, removed provisions in the MSAP regulations at 34 CFR 280.2(b)(2), 280.4(b), and 280.20(g) that required districts to use binary racial classifications and prohibited the creation of magnet schools that result in minority group enrollments in magnet and feeder schools exceeding the district-wide average of minority group students. The IFR explained that these changes were necessary to permit MSAP applicants ''to determine how best to meet program requirements while also taking into account intervening Supreme Court case law, including the Court's decision in *Parents Involved in Community Schools* v. *Seattle School District No 1 et al.,* 551 U.S. 701 (2007) (*Parents Involved*).''

In the IFR, the Department also invited comments on the removal of the regulatory provisions, noting that any changes made to the IFR in light of comments received would govern future MSAP grant competitions.

Analysis of Comments and Changes

In response to the Secretary's invitation in the IFR, three parties submitted comments on the proposed regulations. We make no further amendments to the regulations in response to the comments; however, an analysis of the comments follows.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize the Secretary to make.

Comments: The commenters agreed with the decision to remove the provisions of the regulations in light of the Supreme Court's decision in *Parents Involved,* but they expressed concern about the use of case-by-case decision-making when evaluating proposed MSAP voluntary desegregation plans. The commenters requested additional guidance from the Department about permissible ways for applicants to voluntarily reduce minority group isolation after the Court's decision in *Parents Involved.* The commenters suggested replacing the removed provisions with more specific language in order to assist school districts in designing legally permissible voluntary desegregation plans.

Discussion: In the IFR, the Department removed the definition of ''minority group isolation'' in 34 CFR 280.4(b). Under the definition, the term meant, in reference to a school, ''a condition in which minority group children constitute more than 50 percent of the enrollment of the school.'' We removed the definition because it required the use of only two racial classifications of students—minority group and nonminority group students. In the absence of a definition of ''minority group isolation,'' the IFR stated—

> the Department will determine on a case-by-case basis whether a district's voluntary plan meets the statutory purpose of reducing, eliminating, or preventing minority group isolation in its magnet or feeder schools, considering the unique circumstances in each district and school. For example, the Department may consider whether there is a substantial proportion of students from any minority group enrolled in a school, looking at the student enrollment numbers of the district and the targeted schools disaggregated by race.

The Department agrees that at the time of publication of the IFR there was some confusion for applicants about whether the case-by-case analysis would be an effective way to evaluate voluntary plans under the MSAP. The Department recognized the need for additional guidance about ways that districts can voluntarily reduce minority group isolation and promote diversity in school districts in light of *Parents Involved.* On December 2, 2011, the Departments of Education and Justice jointly issued guidance that explains how educational institutions can lawfully pursue voluntary policies to achieve diversity or avoid racial isolation within the framework of Titles IV and VI of the Civil Rights Act of 1964, the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and current case law. The ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' (Guidance) is available on the Department's Web site at *http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf.*

In light of this Guidance, and based on the Department's experience in awarding FY 2010 grants under the regulations as amended by the IFR, the Department has concluded that it is not necessary to propose provisions to replace those that were removed by the IFR. Applicants are encouraged to use the Guidance when designing voluntary desegregation plans.

The Department continues to believe that case-by-case decision-making is

appropriate so that determinations regarding voluntary desegregation plans can be made on the unique facts in each district. The Department determines on a case-by-case basis whether the voluntary plans are adequate under Title VI of the Civil Rights Act of 1964 for the purposes of 34 CFR 280.2. We also determine whether the proposed magnet schools will reduce, eliminate, or prevent minority group isolation within the period of the grant award, for the purposes of sections 280.2(b) and 280.20(g). These determinations will include an examination of the factual basis for any proposed increases in minority enrollment at district schools. For example, the Department might consider whether a plan to reduce, eliminate, or prevent minority group isolation at a magnet school or at a feeder school would significantly increase minority group isolation at any magnet or feeder school in the project at the grade levels served by the magnet school. In a case in which a school district is subject to a desegregation order that prohibits magnet or feeder schools from exceeding the district-wide average of minority group students, the district would, of course, continue to be bound by that order.

Changes: None.

Executive Orders 12866 and 13563

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

We discussed the potential costs and benefits of these final regulations in the interim final rule at 75 FR 9779.

Paperwork Reduction Act of 1995

These regulations do not contain any information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

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You may also view this document in text or PDF at the following site:

www.ed.gov/programs/magnet/legislation.html

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program)

List of Subjects in 34 CFR Part 280

Elementary and secondary education, Equal educational opportunity, Grant programs—education, Reporting and recordkeeping requirements.

Dated: November 7, 2012.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

For the reasons discussed in the preamble, the interim final rule amending 34 CFR part 280, published at 75 FR 9777 on March 4, 2010, is adopted as a final rule without change.

[FR Doc. 2012–27559 Filed 11–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 1206013412–2517–02]

RIN 0648–BB97

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 35

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures described in Amendment 35 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council). This final rule establishes sector annual catch limits (ACLs) and sector annual catch targets (ACTs) for greater amberjack; revises the sector accountability measures (AMs) for greater amberjack; and establishes a commercial trip limit for greater amberjack. Additionally, Amendment 35 modifies the greater amberjack rebuilding plan. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve optimum yield (OY) for the greater amberjack resource in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective December 13, 2012.

ADDRESSES: Electronic copies of Amendment 35, which includes an environmental assessment, an initial regulatory flexibility analysis (IRFA), and a regulatory impact review, may be obtained from the Southeast Regional Office Web site at *http://sero.nmfs.noaa.gov/sf/GrouperSnapperandReefFish.htm*.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, Southeast Regional Office, telephone 727–824–5305, email *rich.malinowski@noaa.gov*.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf is managed under the FMP. The FMP was prepared by the Council and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Act. All greater amberjack weights discussed in this rule are in round weight.

On July 3, 2012, NMFS published a notice of availability for Amendment 35 and requested public comment (77 FR 39460). On July 19, 2012, NMFS published a proposed rule for Amendment 35 and requested public comment (77 FR 42476). The proposed rule and Amendment 35 outline the rationale for the actions contained in this final rule. A summary of the actions implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

ACLs and ACTs

Amendment 35 establishes the greater amberjack stock ACL equal to the greater amberjack stock allowable biological catch (ABC) at 1,780,000 lb (807,394 kg), and sets the greater amberjack stock ACT at 1,539,000 lb (698,079 kg) based on the ACT Control Rule developed in the Generic Annual Catch Limits/Accountability Measures Amendment (Generic ACL Amendment) (76 FR 82044, December 29, 2011).

Sector allocations were established in Amendment 30A to the FMP and remain unchanged at 27 percent of the ACL allocated to the commercial sector and 73 percent of the ACL allocated to the recreational sector. Based on these allocations, this final rule establishes specific ACLs for the greater amberjack commercial and recreational sectors. This final rule also establishes ACTs (expressed as quotas in the regulatory text) for both sectors.

This final rule establishes the greater amberjack commercial sector ACL at 481,000 lb (218,178 kg). The commercial ACT, which is equivalent to the greater amberjack commercial quota, is reduced from 503,000 lb (228,157 kg), to 409,000 lb (185,519 kg). The commercial ACT is set 15 percent below the ACL to account for management uncertainty.

This final rule establishes the greater amberjack recreational ACL at 1,299,000 lb (589,116 kg). The recreational ACT, which is equivalent to the greater amberjack recreational quota, is reduced from 1,368,000 lb (620,514 kg), to 1,130,000 lb (512,559 kg). The recreational ACT is set 13 percent below the ACL to account for management uncertainty.

AMs

This final rule revises the AMs for both the greater amberjack commercial and recreational sectors. The current in-season AM for the greater amberjack commercial sector requires the sector be closed when commercial landings reach or are projected to reach the applicable quota (currently equal to the commercial ACL). In addition, if despite such closure the commercial landings exceed the quota, the following year's quota is reduced by the amount of the quota overage in the prior fishing year (post-season AM). This final rule implements an ACT that is less than the ACL, creating a buffer between the two. The commercial ACT will now be equivalent to the commercial quota and this final rule requires that the commercial sector be closed when the commercial ACT is reached or projected to be reached. By closing the sector when the commercial ACT is reached or projected to be reached, there is less probability of exceeding the commercial ACL. In addition to this revision of the in-season AM, this rule revises the post-season AM as follows: If commercial landings exceed the commercial ACL, then during the following fishing year, both the commercial ACT (commercial quota) and the commercial ACL will be reduced by the amount of the prior year's commercial ACL overage.

The current in-season AM for the greater amberjack recreational sector closes the sector when recreational landings reach or are projected to reach the recreational quota (currently equal to the recreational ACL). In addition, if despite such closure the recreational landings exceed the recreational quota, the following year's recreational quota is reduced by the amount of the recreational quota overage in the prior fishing year, and the recreational fishing season is reduced by the amount necessary to recover the overage from the prior fishing year (post-season AMs). This final rule implements a recreational ACT, which will now be equivalent to the recreational quota, and requires that the recreational sector close when the recreational ACT is reached or projected to be reached. In addition to this revision of the in-season AM, this final rule revises the post-season AMs as follows: If recreational landings exceed the recreational ACL, then during the following fishing year,

both the recreational ACT (recreational quota) and the recreational ACL will be reduced by the amount of the prior year's recreational ACL overage.

Commercial Trip Limit

This final rule establishes a commercial trip limit for greater amberjack of 2,000 lb (907 kg). This trip limit is applicable until the commercial ACT (commercial quota) is reached or projected to be reached during a fishing year and the commercial sector is closed.

Other Action Contained in Amendment 35

Amendment 35 revises the rebuilding plan for greater amberjack. The greater amberjack stock is currently in its last year of a 10-year rebuilding plan that began in 2003 and ends in 2012. Amendment 35 modifies the rebuilding plan in response to the results from the 2011 Southeast Data, Assessment, and Review stock assessment (SEDAR 9 Update) and subsequent SSC review and recommendations for the greater amberjack ABC. The Council agreed with the SSC application of the ABC Control Rule developed in the Generic ACL Amendment for setting the greater amberjack ABC. The SSC applied the ABC Control Rule to the most recent 10 years (2000–2009) of landings and established the revised ACL 25 percent below the ABC.

Comments and Responses

NMFS received seven comment letters from individuals, two from non-governmental organizations, and one from a Federal agency on Amendment 35 and the proposed rule. The Federal agency indicated they had no objection to Amendment 35 or the proposed rule. Specific comments related to the actions contained in Amendment 35 and the proposed rule are summarized and responded to below.

Comment 1: All species should have a closed season during their respective spawning seasons, including greater amberjack. If spawning season closures were implemented for all fisheries, then these species would not be targeted, bycatch would be reduced, and species would not become overfished.

Response: Amendment 35 does not address closed seasons for all species. The intent of Amendment 35 is to end overfishing of greater amberjack, modify the greater amberjack rebuilding plan and help achieve OY. The commercial harvest of greater amberjack is closed during the months of March, April, and May for the greater amberjack spawning season. On April 29, 2011, NMFS published a final rule to implement a recreational seasonal closure during June and July (76 FR 23904). In Amendment 35, the Council considered alternatives that would modify the recreational season closure, including a recreational season closure mirroring the commercial season closure. However, the Council decided to leave the current recreational season closure in place to determine if this will adequately restrain harvest. In addition, the Council determined that a recreational season closure during peak harvest (June-July) reduced harvest and mortality to a greater extent than a closure during the spawning season (March-May) because there is less recreational fishing effort early in the year compared to mid-summer.

Comment 2: The lack of a trip limit has resulted in a derby fishery, where the quota is harvested early in the year. However, a 1,500-lb (680 kg) or 1,000-lb (453 kg) commercial trip limit is more appropriate than what has been selected, and would be less likely to result in the quota being exceeded during the fishing year.

Response: In addition to preferred 2000-lb (907 kg) trip limit, the Council considered a 1,500-lb (680 kg), 1,000-lb (453 kg), and 500-lb (227 kg) trip limit. The trip limit is intended to extend the fishing season, not ensure that the quota is not exceeded during the fishing year. The Council decided that the current commercial sector seasonal closure (March 1–May 31) and establishment of a commercial 2,000-lb (907 kg) trip limit would provide the best balance between a longer commercial fishing season and revenue reductions per trip, and is not anticipated to shift any commercial fishing effort or methods because less than 5 percent of commercial trips exclusively target greater amberjack.

Comment 3: Amendment 35 and the proposed rule should establish a 4,000-lb (1,814 kg) commercial trip limit because of costs associated with maintaining the profitability of a small fishing business.

Response: The Council considered several commercial trip limit alternatives in Amendment 35 that would keep the commercial fishing season open as long as possible without exceeding the ACL. Landings data indicate that on average approximately 8 percent of vessels that landed greater amberjack landed more than 2,000 lb (907 kg) in a single trip. Thus, of the reasonable alternatives considered, a 2,000-lb (907 kg) trip limit was the largest trip limit considered. All commercial trip limit alternatives were estimated to result in revenue reductions, but a 2,000-lb (907 kg) trip limit was considered to achieve the best balance between a longer commercial season and reduced economic impacts on commercial fishermen. With the 2,000-lb trip limit, the commercial sector is expected to remain open until mid-September or October. A 4,000-lb (1,814 kg) trip limit would likely result in a more abbreviated commercial fishing season that would cause additional negative economic impacts to the entire greater amberjack commercial sector.

Comment 4: NMFS should approve and implement the management measures in Amendment 35. However, the lack of rebuilding analyses on which to base the management decisions causes concern. Hopefully, the benchmark stock assessment scheduled for 2013 will produce stock projections deemed sufficient for management advice, and the Council will be able, at that time, to revise the ACLs and set new target rebuilding dates. Until the assessment is completed in 2013, the measures proposed by the Council in Amendment 35 are consistent with the management advice the Council received from its Scientific and Statistical Committee (SSC) and the ABC Control Rule previously approved by NMFS.

Response: NMFS agrees that the management measures contained in Amendment 35 should be implemented. The reliability of the yield/stock projections in the SEDAR 9 Update was questioned by the Council's SSC because of the large sensitivity to small changes in the assessment model initial conditions, fishing mortality rates, and catch. The Council's SSC determined the initial conditions of sample sizes from the observer studies were low, the spatial representation of the observer trips to the entire fishery was not complete, the observer study did not span a long time series, and there was uncertainty in the ability of the observers to accurately differentiate greater amberjack from other commonly caught jacks (Almaco jack, banded rudderfish, lesser amberjack).

Therefore, the SSC did not use the stock assessment to set the overfishing limit (OFL) or the acceptable biological catch (ABC) but instead used the ABC control rule that the Council was developing in the Generic Annual Catch Limit/Accountability Measure Amendment (Generic ACL Amendment) and was subsequently approved by NMFS. NMFS believes that the SSC's ABC recommendation (i.e., 75 percent of the OFL) and the management measures implemented by the Council (setting the ACT approximately 15 percent below the ACL) will, more likely than not, provide the reduction in

greater amberjack fishing mortality necessary to end overfishing and rebuild the greater amberjack stock.

A new benchmark assessment for greater amberjack is scheduled to be undertaken in 2013. The SSC recommended that the next stock assessment include aging studies and fishery-independent data for the Gulf. When the new assessment is completed, NMFS and the Council will be able to confirm that greater amberjack has met its rebuilding schedule.

Comment 5: Greater amberjack are overfished in the Gulf and both the recreational and commercials sectors should have more restrictions implemented than those proposed through Amendment 35. Recent landings by both the recreational and commercial sectors have exceeded the existing ACL by more than the reductions implemented through this rule. Restrictions in this rule may not restrict either sector to their quotas.

Response: In Amendment 35, the Council analyzed and reviewed ACLs and ACTs, minimum size limits, recreational bag limits, seasonal closures, and commercial trip limits. The Council's SSC recommended that the ABC be set at 1,780,000 lb (807,394 kg), which is a decrease from the previously established ACL. The Council then set the ACL equal to the ABC, and set the ACT approximately 15 percent below the ACL. NMFS and the Council expect that the management measures implemented in this final rule will lengthen the fishing season, restrain catch to the ACT, and end overfishing of greater amberjack. Both the commercial and recreational sector AMs require that the sectors close for the remainder of the fishing year when landings reach or are projected to reach the applicable ACT (quota). This in-season closure authority is intended to restrict each sector to its ACT to the extent possible. The buffer between the ACL and the ACT (quota) is intended to ensure that the ACL is not exceeded due to management uncertainty in determining when the sector should close.

Comment 6: The management measures in Amendment 35 are not sufficient to successfully rebuild the greater amberjack population. Specifically, Amendment 35 maintains the status quo for the recreational minimum size limit of 30 inches (76 cm). Without other management actions to significantly reduce overall mortality, not enough of the population will reach the size at which they become reproductively mature. This inhibits the ability of this population to rebuild to a healthy level. The commenters strongly recommend raising the minimum allowable size from the current 30 inches (76 cm) fork length (FL) to 34 or 36 inches (86 or 91 cm) FL. This would increase the number of mature females capable of spawning that are left in the water and make it far more likely that the rebuilding plan will successfully restore this population.

Response: The Council considered increasing the minimum size limit to as much as 36 inches (91 cm), FL. Based on a theoretical analysis comparing yield-per-recruit and spawning potential ratio, Amendment 35 estimated that increasing the minimum size limit would provide greater spawning potential but maintaining the 30 inch (76 cm) FL minimum size limit would result in a higher yield. Although larger size limit alternatives are estimated to provide greater biological benefits to greater amberjack than the preferred alternative of maintaining the current minimum size limit of 30 inches (76 cm), public testimony at Council meetings indicated that release mortality likely increases as fish size increases, because larger greater amberjack fight harder, it takes longer amounts of time to reel in the fish, and the fish take longer to recover after release. Thus, the benefits of increasing the minimum size limit would be lower than estimated because more fish would die from release mortality and not contribute to the fishery yield or spawning potential. The preferred alternative would provide the greatest benefits to the resource by reducing the number of dead discards when compared to having a larger size limit.

Comment 7: The use of overage deductions that adjust both the ACL and the ACT as part of the AMs is appropriate. However, overage adjustments for any given fishing year will be subtracted from the ACL and ACT for the following year. A more appropriate method would be to set the adjusted ACT using the ACT control rule adopted in the Generic ACL Amendment so that adjustments to the ACT correspond to changes in the amount of management uncertainty associated with this fishery.

Response: In Amendment 35, the Council revised both the ACT and ACL based on the ACL/ACT control rule developed in the Generic ACL Amendment (76 FR 82044, December 29, 2011). The Council established the procedure for an overage adjustment when it established the rebuilding plan through Amendment 30A to the Reef Fish FMP, and did not consider alternative ACT and ACL calculation methods in Amendment 35. However, in the future the Council may consider alternative methods of adjusting the ACT when the ACL is exceeded, such as that suggested in the comment.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is necessary for the conservation and management of the species within Amendment 35 and is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

A final regulatory flexibility analysis (FRFA) was prepared for this rule. The FRFA incorporates the IRFA, a summary of the significant economic issues raised by public comments, NMFS' responses to those comments, and a summary of the analyses completed to support the action. The FRFA follows.

While none of the comments specifically addressed the IRFA, two of the ten comments received on Amendment 35 and the proposed rule concerned direct socio-economic implications of this rule on small commercial entities, and both relate to the proposed 2,000-lb (907 kg) commercial trip limit. One suggested a 1,500-lb (680 kg) commercial trip limit as a longer fishing season is necessary to maintain profitability. The other suggested a 4,000-lb (1,814 kg) commercial trip limit as a lower trip limit would result in lower net operating income per trip for distribution between the boat and its crew. As noted in the comments and responses section, the Council considered several trip limit alternatives that would lengthen the fishing season but not exceed the ACL/ACT. The economic analysis conducted for Amendment 35 determined that all trip limits would result in revenue reductions to commercial vessels. Some vessels would experience more revenue reductions than others. A 4,000-lb (1,814 kg) commercial trip limit would likely result in an abbreviated fishing season that would bring about more negative economic impacts on small entities. The 2,000-lb (907 kg) commercial trip limit was determined to achieve the best balance between a longer fishing season and revenue reductions per trip without exceeding the ACL/ACT. No changes to the final rule were made in response to public comments.

NMFS agrees that the Council's choice of preferred alternatives would best achieve the Council's objectives while minimizing, to the extent practicable, the adverse effects on

fishers, support industries, and associated communities. The preamble to the final rule provides a statement and need for, and the objectives of this rule, and is not repeated here.

The Magnuson-Stevens Act provides the statutory basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. This final rule would not introduce any changes to current reporting, recordkeeping, and other compliance requirements.

NMFS expects the rule to directly affect commercial fishers and for-hire operators. The Small Business Administration established size criteria for all major industry sectors in the U.S. including fish harvesters and for-hire operations. A business involved in fish harvesting is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and its combined annual receipts are not in excess of $4.0 million (NAICS code 114111, finfish fishing) for all of its affiliated operations worldwide. For for-hire vessels, other qualifiers apply and the annual receipts threshold is $7.0 million (NAICS code 713990, recreational industries).

From 2005–2010, an average of 1,096 vessels had Federal commercial Gulf reef fish permits. Based on home port states reported in their permit applications, these vessels were distributed as follows: 897 vessels in Florida, 34 vessels in Alabama, 19 vessels in Mississippi, 58 vessels in Louisiana, 79 vessels in Texas, and 9 vessels in other states. Of the total number of federally permitted reef fish commercial vessels, 750 vessels reported landings of at least 1 lb (0.6 kg) of reef fish. These vessels generated total dockside revenues of approximately $41.5 million dollars (2010 dollars), or an average of $55,000 per vessel. An average of 325 vessels reported landings of at least 1 lb (0.6 kg) of greater amberjack, with these vessels distributed as follows: 259 vessels in Florida, 15 vessels in Alabama/Mississippi, 32 in Louisiana, 32 in Texas, and 2 in other states. Dockside revenues from greater amberjack were approximately $600,000 (2010 dollars). Based on this information, all commercial fishing vessels expected to be directly affected by this final rule are determined for the purpose of this analysis to be small business entities.

The for-hire fleet is comprised of charterboats, which charge a fee on a vessel basis, and headboats, which charge a fee on an individual angler (head) basis. From 2005–2010, an average of 1,493 vessels had Federal Gulf reef fish charter/headboat permits, and based on homeport states reported in their permit applications these vessels were distributed as follows: 921 vessels in Florida, 147 vessels in Alabama, 61 vessels in Mississippi, 104 vessels in Louisiana, 238 vessels in Texas, and 22 in other states. There is no information available as to how many for-hire vessels harvested or targeted greater amberjack. The Federal Gulf charter/headboat permit does not distinguish between headboats and charterboats, but in 2010, the headboat survey program included 79 headboats. The majority of headboats were located in Florida (43), followed by Texas (19), Alabama (8), and Louisiana (4). The average charterboat is estimated to earn approximately $89,000 (2010 dollars) in annual revenues, while the average headboat is estimated to earn approximately $466,000 (2010 dollars). Based on these average annual revenue figures, all for-hire vessels expected to be directly affected by this rule are determined for the purpose of this analysis to be small business entities.

Some fleet activity, i.e., multiple vessels owned by a single entity, may exist in both the commercial sector and the for-hire component of the recreational sector by an unknown extent, and NMFS treats all vessels as independent entities in this analysis.

NMFS expects the final rule to directly affect all federally permitted commercial vessels harvesting greater amberjack and for-hire vessels that operate in the Gulf reef fish fishery. All directly affected entities have been determined, for the purpose of this analysis, to be small entities. Therefore, NMFS determined that this final rule would affect a substantial number of small entities.

NMFS considers all entities expected to be affected by this final rule as small entities, so the issue of disproportional effects on small versus large entities does not arise in the present case.

Modifying the greater amberjack rebuilding plan by establishing sector ACLs and ACTs would result in a total annual revenue reduction of $99,000 (part of which would be profits) for the entire reef fish commercial sector's vessel operations because the commercial ACT is less than the historical average commercial landings. This revenue reduction takes into account the AM revision that would close the commercial sector if the ACT is reached or projected to be reached during the fishing year. However, it does not account for the effects of the post-season AM that would reduce the applicable sector's ACT and ACL if the ACL were exceeded in the previous fishing year. This post-season AM would be expected to reduce vessel revenues and profits by an unknown amount. The for-hire component of the recreational sector would largely remain unaffected by the ACL/ACT and AM revisions, at least in the short term. Based on the projection model used in the analysis, the recreational sector, which includes the for-hire component, is not expected to reach its ACL/ACT, implying that there would be no trip cancellations that would lead to for-hire profit reductions.

Establishing a 2,000-lb (907 kg) trip limit on commercial vessels that harvest greater amberjack would result in an annual revenue reduction (part of which would be profits) of $96,000 for the entire commercial harvesting operation. Because this estimated revenue reduction for the selected trip limit alternative presupposed the adoption of the ACLs/ACTs revised through this final rule, it should not be considered in addition to the revenue reduction due to the ACL/ACT revision. The smaller reduction appears to show that because the trip limit may allow for an extension of the commercial season it would slightly mitigate the adverse effects of a lower ACL/ACT.

The negative effects of this final rule on the profits of commercial vessels are minimal when compared to the overall industry profits from harvesting reef fish. It is possible that some vessels may rely on greater amberjack for a sizeable portion of their overall harvesting operations so their profit reductions may be relatively large, but the number of vessels in this category in the reef fish fishery cannot be ascertained.

Four alternatives, including the preferred alternative, and two sub-options, of which one is the preferred option, were considered for modifying the greater amberjack rebuilding plan. The first alternative, the no action alternative, would retain the greater amberjack stock ACL. This is not a viable alternative because the current stock ACL is higher than the ABC being set for greater amberjack.

Like the preferred alternative, the second alternative would set a stock ACL equal to the ABC, which is about 5 percent lower than the current stock ACL. However, this alternative would not set an ACT below the level of the ACL. Among the alternatives, this would provide the best scenario for short-term profitability of small entities. Without an ACT, however, this ACL level may be exceeded, particularly since the stock ACL has been exceeded in the last 3 years (2009, 2010, and 2011). Exceeding this ACL would lower the probability of protecting and

rebuilding the overfished stock. The sub-option that was not selected would set the stock ACL 18 percent less than the current ACL. This would have the same impacts on profits as the preferred option for a current fishing year, but it would potentially result in a worse profit condition in a following fishing year because it would require post-season overage adjustments if the ACTs were exceeded and AMs were enacted. The third alternative, which would establish a stock ACL of zero, would result in the largest profit reductions to both the commercial sector and for-hire component of the recreational sector.

Two alternatives, including the preferred alternative, were considered for revising the commercial AM. The only alternative to the preferred alternative is the no action alternative which would retain the current commercial AM. This would result in lesser short-term profit reductions than the preferred alternative. The downside of the no action alternative is that it would subject the commercial sector to a greater likelihood of facing a post-season AM the following fishing year that would reduce the following year's ACL and ACT and therefore commercial vessel profits as well would be reduced. In the long-term, it appears that the preferred alternative would have a greater potential of rebuilding the stock within the rebuilding timeframe so as to eventually allow for a higher ACT and ACL.

Two alternatives, including the preferred alternative, were considered for revising the recreational AM. The only alternative to the preferred alternative is the no action alternative. The no action alternative would result in greater short-term profits than the preferred alternative. Its downside is that it would subject the sector to a greater likelihood of facing a post-season AM that would reduce the following year's ACL and ACT and therefore for-hire vessel profits as well in the following fishing year. In the long-term, it appears that the preferred alternative would have a greater potential of rebuilding the stock within the rebuilding timeframe so as to eventually allow for a higher ACT and ACL.

Three alternatives, including the preferred alternative, were considered for commercial management measures. The first alternative is the no action alternative and would have no effects on vessel profits. The second alternative, which would establish a commercial vessel trip limit, while maintaining the March 1–May 31 seasonal closure, includes four options. The preferred option would establish a commercial trip limit of 2,000 lb (907 kg), which as noted above would result in an annual revenue reduction of $96,000. The other options would establish a commercial trip limit of 1,500 lb (680 kg), 1,000 lb (454 kg), or 500 lb (227 kg). Given the preferred ACL/ACT alternative, these other options would result in annual revenue reductions of $95,000, $97,000, and $198,000, respectively. These other trip limit options would result in a longer fishing season than the preferred option. The commercial trip limit of 1,500 lb (680 kg) would result in a slightly longer season and lower revenue reduction than the preferred option because revenue gains from a longer fishing season would outweigh revenue losses from a lower trip limit. For the other two trip limit options however, the trip limits are so low that revenue gains from a longer fishing season would not outweigh revenue losses from a lower trip limit. Profit reductions would also likely occur with these other options.

The third alternative, which would eliminate the March 1–May 31 seasonal closure, includes four trip limit options. The trip limit options are 2,000 lb (907 kg), 1,500 lb (680 kg), 1,000 lb (454 kg), or 500 lb (227 kg). Given the preferred ACL/ACT alternative, these options would result in annual revenue reductions of $123,000, $120,000, $115,000, and $110,000 respectively for the trip limit alternatives. These revenue reductions for trip limits not linked with a seasonal closure are greater when compared to trip limits linked with a seasonal closure because they would result in a longer quota closure during the fishing year. Profit reductions would also likely occur with these options.

In Amendment 35, the Council considered several actions for which the no-action alternative was the preferred alternative.

Four alternatives were considered for modifying the recreational minimum size limit for greater amberjack. The first alternative is the no action alternative, which would not affect the profits of for-hire vessels. The other alternatives would raise the recreational minimum size limit to 32 in (81 cm), 34 in (86 cm), or 36 in (91 cm), fork length. These other alternatives would possibly result in for-hire vessel profit reductions to the extent that some trips would be cancelled.

Five alternatives were considered for modifying the recreational closed season for greater amberjack. The preferred alternative is the no action alternative which would not affect the profits of for-hire vessels. The second alternative would remove the fixed closed season so that the recreational sector would open on January 1 and would remain open until the recreational ACT (recreational quota) is reached. This alternative would result in a short-term profit increase of $75,000 annually to charterboats and an unknown profit increase to headboats under the preferred ACL/ACT alternative. These profit increases hinge on the assumption that displaced effort due to a quota closure would not shift to the open season. Any effort shift would likely negate such profit increases.

The third alternative would modify the recreational sector's seasonal closure to March 1–May 31. This alternative would result in a profit loss of approximately $300,000 annually to charterboats and an unknown profit loss to headboats. Profit losses would be less if displaced effort from the closed months shifted to the open months. The fourth alternative would modify the recreational seasonal closure to January 1–May 31. This alternative would result in a profit loss of approximately $400,000 to charterboats and an unknown profit loss to headboats. Profit losses would be less if displaced effort from the closed months shifted to the open months. The fifth alternative would modify the recreational seasonal closure to June 1–July 23. In the absence of effort shifting, this alternative would result in a short-term profit increase of approximately $80,000 annually to charterboats and an unknown profit increase to headboats. Any effort shift would tend to negate these profit increases.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all vessel permit holders in the Gulf reef fish fishery.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: November 7, 2012.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.42, paragraphs (a)(1)(v) and (a)(2)(ii) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(a) * * *

(1) * * *

(v) Greater amberjack—409,000 lb (185,519 kg), round weight.

* * * * *

(2) * * *

(ii) *Recreational quota for greater amberjack.* The recreational quota for greater amberjack is 1,130,000 lb (512,559 kg), round weight.

* * * * *

■ 3. In § 622.44, paragraph (d) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(d) *Gulf greater amberjack.* Until the quota specified in § 622.42 (a)(1)(v) is reached, 2,000 lb (907 kg), round weight. See § 622.43 (a)(1)(i) for the limitations regarding greater amberjack after the quota is reached.

* * * * *

■ 4. In § 622.49, paragraph (a)(1) is revised to read as follows:

§ 622.49 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

(a) * * *

(1) *Greater amberjack.* (i) *Commercial sector*—(A) If commercial landings, as estimated by the SRD, reach or are projected to reach the annual catch target (ACT) specified in § 622.42(a)(1)(v) (commercial quota), the AA will file a notification with the Office of the Federal Register to close the commercial sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (a)(1)(i)(A) of this section, if commercial landings, as estimated by the SRD, exceed the commercial ACL, as specified in paragraph (a)(1)(i)(C) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the commercial ACT (commercial quota) and the commercial ACL for that following year by the amount of any commercial ACL overage in the prior fishing year.

(C) The commercial ACL for greater amberjack is 481,000 lb (218,178 kg), round weight.

(ii) *Recreational sector*—(A) If recreational landings, as estimated by the SRD, reach or are projected to reach the ACT specified in § 622.42 (a)(2)(ii) (recreational quota), the AA will file a notification with the Office of the Federal Register to close the recreational sector for the remainder of the fishing year.

(B) In addition to the measures specified in paragraph (a)(1)(ii)(A) of this section, if recreational landings, as estimated by the SRD, exceed the recreational ACL, as specified in paragraph (a)(1)(ii)(C) of this section, the AA will file a notification with the Office of the Federal Register, at or near the beginning of the following fishing year to reduce the recreational ACT (recreational quota) and the recreational ACL for that following year by the amount of any recreational ACL overage in the prior fishing year.

(C) The recreational ACL for greater amberjack is 1,299,000 lb (589,216 kg), round weight.

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[FR Doc. 2012–27540 Filed 11–9–12; 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 0648–XC346

Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Central Regulatory Area of the Gulf of Alaska Management Area

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

ACTION: Temporary rule; reallocation.

SUMMARY: NMFS is reallocating the projected unused amount of Pacific cod from catcher vessels using trawl gear to vessels using pot gear and vessels using jig gear in the Central Regulatory Area of the Gulf of Alaska management area. This action is necessary to allow the 2012 total allowable catch of Pacific cod to be harvested.

DATES: Effective November 7, 2012, through 2400 hrs, Alaska local time (A.l.t.), December 31, 2012.

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

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the Gulf of Alaska (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. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The 2012 Pacific cod total allowable catch specified for catcher vessels using trawl gear in the Central Regulatory Area of the GOA is 15,954 metric tons (mt) as established by the final 2012 and 2013 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012), after a 1,627 mt apportionment to the trawl catcher vessel sector under the Central GOA Rockfish Program (§ 679.81(c)(4)(ii)). The Administrator, Alaska Region (Regional Administrator) has determined that catcher vessels using trawl gear will not be able to harvest 1,800 mt of the 2012 Pacific cod TAC allocated to those vessels under § 679.20(a)(12)(i)(B)(*4*). In accordance with § 679.20(a)(12)(ii)(B), the Regional Administrator has also determined that the pot and jig sectors currently have the capacity to harvest this excess allocation and reallocates 1,500 mt to vessels using pot gear and 300 mt to vessels using jig gear.

The harvest specifications for Pacific cod included in the final 2012 harvest specifications for groundfish in the GOA (77 FR 15194, March 14, 2012) are revised as follows: 14,154 mt for catcher vessels using trawl gear, 13,255 mt for vessels using pot gear, and 727 mt to vessels using jig gear. This action does not reduce the Pacific cod apportionment (1,627 mt) made to the trawl catcher vessel sector operating under the Central GOA Rockfish Program.

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 reallocation of Pacific cod specified from catcher vessels using trawl gear to vessels using pot gear and vessels using jig gear. Since the fishery is currently open, it is important to immediately inform the industry as to the revised allocations. 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 as well as processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 6, 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 is exempt from review under Executive Order 12866.

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

Dated: November 7, 2012.

Emily H. Menashes,

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

[FR Doc. 2012–27536 Filed 11–7–12; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XC344

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Jig Gear in the Central Regulatory Area of 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 Pacific cod by vessels using jig gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2012 Pacific cod total allowable catch (TAC) apportioned to vessels using jig gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 9, 2012, through 2400 hrs, A.l.t., December 31, 2012. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 26, 2012.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2012–0223, 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–2012–0223 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 *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: Josh Keaton, 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 Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA under § 679.20(d)(1)(iii) on June 29, 2012 (77 FR 39183, July 2, 2012).

As of November 5, 2012, NMFS has determined that approximately 25 metric tons of Pacific cod remain in the directed fishing allowance of the Pacific cod TAC apportioned to vessels using jig gear in the Central Regulatory Area 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 Pacific cod apportioned to vessels using jig gear in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels using jig gear in the Central Regulatory Area of the GOA, effective 1200 hrs, A.l.t., November 9, 2012.

The Administrator, Alaska Region (Regional Administrator) considered the following factors in reaching this

decision: (1) The current catch of Pacific cod by vessels using jig gear in the Central Regulatory Area 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 Pacific cod fishery by vessels using jig gear in the Central Regulatory Area 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 November 5, 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 Pacific cod fishery by vessels using jig gear in the Central Regulatory Area 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 26, 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: November 7, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–27544 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 219
Tuesday, November 13, 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 39

[Docket No. FAA–2012–1031; Directorate Identifier 2012–NE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611–8 turbofan engines. This proposed AD was prompted by a recent quality review determination that bolts with reduced material properties may have been installed in some engines. This proposed AD would require inspection and replacement if necessary, of affected bolts. We are proposing this AD to prevent uncontained turbine disc fracture and damage to the airplane.

DATES: We must receive comments on this proposed AD by January 14, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

For service information identified in this proposed AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1031; Directorate Identifier 2012–NE–31–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD 2012–0163, dated August 28, 2012 (referred to hereinafter as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> The results of a recent quality review of low pressure turbine (LPT) stage 1 static air seal and high pressure turbine (HPT) stage 1 air seal support bolts identified that, before installation, those bolts may have not been inspected. As a consequence, bolts with reduced material properties may have been installed in some engines.
>
> This condition, if not detected and corrected, could lead to failure of a bolt, potentially causing turbine disc fracture and release of high-energy debris, possibly resulting in damage to the aeroplane and/or injury to the occupants.

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

Relevant Service Information

RRD has issued Alert Service Bulletin TAY–72–A1696, Revision 1, dated June 11, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by EASA, and is approved for operation in the United States. Pursuant to our bilateral agreement with the European Community, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design. This proposed AD would require inspection and replacement if necessary, of affected bolts.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 20 engines installed on

airplanes of U.S. registry. We also estimate that it would take about 4 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts would cost about $1,848. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $43,760.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Rolls-Royce Deutschland Ltd & Co KG (Formerly Rolls-Royce Deutschland GmbH, Formerly Rolls-Royce plc): Docket No. FAA–2012–1031; Directorate Identifier 2012–NE–31–AD.

(a) Comments Due Date

We must receive comments by January 14, 2013.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) Tay 611–8 turbofan engines, serial numbers 16245, 16256, 16417, 16418, 16584, 16585, 16639, 16640, 16701, 16702, 16813, 16814, 16853, 16854, 16879, 16880, 16898, 16905, 16906, 16911, 16923, 16935, and 16936, with a date of the last shop visit before December 8, 2006.

(d) Reason

This AD was prompted by a recent quality review determination that bolts with reduced material properties may have been installed in some engines. We are issuing this AD to prevent uncontained turbine disc fracture and damage to the airplane.

(e) Actions and Compliance

Unless already done, for engines with a date of the last shop visit before December 8, 2006, do the following actions:

(1) If engine cycles accumulated since the last engine shop visit is 5,400 cycles or more on the effective date of this AD, inspect the bolts installed in the low-pressure turbine (LPT) stage 1 static seal and high-pressure turbine (HPT) stage 1 air seal support within 100 engine cycles-in-service.

(2) If engine cycles accumulated since the last engine shop visit is fewer than 5,400 cycles on the effective date of this AD, inspect the bolts installed in the LPT stage 1 static seal and HPT stage 1 air seal support before accumulating 5,500 engine cycles since the last engine shop visit.

(3) If any broken bolt, brown bolt, or bolt with a rough oxidized surface is identified, then replace all bolts with new bolts before further flight.

(4) Within 30 days after the inspection, report the inspection findings to RRD service engineering. Guidance on reporting can be found in Alert Service Bulletin TAY–72–A1696, Revision 1, dated June 11, 2012.

(f) Installation Prohibition

After the effective date of this AD, do not install any HPT module and/or LPT module into any engine, or any engine onto an airplane, unless the bolts have been inspected and replaced if necessary, as specified in paragraph (e) of this AD.

(g) Paperwork Reduction Act Burden Statement

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

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Frederick Zink, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7779; fax: 781–238–7199; email: *frederick.zink@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2012–0163, dated August 28, 2012, and RRD Alert Service Bulletin TAY–72–A1696, Revision 1, dated June 11, 2012, for related information.

(3) For service information identified in this AD, contact Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, Dahlewitz, 15827 Blankenfelde-Mahlow, Germany; phone: 49 0 33–7086–1883; fax: 49 0 33–7086–3276. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on November 1, 2012.

Colleen M. D'Alessandro,

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

[FR Doc. 2012–27454 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121 and 135

[Docket No.: FAA–2011–1136; Notice No. 12–07]

RIN 2120–AJ33

Air Carrier Contract Maintenance Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to amend the maintenance regulations for domestic, flag, and supplemental operations, and commuter and on-demand operations for aircraft type certificated with a passenger seating configuration of 10 seats or more (excluding any pilot seat). The proposed rules would require these operators to develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA and to include them in their maintenance manuals. The rules would also require the operators to provide a list to the FAA of all persons with whom they contract their maintenance. These changes are needed because contract maintenance has increased to over 70 percent of all air carrier maintenance, and numerous investigations have shown deficiencies in maintenance performed by contract maintenance providers. The proposals would help ensure consistency between contract and in-house air carrier maintenance and enhance the oversight capabilities of both the air carriers and the FAA.

DATES: Send comments on or before February 11, 2013.

ADDRESSES: Send comments identified by docket number FAA–2011–1136 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *http://www.regulations.gov,* including any personal information the commenter provides. Using the search function of the docket web site, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *http://DocketsInfo.dot.gov.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Patricia K. Williams, Aircraft Maintenance Division, Air Carrier Maintenance Branch, AFS–330, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–6432; email *patricia.k.williams@faa.gov.*

For legal questions concerning this action, contact Ed Averman, Office of the Chief Counsel, Airworthiness, Advanced Aircraft, and Commercial Space Law Branch, AGC–210, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC; telephone (202) 267–3147; facsimile (202) 267–5106, email *ed.averman@faa.gov.*

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules on 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 rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 447, Section 44701(a)(2)(A) and (B) and (5). Under that section, the FAA is charged with prescribing regulations and minimum standards in the interest of safety for inspecting, servicing, and overhauling aircraft, aircraft engines, propellers, and appliances, and equipment and facilities for, and the timing of and manner of, the inspecting, servicing and overhauling, and prescribing regulations the FAA finds necessary for safety and commerce. This regulation is within the scope of that authority.

In addition, the ''FAA Modernization and Reform Act of 2012'' (the Act), Public Law 112–95 (February 14, 2012), in section 319 (Maintenance providers), requires the FAA to issue regulations ''requiring that covered work on an aircraft used to provide air transportation under part 121 * * *, be performed by persons in accordance with subsection (b).'' Subsection (b), in addition to listing persons authorized under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for covered work. The Act defines *covered work,* and mandates that the applicable part 121 air carrier must be directly in charge of covered work being performed for it under contract, and that the work be done under the supervision and control of the air carrier. These statutory requirements are addressed in this proposal.

I. Overview of Proposed Rule

The proposed amendments would apply to certificate holders who conduct either domestic, flag, or supplemental operations under 14 CFR part 121, and who conduct either commuter operations or on-demand operations with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more [1] under 14 CFR part 135, if they contract any of their maintenance, preventive maintenance, or alteration work to an outside source. The amendments would require that each certificate holder who contracts for such work must first have developed policies, procedures, methods, and instructions for the accomplishment of that work. These must ensure that, if they are followed, the work will be performed in accordance with the certificate holder's maintenance program and maintenance manual. Each certificate holder would also be required to ensure that its system for the continuing analysis and surveillance of that work contains procedures for its oversight. All of these policies, procedures, methods, and instructions would have to be acceptable to the FAA and be included in the certificate holder's maintenance manual. In addition, each certificate

[1] For brevity throughout this preamble, we will refer to these aircraft as ''10 or more.''

holder who contracts any of its maintenance, preventive maintenance, or alteration work to an outside source would be required to provide to its local FAA Certificate Holding District Office a list that includes the name and address of each maintenance provider it uses and a description of the type of maintenance that would be performed.

The requirement that any person performing maintenance for an air carrier must follow the carrier's maintenance program is not new—FAA regulations have long required this. For example, § 121.363(b) authorizes a certificate holder to arrange with another person to perform its maintenance,[2] and the regulation makes clear that doing so does not relieve the carrier from remaining primarily responsible for the airworthiness of its aircraft. Further, § 121.367(a) requires specifically that maintenance performed by either a certificate holder, or by another person, must be performed in accordance with the certificate holder's manual. Similar provisions are found in §§ 135.413 and 135.425. Despite those general requirements, the Department of Transportation Inspector General (IG) had noted lapses in the means to ensure air carrier manuals are followed when contracted maintenance is performed. The deficiencies noted include a lack of guidance and training for the maintenance providers, and insufficient oversight of that maintenance. The IG reports recommended the FAA develop a means to identify these contract maintenance providers so the agency could better target its inspector resources in surveilling air carrier maintenance. In a separate rulemaking the FAA is proposing mandatory training programs for air carrier maintenance that would have to be approved by the FAA.

II. Background

A. Statement of the Problem

Over the past three decades, air carrier maintenance has evolved from mostly an ''in-house'' operation to an extended network of maintenance providers that fulfill contracts with air carriers to perform their aircraft maintenance. The reasons for this shift are many, including air carriers lowering costs by employing fewer maintenance personnel and reducing their inventories of maintenance-related tools, equipment, and housing by allowing others with specialized equipment and expertise to work on their aircraft and its safety-critical components. Thus, air carriers, in making business decisions, have shifted much of their maintenance to contract providers.

By regulation, each air carrier remains primarily responsible for the airworthiness of its aircraft, whether the maintenance is contracted to another person or not. Any person performing maintenance for an air carrier must follow the air carrier's maintenance manual. (14 CFR 121.363, 121.367(a), 135.413, and 135.425(a).) In addition, each air carrier is required to document in its general maintenance manual, both a listing of persons with whom it contracts maintenance and a general description of the contracted work. (14 CFR 121.369(a), and 135.427(a).)

However, air carrier general maintenance manuals often are geared toward in-house maintenance. They fail to provide the necessary instructions to maintenance providers to enable them to follow the air carriers' maintenance programs. This is exacerbated when an air carrier's manual contains proprietary data, or other confidential information that an air carrier may not want to share with a maintenance provider. Often, the maintenance provider may also work on a competitor's aircraft. Consequently, according to the IG, air carriers often are reluctant to share such information, and therefore, often do not.

In addition, the FAA has found that, although air carriers are required to list their maintenance providers and a description of the work to be done in their maintenance manuals, these lists are not always kept up to date, are not always complete, and are not always in a format that is readily useful for FAA oversight and analysis purposes. The FAA needs this information to be complete and readily available centrally. This data is used by the FAA in planning surveillance of air carrier maintenance programs and determining the extent to which maintenance providers are performing their work according to the air carriers' maintenance manuals. Without accurate and complete information on the work being performed for air carriers, the FAA cannot adequately target its inspection resources for surveillance and make accurate risk assessments.

B. History

In May 1996, employees of SabreTech, a contract maintenance provider to air carriers, placed mislabeled and mishandled oxygen generators into the cargo compartment of a passenger jet. Those mishandled hazardous materials caused a fire in the cargo hold that caused Valujet Flight 592 from Miami to Atlanta to crash into the Everglades in Florida, taking the lives of all 110 people on board. Since then, the FAA's surveillance of air carrier maintenance and contract maintenance has been a particular area of focus for the Department of Transportation's Office of Inspector General (DOT/OIG). The OIG has been performing investigations and audits of the FAA's safety oversight of air carriers' use of repair stations to perform their maintenance, the use by air carriers of non-certificated repair facilities, and the air carriers' outsourcing of maintenance. In each of those reports (detailed below), the OIG found fault with the FAA's methods of tracking where air carriers perform their maintenance, who performs it, and how it is performed.

A 2003 Department of Transportation IG report [3] identified a trend of air carriers increasingly contracting their maintenance to outside sources such as repair stations. The report revealed that major air carriers spent approximately $1.5 billion on outsourced maintenance in 1996 and approximately $2.5 billion in 2002. The report attributed the trend to cost savings that can be realized by air carriers contracting their maintenance to outside repair facilities. The report was based, in part, on investigators' visits to several FAA field offices and to 21 repair stations to evaluate the effectiveness of the FAA's oversight of the maintenance work being performed for air carriers. The investigation identified weaknesses in maintenance practices at 15 of the 21 repair stations and concluded that a lack of FAA oversight, especially for repeat issues, contributed to the deficiencies. The IG report made several recommendations on ways the FAA could enhance the effectiveness of its oversight of air carrier contracted maintenance. Among them was that the FAA should develop a process to identify repair stations air carriers use to perform aircraft maintenance, and to target FAA inspector resources based on risk assessments or analysis of the data collected on air carrier maintenance outsourcing practices (Recommendation 2).

In 2005, the IG issued a second report on air carriers' use of outside maintenance providers [4]—this one reporting on the use of non-certificated repair facilities. The report discussed air

[2] Throughout this preamble, unless otherwise indicated, when we refer to the generic term ''maintenance,'' the term is meant to include ''maintenance, preventive maintenance, and alterations.''

[3] *Review of Air Carriers' Use of Aircraft Repair Stations,* Report No. AV–2003–047 (July 8, 2003).

[4] *Air Carrier's Outsourcing Use of Non-Certificated Repair Facilities,* Report No. AV–2006–031 (Dec. 15, 2005).

carriers' use of both non-certificated facilities (*i.e.,* maintenance facilities not certificated by the FAA as repair stations) and individual mechanics hired on a temporary basis. The report echoed a recommendation from the 2003 IG report by recommending that the FAA inventory air carrier vendor lists that include all maintenance providers working on air carrier aircraft and identify non-certificated repair facilities that perform critical or scheduled maintenance (Recommendation 1). The report also recommended that the FAA determine whether air carriers evaluate the background, experience, and qualifications of the temporary maintenance personnel used by the contractors to ensure the work they perform is completed in accordance with FAA and air carrier requirements (Recommendation 7).

The problem areas discussed above were emphasized at Congressional hearings in testimony by the Inspector General in 2007. The Inspector General stated: ''If FAA is to achieve the planned improvements in oversight of outsourced maintenance, it will need to obtain definitive data on where air carriers are getting the maintenance performed, including critical and scheduled maintenance work done at non-certificated repair facilities, so that it can focus its inspections to areas of greatest risk.'' [5]

In 2008, the IG issued a third related report on air carriers' outsourcing of maintenance.[6] The report noted a continuing trend of air carriers outsourcing more of their maintenance. The IG based this report on its review of nine major air carriers, which sent 71% of their heavy maintenance checks to repair stations in 2007—up from 34% in 2003.[7] The report pointed out the continuing need for better oversight of contract maintenance, both by the FAA and by air carriers, especially when the air carriers are contracting repairs of critical components. In addition, the report found that air carrier maintenance manuals have traditionally been geared toward in-house maintenance, and noted that repair stations may perform work for various air carriers, all with different in-house procedures. In this regard, the report concluded that the FAA should ensure that air carriers provide well-defined maintenance procedures and guidance for their outsourced repairs. The report specifically recommended that the FAA: ''Encourage the industry best practice of using airworthiness agreements between air carriers and repair stations that more closely define maintenance procedures and responsibilities'' (Recommendation 7).

Need for the Rule

As noted in the IG reports discussed above, air carrier use of contract maintenance providers continues to grow, averaging 64% of air carrier maintenance costs in 2007. The air carrier regulations have long stipulated that each certificate holder is primarily responsible for the airworthiness of its aircraft, even if maintenance is contracted to another person. (*See* §§ 121.363 and 135.413.) Air carriers cannot abrogate this responsibility. Consistent with this responsibility are the requirements that when persons other than the certificate holder (*i.e.,* contract maintenance providers) perform maintenance for it, the maintenance must be performed in accordance with the certificate holder's maintenance manual.

Section 121.367 has long required that each certificate holder shall have a maintenance program that ensures that: ''Maintenance, preventive maintenance, and alterations performed by it, *or by other persons,* are performed in accordance with the certificate holder's manual.'' (§§ 121.367(a) and 135.425(a) (emphasis added).) And, current § 121.369(b) requires, in pertinent part, that:

> The certificate holder's manual must contain the programs required by § 121.367 that must be followed in performing maintenance, preventive maintenance, and alterations of that certificate holder's airplanes, including airframes, aircraft engines, propellers, appliances, emergency equipment, and parts thereof * * *.

A nearly identical requirement is in § 135.427(b). While these requirements may be clear, the specifics of how to achieve the result may not be. As noted in the three IG reports discussed above, the investigators found numerous problems with maintenance being outsourced by air carriers. One conclusion reached by the IG was, as noted above, that air carriers should provide their contract maintenance providers with well-defined maintenance procedures. Implicit is that these procedures would be designed by each air carrier so that its maintenance providers could follow its manual.

The FAA believes that a root cause of this problem may be that many air carrier maintenance manuals were written at a time when maintenance was performed mostly in-house. Thus parts of these manuals may contain proprietary information obtained from various sources, for example, original equipment manufacturer (OEM), Type Certificate (TC) holder, or Supplemental Type Certificate (STC) holder, or the information may have been developed by the air carrier. Because of the proprietary nature of the data, an air carrier may be reluctant to provide its maintenance providers with all of the complete and specific guidance within its maintenance manual. This reluctance by an air carrier to provide the specific proprietary guidance/information may indicate that it does not fully recognize the maintenance provider as an extension of its own maintenance program. In those situations, the maintenance provider may be unable to follow the air carrier's program to the extent required by the regulations.

Repair stations have been frustrated by their inability to obtain the necessary applicable portions of some air carrier maintenance manuals when performing work under contract for them. The repair station regulations require repair stations to follow the maintenance manuals of the air carriers for whom they are doing the work. Section 145.205(a) provides that:

> A certificated repair station that performs maintenance, preventive maintenance, or alterations for an air carrier or commercial operator that has a continuous airworthiness maintenance program under part 121 or part 135 must follow the air carrier's or commercial operator's program and applicable sections of its maintenance manual.

It stands to reason that if a repair station must follow the air carrier's or commercial operator's manual in order to comply with this regulation, then the corresponding part 121 and part 135 regulations should require the air carrier or commercial operator to provide the repair station that does the work with the applicable portions of its maintenance manual. This would be consistent with the air carriers' remaining primarily responsible for the airworthiness of their aircraft and the concept that when a maintenance provider performs maintenance for an air carrier, the provider is an extension of the air carrier's maintenance program.

The IG reports placed much emphasis on the need for improved FAA oversight of air carrier contract maintenance. In order for the FAA to improve this

[5] Scovel, Aviation Safety, FAA Oversight of Repair Stations, June 20, 2007, CC 2007–076 Senate Committee on Science, Transportation and Commerce, Subcommittee on Operations, Safety and Security.

[6] *Air Carrier's Outsourcing of Aircraft Maintenance,* Report No. AV–2008–090 (Sept. 30, 2008).

[7] The report noted that, ''overall, major air carriers outsourced an average of 64 percent of their maintenance expenses in 2007, compared to only 37 percent in 1996.'' Report No. AV–2008–090 (Sept. 30, 2008) at p. 1.

oversight, the IG, in 2003, recommended the agency develop a means to identify repair stations that perform maintenance for air carriers. The current regulations require only that air carriers put in their manuals a list of persons with whom they have arranged for the performance of maintenance and a general description of that work. (*See* §§ 121.369(a) and 135.427(a).) Although the FAA may review these manuals, no current rule requires air carriers to keep such a list up to date and to provide it to the FAA in an acceptable format. As explained below, the FAA has found that the lists maintained by air carriers in their manuals in some cases are not readily useful for oversight purposes.

The requirements that an air carrier put in its maintenance manual a list of persons with whom it has arranged to perform maintenance, including a general description of that work, has been in place since at least 1965. As a consequence of the IG reports, between June and September 2010, the FAA did an internal investigation to determine the effectiveness of the requirement that air carriers include in their manual the list of outside maintenance providers. The agency found inconsistent compliance with the rule. Some carriers failed to specify an adequate description of the type of work, and some failed to include the name and address of their maintenance providers, using instead only alpha-numeric designators. This piecemeal and inconsistent availability of the information is not conducive to FAA analysis and targeting of problem areas.

The FAA agrees with the IG's recommendations that the agency should have an accurate, consistent inventory of each air carrier's contract maintenance providers. Such a list would enable the FAA to more accurately assess the risk associated with air carriers increasingly maintaining their fleets by contract maintenance providers. Although the identity of contract maintenance providers is currently available to the FAA through the air carriers' manuals and available upon request, it is not published in a format that readily allows for analysis, as it may be annotated in various formats, and the information is not available to the FAA in a single data base. In accordance with the IG's recommendations, we are proposing this rule so the FAA would have a dedicated and readily available list in an acceptable format of all air carrier contract maintenance providers. These lists would be useful for purposes of FAA analysis and oversight of both the air carriers that contract portions of their maintenance and their maintenance providers. The FAA envisions that this list would be administered via air carriers' operations specifications or through the agency's new safety assurance system that allows each certificate holder to enter its own data electronically into the FAA system. This would provide the FAA with real time data and assist it in meeting its oversight responsibilities and in making risk assessments.

III. Discussion of the Proposal

Because current FAA regulations do not clearly address air carrier requirements for contract maintenance providers, the resulting lack of standardization makes it difficult for both the air carriers and the FAA to provide meaningful oversight to ensure proper maintenance that is vital for the public's continued safety. Consistent with the IG's recommendations, we propose to address weaknesses in contracted maintenance on two fronts. The first would add consistency and structure to the arrangements air carriers make with their outside maintenance providers, with the goal of ensuring that the air carriers' maintenance manuals would be followed. The second would assist the FAA in its oversight of contracted maintenance by requiring each air carrier that contracts any of its maintenance to provide, and keep updated, a list of those maintenance providers to the FAA. The list would include the physical (street) address where the work would be performed, and a description of the work to be performed by each maintenance provider.

While the current regulations do require that any person (whether certificated or not) with whom an air carrier arranges to perform maintenance must follow the carrier's manual, the requirement is broadly stated and often loosely implemented. In order to assure consistency in any future FAA guidance material, we are proposing in new §§ 121.368 and 135.426 to define a *maintenance provider* as any person (whether certificated or not) who performs maintenance for a certificate holder other than a person who is trained by and employed by that certificate holder. These new sections would also require each air carrier that contracts any part of its maintenance to a maintenance provider to first have policies and procedures in place to ensure that, if they were followed, the carrier's contracted maintenance would be performed in accordance with its maintenance program and maintenance manual. Proprietary data issues could be addressed by carefully drafted airworthiness agreements between the air carrier and its maintenance provider, as recommended in the 2008 IG report. Each certificate holder would also be required to ensure that its system for the continuing analysis and surveillance of that work contains procedures for its oversight. All of these policies, procedures, methods, and instructions would have to be acceptable to the FAA and be included in the certificate holder's maintenance manual.

For completeness, we are also proposing a new paragraph (b)(10) to current §§ 121.369 and 135.427 (Manual requirements) to include the above requirements for procedures and oversight in the air carriers' maintenance manuals.

We are also proposing in new §§ 121.368 and 135.426 to require each air carrier that contracts any of its maintenance to an outside source to provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and address of each maintenance provider used by that certificate holder under contract, and a description of the work that would be performed. This would enable the FAA to have a meaningful data base that would show who was doing the work for each air carrier and the kind of work being done. This would assist the FAA in its oversight responsibilities, especially in determining which maintenance providers were performing critical maintenance.

The FAA recognizes that operators will need time to fully develop the policies, procedures, methods, and instructions for contract maintenance and to provide them in an acceptable format to the FAA. Similarly, they will need time to prepare the list with the required information of their contract maintenance providers and to provide them in an acceptable format to their Certificate Holding District Offices. The FAA will also need time to review the information submitted by the operators. In view of these considerations, the FAA is proposing to make the effective date of the final rule one year after its publication. We are requesting public comments on the reasonableness of this one-year ''compliance'' period, as well as any other aspect of this proposal.

In addition, as explained in the Authority for this Rulemaking section of this preamble, the ''FAA Modernization and Reform Act of 2012'' (the Act), Public Law 112–95 (February 14, 2012), in section 319 (Maintenance providers), requires the FAA to issue regulations ''requiring that covered work on an aircraft used to provide air transportation under part 121 * * *, be performed by persons in accordance

with subsection (b).'' Subsection (b) of the Act, in addition to listing persons already authorized to perform maintenance under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for the performance of covered work. The Act defines *covered work* as any of the following: ''(A) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used. (B) Regularly scheduled maintenance. (C) A required inspection item (as defined by the Administrator).'' The Act also requires that covered work be carried out under the *supervision and control* of the part 121 air carrier *directly in charge* of the covered work being performed for it by a maintenance provider, and that the covered work be carried out in accordance with the air carrier's maintenance manual.

In accordance with these statutory requirements, we are proposing to include in §§ 121.368(a) and 135.426(a) the definition of *covered work* set forth in the statute, and to provide definitions of *supervision and control* and *directly in charge.* The definition of *directly in charge* would be similar to the current definitions in §§ 121.378 and 135.435. As required by the statute, we are also proposing: In §§ 121.368(b) and 135.426(b), that each certificate holder must be directly in charge of all covered work it contracts to a maintenance provider; in §§ 121.368(c) and 135.426(c), that all covered work must be carried out in accordance with the certificate holder's maintenance manual; and in §§ 121.368(d) and 135.426(d), that no covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder. Although the statute mandates these amendments for part 121 air carriers, the FAA believes that, in the interest of providing an equivalent level of safety for commuter and on demand operations, the same requirements should apply to persons conducting operations under part 135 in aircraft configured with 10 or more passenger seats. Accordingly, we are proposing the changes mandated by the Act for both part 121 and part 135 (10 or more) certificate holders.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866; (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Total Benefits and Costs of This Rule

This proposed rule would ensure consistency between contract and in-house air carrier maintenance and assist the FAA in its oversight responsibilities. The DOT IG reports placed much emphasis on the need for improved FAA oversight of air carrier contract maintenance. In order for the FAA to better be able to provide this oversight, the IG, in 2003, recommended the agency develop a means to identify repair stations that perform maintenance for air carriers.

In accord with the IG's recommendations, we are proposing this rule so the FAA would have a dedicated and readily available list in an acceptable format of all air carrier contract maintenance providers. These lists would be useful for purposes of FAA analysis and oversight of both the air carriers that contract portions of their maintenance and their maintenance providers.

These new sections would also require each air carrier that contracts any part of its maintenance to a maintenance provider to first have policies and procedures in place to ensure that, if they were followed, the carrier's contracted maintenance would be performed in accordance with its maintenance program and maintenance manual. Proprietary data issues could be addressed by carefully drafted airworthiness agreements between the air carrier and its maintenance provider, as recommended in the 2008 IG report.

In addition, this proposed rule responds to a provision (Section 319 on Maintenance Providers) in the FAA Modernization and Reform Act of 2012 mandating that the FAA issue regulations ''requiring that covered work on an aircraft used to provide air transportation under part 121 * * *, be performed by persons in accordance with subsection (b) [of that section].'' Subsection (b), in addition to listing persons authorized under existing regulations, referenced additional terms and conditions in subsection (c) that would apply to persons who provide contract maintenance workers, services, or maintenance functions to a part 121 air carrier for covered work. The section defines *covered work,* and mandates that the applicable part 121 air carrier must be directly in charge of covered work being performed for it under contract, and that the work be done under the supervision and control of the air carrier. As already explained under Discussion of the Proposal in this preamble, in the interest of providing an equivalent level of safety for commuter and on demand operations, we are proposing the above statutory requirements for certificate holders operating under part 135 as well as for those operating under part 121.

Over 10 years, the cost to part 121 and part 135 (10 or more) air carriers and the FAA would be approximately $2.4

million ($1.6 million, present value at 7%), or essentially minimal cost.

The FAA believes the benefits discussed above have value exceeding the costs.

Who is potentially affected by this rule?

Part 121 and part 135 (10 or more) air carriers.

Assumptions:

- The rule is expected to take effect in 2014. The time horizon for these potential benefits is 10 years, 2014 through 2023.
- All monetary values were expressed in constant 2011 dollars. We calculated the present value of the potential benefit stream by discounting the monetary values using a 7 percent interest rate from 2014 to 2023.
- The FAA identified 301 part 121 and part 135 (10 or more) air carriers that would be affected by this proposed rule.

Benefits of This Rule

This proposed rule would ensure consistency between contract and in-house air carrier maintenance and assist the FAA in its oversight responsibilities. The DOT IG reports placed much emphasis on the need for improved FAA oversight of air carrier contract maintenance. In order for the FAA to better be able to provide this oversight, the IG, in 2003, recommended the agency develop a means to identify repair stations that perform maintenance for air carriers.

In accord with the IG's recommendations, we are proposing this rule so the FAA would have a dedicated and readily available list in an acceptable format of all air carrier contract maintenance providers. These lists would be useful for purposes of FAA analysis and oversight of both the air carriers that contract portions of their maintenance and their maintenance providers.

Although the IG reports discussed earlier dealt primarily with maintenance conducted for part 121 certificate holders, the FAA has found similar problems with maintenance providers not following the maintenance programs of certificate holders conducting commuter and on-demand operations with aircraft type certificated for a passenger seating configuration, excluding any pilot seat, of ten seats or more under part 135. In a similar vein, the FAA has also found that some of these operators conduct insufficient oversight of their maintenance providers. Even before the passage of Public Law 112–95 in February 2012, the FAA was planning to propose rules for both part 121 and 135 certificate holders that would require additional procedures and oversight to help ensure that the certificate holders' manuals would be followed by outside maintenance providers. The statute mandates new requirements for part 121 certificate holders, including that they be directly in charge of what it defines as ''covered work.'' Because the FAA has observed the same types of lapses with maintenance performed for part 135 certificate holders operating aircraft with 10 or more seats, we are proposing the same requirements for these operators. The FAA believes that by requiring part 135 certificate holders to adopt the new part 121 statutory requirements, a higher level of safety would be achieved.

Costs of This Rule

From 2014 to 2023, the cost to part 121 and part 135 (10 or more) air carriers and the FAA would be approximately $2.4 million ($1.6 million, present value). The FAA solicits comments regarding this determination and requests that all comments be accompanied by clear and detailed supporting economic documentation.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA identified a total of 269 small entities out of 301 air carriers that would be affected by this proposed rule. For each of these entities, the FAA attempted to retrieve their annual revenue data from World Aviation Directory. The FAA found data for 36 of the 269 small entities. The FAA then compared their revenue data with their annualized costs. The projected annualized costs of the proposed rule as a percent of revenue would be less than 1 percent for the 36 small entities, which is not a significant economic impact. Therefore, the FAA certifies this proposed rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments regarding this determination.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that the objective is to improve safety: therefore, it would not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $143.1 million instead of $100 million. This proposed rule does not contain such a mandate; therefore, the

requirements of Title II of the Act do not apply.

E. Paperwork Reduction

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA considers the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

This action contains the following proposed amendments to the existing information collection requirements previously approved under OMB Control Number 2120–XXXX. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted these proposed information collection amendments to OMB for its review.

Summary: Each operator which seeks to obtain, or is in possession of, an air carrier operating certificate must comply with the requirements of 14 CFR part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards. Original certification is completed in accordance with part 119.

Each operator which seeks to obtain, or is in possession of a commuter or on-demand operating certificate must comply with the requirements of 14 CFR part 135 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards. Original certification is completed in accordance with part 119. Continuing certification is completed in accordance with part 121 and part 135. One form is used. The use of this form was taken into account in estimating the burden for this section.

Use: This information collection supports the Department of Transportation's strategic goal of safety. Specifically, the goal is to promote the public health and safety by working toward the elimination of transportation-related deaths, injuries, and destruction of property.

Title 49 U.S.C., Section 44702, empowers the Secretary of Transportation to issue air carrier operating certificates and to establish minimum safety standards for the operation of the air carrier to whom such certificates are issued. Under the authority of Title 49 CFR, Section 44701, Federal Aviation Regulations part 121 and part 135 prescribe the terms, conditions, and limitations as are necessary to ensure safety in air transportation.

Respondents (including number of): There are approximately 94 part 121 air carriers and 207 part 135 operators affected by this proposed rule.

Frequency: The manual requirements will be submitted as part of the submission of maintenance manuals to the FAA for acceptance.

Annual Burden Estimate: The proposed rule would require that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program. The proposed rule would also require that the air carrier provides a list with the name and address of each maintenance provider used and the type of maintenance that is to be performed.

Private Sector Costs

The proposed rule would require that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program. The proposed rule would also require that the air carrier provides a list with the name and address of each maintenance provider used and the type of maintenance that is to be performed and updates and maintains that list.

To calculate the cost of revising the manual and revising and maintaining the list, the following assumptions were used, paralleling those in the regulatory evaluation:

- 94 part 121 manuals have to be revised in year 1.
- 207 part 135 manuals have to be revised in year 1.
- 94 part 121 air carriers have to provide a list in year 1.
- 207 part 135 air carriers have to provide a list in year 1.
- Part 121: amount of time revising manual (manager): 4 hours.
- Part 121: amount of time revising manual (technical writer): 40 hours.
- Part 121: amount of time revising manual (editor): 2 hours.
- Part 135: amount of time revising manual (manager): 8 hours.
- Part 121: amount of time to provide the list (manager): 1 hour.
- Part 121: amount of time to provide the list (technical writer): 3 hours.
- Part 121: amount of time to provide the list (auditor): 10 hours.
- Part 135: amount of time to provide the list (manager): 5 hours.
- Parts 121 & 135: amount of time to maintain list (manager): 6 hours/year.
- Parts 121 & 135: amount of time to maintain list (technical writer): 6 hours/year.
- Wage per hour for manager: $69.78.
- Wage per hour for technical writer: $36.76.
- Wage per hour for editor: $43.45.
- Wage per hour for auditor: $49.79.

First Year Costs for Part 121

Cost = 94 × ((4 hours × $69.78) + (40 hours × $36.76) + (2 hours × $43.45) + (1 hour × $69.78) + (3 hours × $36.76) + (10 hours × $49.79) + (6 hours × $69.78) + (6 hours × $36.76)) = $296,454.

Time = 94 × (4 hours + 40 hours + 2 hours + 1 hour + 3 hours + 10 hours + 6 hours + 6 hours) = 6,768.

Subsequent Year Costs for Part 121

Cost = 94 × ((6 hours × $69.78) + (6 hours × $36.76)) = $60,091.

Time = 94 × (6 hours + 6 hours) = 1,128.

First Year Costs for Part 135

Cost = 207 × ((8 hours × $69.78) + (5 hours × $69.78) + (6 hours × $69.78) + (6 hours × $36.76)) = $320,114.

Time = 207 × (8 hours + 5 hours + 6 hours + 6 hours) = 5,175.

Subsequent Year Costs for Part 135

Cost = 207 × ((6 hours × $69.78) + (6 hours × $36.76)) = $132,329.

Time = 207 × (6 hours + 6 hours) = 2,484.

Total Over 10 Years

Cost = ($296,454 + $320,114 + (9 × $60,091) + (9 × $132,329)) = $2,348,351.

Time = (6,768 hours + 5,175 hours + (9 × 1,128 hours) + (9 × 2,484 hours)) = 44,451.

Average Per Year

Cost = $2,348,351/10 = $234,835.

Time = 44,451/10 = 4,445 hours.

FAA Costs

The FAA has to ensure that the air carrier's manual has all the policies, procedures, methods, and instructions for the accomplishment of maintenance by another person to include the information necessary for certificate holders to ensure all maintenance is performed in accordance with its maintenance program.

To calculate the cost of revising the manual, the following assumptions were used, paralleling those in the regulatory evaluation:

- 94 part 121 manuals have to be revised in year 1.

• 207 part 135 manuals have to be revised in year 1.
• Part 121: amount of time revising manual (FAA inspector): 1 hour.
• Part 135: amount of time revising manual (FAA inspector): 1 hour.
• Wage per hour for FAA inspector: $96.14.

First Year Costs for Part 121

Cost = 94 × ((1 hour × $96.14)) = $9,037.
Time = 94 × (1 hour) = 94 hours.

First Year Costs for Part 135

Cost = 207 × ((1 hour × $96.14)) = $19,901.
Time = 207 × (1 hour) = 207 hours.

Total Over 10 Years

Cost = ($9,037 + $19,901) = $28,938.
Time = (94 hours + 207 hours) = 301 hours.

Average Per Year

Cost = $28,938/10 = $2,894.
Time = 301/10 = 30 hours.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement to the address listed in the **ADDRESSES** section at the beginning of this preamble by February 11, 2013. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20053.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in Chapter 3, paragraph 312d and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action would not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have Federalism implications.

B. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it would not be a ''significant energy action'' under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The agency also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

Proprietary or Confidential Business Information: Commenters should not file proprietary or confidential business information in the docket. Such information must be sent or delivered directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document, and marked as proprietary or confidential. If submitting information on a disk or CD ROM, mark the outside of the disk or CD ROM, and identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), if the FAA is aware of proprietary information filed with a comment, the agency does not place it in the docket. It is held in a separate file to which the public does not have access, and the FAA places a note in the docket that it has received it. If the FAA receives a request to examine or copy this information, it treats it as any other request under the Freedom of Information Act (5 U.S.C. 552). The FAA processes such a request under Department of Transportation procedures found in 49 CFR part 7.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies web page at *http://www.faa.gov/regulations_policies* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Commenters must identify the docket or notice number of this rulemaking.

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

List of Subjects

14 CFR Part 121

Aircraft, Aviation safety.

14 CFR Part 135

Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

2. Add new § 121.368 as follows:

§ 121.368 Contract maintenance.

(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in § 121.379(a) only if all the requirements in this section are met. For purposes of this section—

(1) A *maintenance provider* is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.

(2) *Covered work* means any of the following:

(i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used;

(ii) Regularly scheduled maintenance; or (iii) A required inspection item on an aircraft.

(3) *Directly in charge* means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.

(4) *Supervision and control* means that a representative of the certificate holder must be available to personally observe the covered work being done to the extent necessary to ensure it is being done properly, and when the representative is not physically present to observe the work, the representative must be available for consultation on matters requiring instruction or decision.

(b) Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.

(c) All covered work must be carried out in accordance with the certificate holder's maintenance manual.

(d) No covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder.

(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must develop policies, procedures, methods, and instructions for the accomplishment of all such maintenance, preventive maintenance, and alterations, and these policies, procedures, methods, and instructions must ensure that, if they are followed, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by the maintenance provider, as required by § 121.373(a), contains procedures for oversight of all contracted covered work.

(g) The policies, procedures, methods, and instructions required by paragraph (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual as provided in § 121.369(b)(10).

(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

3. Amend § 121.369 by adding paragraph (b)(10) as follows:

§ 121.369 Manual requirements.

* * * * *

(b) * * *

(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and ensure that, when followed by the maintenance provider, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

4. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722, 45101–451050.

5. Add new § 135.426 to read as follows:

§ 135.426 Contract maintenance.

(a) A certificate holder may arrange with another person for the performance of maintenance, preventive maintenance, and alterations as authorized in § 135.437(a) only if all the requirements in this section are met. For purposes of this section—

(1) A *maintenance provider* is any person who performs maintenance, preventive maintenance, or an alteration for a certificate holder other than a person who is trained by and employed directly by that certificate holder.

(2) *Covered work* means any of the following: (i) Essential maintenance that could result in a failure, malfunction, or defect endangering the safe operation of an aircraft if not performed properly or if improper materials are used; (ii) Regularly scheduled maintenance; or (iii) A required inspection item on an aircraft.

(3) *Directly in charge* means having responsibility for covered work performed by a maintenance provider. A representative of the certificate holder directly in charge of covered work does not need to physically observe and direct each maintenance provider constantly, but must be available for consultation on matters requiring instruction or decision.

(4) *Supervision and control* means that a representative of the certificate holder must be available to personally

observe the covered work being done to the extent necessary to ensure it is being done properly, and when the representative is not physically present to observe the work, the representative must be available for consultation on matters requiring instruction or decision.

(b) Each certificate holder must be directly in charge of all covered work done for it by a maintenance provider.

(c) All covered work must be carried out in accordance with the certificate holder's maintenance manual.

(d) No covered work may be performed by a maintenance provider unless that work is carried out under the supervision and control of the certificate holder.

(e) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must develop policies, procedures, methods, and instructions for the accomplishment of all contracted maintenance, preventive maintenance, and alterations, and these policies, procedures, methods, and instructions must ensure that, if they are followed, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

(f) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must ensure that its system for the continuing analysis and surveillance of the maintenance, preventive maintenance, and alterations carried out by a maintenance provider under this section contains procedures for oversight of the contracted work, as required by § 135.431(a), contains procedures for oversight of all contracted covered work.

(g) The policies, procedures, methods, and instructions required by paragraphs (e) and (f) of this section must be acceptable to the FAA and included in the certificate holder's maintenance manual as provided in § 135.427(b)(10).

(h) Each certificate holder who contracts for maintenance, preventive maintenance, or alterations to be carried out by a maintenance provider must provide to its FAA Certificate Holding District Office, in a format acceptable to the FAA, a list that includes the name and physical (street) address, or addresses, where the work is carried out for each maintenance provider that performs work for the certificate holder, and a description of the type of maintenance, preventive maintenance, or alteration that is to be performed at each location. The list must be updated with any changes, including additions or deletions, and the updated list provided to the FAA in a format acceptable to the FAA by the last day of each calendar month.

6. Amend § 135.427 by adding paragraph (b)(10) as follows:

§ 135.427 Manual requirements.

* * * * *

(b) * * *

(10) Policies, procedures, methods, and instructions for the accomplishment of all maintenance, preventive maintenance, and alterations carried out by a maintenance provider. These policies, procedures, methods, and instructions must be acceptable to the FAA and ensure that, when followed by the maintenance provider, the maintenance, preventive maintenance, and alterations are performed in accordance with the certificate holder's maintenance program and maintenance manual.

* * * * *

Issued in Washington, DC, on November 6, 2012.

John M. Allen,

Director, Flight Standards Service.

[FR Doc. 2012–27433 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 360

[Docket Number 121016549–2549–01]

RIN 0625–AA93

Steel Import Monitoring and Analysis System

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Proposed rule.

SUMMARY: The Department of Commerce publishes this proposed rule to request public comments on proposed modifications to the regulations for the Steel Import Monitoring and Analysis (SIMA) System that would extend the system until March 2017. This extension would continue the Department's ability to track as early as possible certain steel mill imports into the United States and make the import data publicly available approximately seven weeks in advance of the full public trade data release by the Bureau of the Census. Having access to full information about imports provides the public with greater knowledge to evaluate current market conditions.

DATES: Comments must be submitted on or before 5 p.m. EST, December 13, 2012.

Submission of Comments

As specified above, to be assured of consideration, comments must be received no later than 30 days after the publication of this notice in the **Federal Register**. All comments must be submitted through the Federal eRulemaking Portal at *http://www.regulations.gov,* into Docket Number ITA–2012–0005, unless the commenter does not have access to the Internet. Commenters that do not have access to the Internet may submit the original and two copies of each set of comments by mail or hand delivery/courier. Please address the written comments to the Secretary of Commerce, Attention: Steven Presing, Director for Industry Support and Analysis, Import Administration, Room 2845, Import Administration, U.S. Department of Commerce, Constitution Avenue and 14th Street NW., Washington, DC 20230. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and on the Department's Web site at *http://www.trade.gov/ia/.*

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, email address: *webmaster-support@trade.gov.*

All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only. All **Federal Register** notices regarding the SIMA system can be accessed at *http://ia.ita.doc.gov/steel/license/SIMA-FR-Notices.html.*

FOR FURTHER INFORMATION CONTACT: For information on the SIMA system, please contact Steven Presing (202) 482–1672 or Julie Al-Saadawi (202) 482–1930.

SUPPLEMENTARY INFORMATION: On March 2, 2002, the Bush Administration authorized the implementation of a steel

import licensing and monitoring program by issuing Proclamation 7529, which placed temporary tariffs on many steel imports and provided the steel industry time to restructure. The monitoring system outlined in Proclamation 7529 required all importers of steel products to obtain a license from the Department of Commerce prior to completing Customs entry summary documentation. This monitoring tool ensured that the effectiveness of the safeguard was not undermined by large quantities of imports originating from countries that were excluded from the tariffs. Pursuant to Proclamation 7529, on December 31, 2002, the Department of Commerce issued final regulations setting forth the ''Steel Import Licensing and Surge Monitoring Program'' (67 FR 79845).

In Proclamation 7741 of December 4, 2003 (68 FR 68483), the President terminated the steel safeguard measures but directed the Secretary of Commerce to continue the steel import licensing and monitoring system until the earlier of March 21, 2005, or such time as the Secretary of Commerce established a replacement monitoring program. On December 9, 2003 (68 FR 68594), the Department published a notice stating that the monitoring system would continue to be in effect as described in Proclamation 7741 until March 21, 2005. Prior to the March 21, 2005, termination date, the Department of Commerce determined that there continued to be a need to collect import data, and published an interim rule (70 FR 12136, March 11, 2005) revising part 360 to slightly expand the monitoring program, and a final rule (70 FR 72373, December 5, 2005) continuing the program through March 21, 2009; at this time the system became known as SIMA. On March 18, 2009, the Department of Commerce published a final rule (74 FR 11474) in the **Federal Register** to continue the SIMA system and extend the program until March 21, 2013, unless further extended upon review and notification in the **Federal Register**.

This proposed rule would extend the implementation of the current SIMA system until March 21, 2017. This extension would continue the Department's ability to track certain steel mill imports into the United States and make the import data publicly available approximately seven weeks in advance of the full trade data release.

The purpose of the SIMA system is to provide steel producers, steel consumers, importers, and the general public with accurate and timely information on anticipated imports of certain steel products into the United States. Steel import licenses, issued through the online SIMA licensing system, are required by U.S. Customs and Border Protection for filing entry paperwork for imports of certain steel mill products into the United States. Import data collected through the issuance of the licenses are aggregated weekly and posted on the publicly available Steel Mill Import Monitor. Details of the current system and monitor can be found at *http://ia.ita.doc.gov/steel/license/.*

The Department proposes to extend the SIMA system beyond its current expiration date for an additional period of four years, until March 21, 2017 (see 19 CFR part 360). SIMA's renewal is coming at a time when the cyclical nature of the global steel industry is of critical concern to the domestic markets. As an import sensitive industry, the industry strongly supports this licensing system as it allows the market to monitor import fluctuations, especially those that may be unfairly traded, as early as possible.

All comments responding to this notice will be a matter of public record and available for public inspection and copying on *www.Regulations.gov* and at Import Administration's Central Records Unit, Room 7046, between the hours of 8:30 a.m. and 5 p.m. on business days.

Classification

Regulatory Flexibility Act. The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as that term is defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* A summary of the factual basis for this certification is below.

This proposed rule will not have a significant economic impact on a substantial number of companies. This rule, if implemented, would extend the current SIMA system until March 21, 2017. The entities that would be impacted by this rule are importers and brokerage companies who import steel mill products. These entities would be required to obtain steel import licenses through the online SIMA licensing system for filing entry paperwork required by the U.S. Customs and Border Protection for U.S. imports of steel mill products. Based on statistics derived from current license applications, of the approximately 1,600 licenses issued each day, Commerce estimates that fewer than two percent of the licenses would be filed by importers and brokerage companies that would be considered small entities.

Based on the current usage of SIMA, Commerce does not anticipate that the extension of the SIMA system will have a significant economic impact. Companies are already familiar with the licensing of certain steel products under the current system. In most cases, brokerage companies will apply for the license on behalf of the steel importers. Most brokerage companies that are currently involved in filing documentation for importing goods into the United States are accustomed to Customs and Border Protection's automated entry filing systems. Today, more than 99% of the Customs filings are handled electronically. Therefore, the web-based, automated nature of this simple license application should not be a significant obstacle to any firm in completing this requirement. However, should an importer or brokerage company need to register for an account or apply for a license non-electronically, a fax/phone option will be available at Commerce during regular business hours. There is no cost to register for a company-specific steel license account and no cost to file for the license. Each license form is expected to take less than 10 minutes to complete and collects much of the same information required on the Customs entry summary documentation. The steel import license is the only additional U.S. entry requirement that the importers or their representatives must fulfill in order to import each covered steel product shipment.

Although Commerce does not charge for licenses, Commerce estimates that the likely aggregate license costs incurred by small entities in terms of the time to apply for licenses as a result of this proposed rule would be fewer than two percent, or an estimated $37,151.00, of the estimated total $1,857,560.00 cost to all steel importers to process the on-line automatic licenses. These calculations were based on an hourly pay rate of $20.00 multiplied by the estimated 92,878 total annual burden hours. Based on the current patterns of license applications, the vast majority of the licenses are applied for by large companies. The approximate cost of a single license is less than 10 minutes of the fillers time and this is reduced if applicants use templates or the electronic data interface for multiple licenses.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction

Act (PRA). These requirements have been approved by OMB (OMB No.: 0625–0245; Expiration Date: 12/31/2014). Public reporting for this collection of information is estimated to be less than 10 minutes per response, including the time for reviewing instructions, and completing and reviewing the collection of information.

Paperwork Reduction Act Data:

OMB Number: 0625–0245.

ITA Number: ITA–4141P.

Type of Review: Regular Submission.

Affected Public: Business or other for-profit.

Estimated Number of Registered Users: 3,500.

Estimated Time per Response: Less than 10 minutes.

Estimated Total Annual Burden Hours: 92,878 hours.

Estimated Total Annual Costs: $0.00.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132

This rule does not contain policies with federalism implications as that term is defined in EO 13132.

List of Subjects in 19 CFR Part 360

Administrative practice and procedure, Business and industry, Imports, Reporting and recordkeeping requirements, Steel.

For reasons discussed in the preamble, we propose amending 19 CFR 360 as follows:

PART 360—STEEL IMPORT MONITORING AND ANALYSIS SYSTEM

1. The authority citation for part 360 continues to read as follows:

Authority: 13 U.S.C. 301(a) and 302.

2. Section 360.105 is revised to read as follows.

§ 360.105 Duration of the steel import licensing requirement.

The licensing program will be in effect through March 21, 2017, but may be extended upon review and notification in the **Federal Register** prior to this expiration date. Licenses will be required for all subject imports entered during this period, even if the entry summary documents are not filed until after the expiration of this program. The licenses will be valid for 10 business days after the expiration of this program to allow for the final filing of required Customs documentation.

Dated: November 2, 2012.

Francisco J. Sanchez,

Under Secretary for International Trade.

[FR Doc. 2012–27539 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–DS–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1195

[Docket No. ATBCB–2012–0003]

RIN 3014–AA40

Medical Diagnostic Equipment Accessibility Standards Advisory Committee

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Medical Diagnostic Equipment Accessibility Standards Advisory Committee (Committee) will hold its second meeting. The second Committee meeting was originally planned for October 29 and 30, 2012 but cancelled on these dates due to the imminent approach of Hurricane Sandy. On July 5, 2012, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations to the Board on matters associated with comments received and responses to questions included in a previously published Notice of Proposed Rulemaking (NPRM) on Medical Diagnostic Equipment Accessibility Standards.

DATES: The Committee will meet on December 3, 2012, from 10:00 a.m. to 5:00 p.m. and on December 4, 2012, from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Access Board's Conference Room, 1331 F Street NW., Suite 800, Washington, DC 20004–1111.

FOR FURTHER INFORMATION CONTACT: Rex Pace, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0023 (Voice); (202) 272–0052 (TTY). Electronic mail address: *pace@access-board.gov.*

SUPPLEMENTARY INFORMATION: On July 5, 2012, the Architectural and Transportation Barriers Compliance Board (Access Board) established an advisory committee to make recommendations to the Board on matters associated with comments received and responses to questions included in a previously published NPRM on Medical Diagnostic Equipment Accessibility Standards. See 77 FR 6916 (February 9, 2012). The NPRM and information related to the proposed standards are available on the Access Board's Web site at: *http://www.access-board.gov/medical-equipment.htm.*

The advisory committee will hold its second meeting on December 3 and 4, 2012. The agenda for the meeting is based on the one originally planned for the October 29 and 30, 2012 meeting dates that were cancelled because of Hurricane Sandy. The agenda includes the following:

- Review of previous committee work;
- Formation of subcommittees based on medical diagnostic equipment type;
- Presentation on the proposed transfer surface size and anthropometric data of people who use wheeled mobility devices by Edward Steinfeld, Arch. D., AIA, Director of the Center for Inclusive Design and Environmental Access;
- Continued discussion on transfer surface height and size;
- Review and discussion on permitted obstructions to the transfer surface;
- Consideration of and possible discussion on issues proposed by committee members; and
- Discussion of administrative issues.

The preliminary meeting agenda, along with information about the committee, is available at the Access Board's Web site (*http://www.access-board.gov/medical-equipment.htm*).

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have opportunities to address the committee on issues of interest to them during public comment periods scheduled on each day of the meeting.

The meetings will be accessible to persons with disabilities. An assistive listening system, computer assisted real-time transcription (CART), and sign language interpreters will be provided. Persons attending the meetings are requested to refrain from using perfume, cologne, and other fragrances for the

comfort of other participants (see *www.access-board.gov/about/policies/fragrance.htm* for more information). Also, persons wishing to provide handouts or other written information to the committee are requested to provide electronic formats to Rex Pace via email prior to the meetings so that alternate formats can be distributed to committee members.

David M. Capozzi,

Executive Director.

[FR Doc. 2012–27516 Filed 11–9–12; 8:45 am]

BILLING CODE 8150–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0846; FRL-9751–5]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Subchapter 16 and Subchapter 17

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve new rules and revisions as submitted by the State of Montana on September 23, 2011, as revisions to Montana's State Implementation Plan. Montana adopted these rules on December 2, 2005, and March 23, 2006. The new rules adopted on December 2, 2005, became state-effective on January 1, 2006; the new rules and revisions adopted on March 23, 2006, became state-effective on April 7, 2006. These new rules and revisions meet the requirements of the Clean Air Act and EPA's minor new source review regulations. The intended effect of this action is to propose to approve these rules as they are consistent with the Clean Air Act. This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2012–0846, by one of the following methods:

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

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2012–0846. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov*, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mailcode 8P–AR, Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6227, or *leone.kevin@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Definitions

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

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

(ii) The initials *ARM* mean or refer to the Administrative Rule of Montana.

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

(iv) The initials *MACT* mean Maximum Achievable Control Technology.

(v) The initials *MAQP* mean Montana Air Quality Permit.

(vi) The initials *MRR* mean Monitoring, Reporting and Recordkeeping.

(vii) The initials *NAAQS* mean National Ambient Air Quality Standards.

(viii) The initials *NESHAP* mean National Emission Standards for Hazardous Air Pollutants.

(ix) The initials *NSR* mean or refer to new source review, a phrase intended to encompass the stationary source regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I,

parts C and D, and 40 CFR 51.160 through 51.166, which includes new source review for both major and minor sources.

(x) The word *Program* mean or refer to the Montana Oil and Gas Registration Program, unless the context indicates otherwise.

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

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

I. General Information

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

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

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

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

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

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

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

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

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

II. What is being addressed in this proposed action?

On September 23, 2011 the State of Montana submitted new rules and revisions to revise the Montana SIP. The submission contains new rules I–VI, codified as Administrative Rule of Montana (ARM) 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, pertaining to the regulation of oil and gas well facilities. EPA is proposing to approve these new rules in this notice. The Montana Board of Environmental Review (Board) adopted these new rules to the existing SIP on December 2, 2005.

This submission also contains new rules I–IX, codified as ARM 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705,17.8.1710, 17.8.1711, 17.8.1712 and 17.8.1713 pertaining to the regulation of oil and gas well facilities. EPA is proposing to approve these rule submissions in this action. The Board adopted these new rules to the existing SIP on March 23, 2006.

This submission contains revisions to ARM 17.8.744 which were adopted on March 23, 2006. The proposed revisions to ARM 17.8.744 are a conforming change because of the addition of new rules.

The proposed approval of the revised and new rules listed above would establish a registration system for oil and gas well facilities that presently require a Montana minor NSR air quality permit under the SIP regulations. The proposed new rules would allow the owner or operator of an oil or gas well facility to register with the Montana Department of Environmental Quality (MDEQ) in lieu of submitting a permit application and obtaining a permit to construct or modify the source before commencing construction or modification. Currently, with specific exemptions, the administrative rules adopted under the Montana Clean Air Act and approved by the EPA into the SIP, require the owner or operator of sources of air pollution to obtain a permit prior to construction or modification.

Montana originally submitted these rules on October 16, 2006 and November 1, 2006, to EPA for inclusion into the SIP. EPA proposed to disapprove these submittals on January 6, 2011 (76 FR 758). EPA had several concerns with the Program, as was explained in 76 FR 758. In March of 2011, the State withdrew the October 16, 2006, and November 1, 2006, submittals and, after several discussions between EPA and the State, Montana resubmitted the oil and gas rules on September 23, 2011. The State's September 2011 submittal included a revised CAA section 110(l) demonstration and other supplemental data, which addressed the concerns we raised in our 76 FR 758 proposed action.

III. What Authorities Apply to EPA's Proposed Action

Section 110(l) of the CAA states, ''[e]ach revision to an implementation plan submitted by a State under this Act shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of this Act.''

A demonstration is necessary to show that this revision will not interfere with attainment or maintenance of the NAAQS, including those for ozone, particulate matter, carbon monoxide, sulfur dioxide, lead, nitrogen oxides or any other requirement of the Act. Therefore, EPA will approve a SIP revision only after a state has demonstrated that such a revision will not interfere (''noninterference'') with attainment of the NAAQS, rate of progress, reasonable further progress or any other applicable requirement of the CAA.

The CAA at section 110(a)(2)(C) requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved. EPA's implementing regulations at 40 CFR 51.160–164 are intended to ensure that new source growth is consistent with maintenance of the NAAQS and 40 CFR 51.160(e) requires states to identify types and sizes of facilities which will be subject to review under their minor NSR program. For sources identified under 40 CFR 51.160(e), section 51.160(a) requires that the SIP include legally enforceable procedures that enable a state or local agency to determine whether construction or modification of a facility, building, structure or installation, or combination of these will result in a violation of applicable portions of the control strategy; or interference with attainment or maintenance of a national standard in the state in which the proposed source (or modification) is located or in a neighboring state. Section 110(i) of the CAA specifically precludes states from changing the requirements of the SIP except through SIP revisions approved by EPA. SIP revisions will be approved by EPA only if they meet all

requirements of section 110 of the CAA and the implementing regulations at 40 CFR part 51. See CAA section 110(l); 40 CFR 51.104.

EPA has also issued several guidance memoranda that explain the Agency's requirements for practicable enforceability for purposes of effectively limiting a source's potential to emit (See docket).

EPA recognizes that, under the applicable federal regulations, states have broad discretion to determine the scope of their minor NSR programs as needed to attain and maintain the NAAQS. A state may tailor its minor NSR requirements as long as they are consistent with the requirements of 40 CFR part 51. States may also provide a rationale for why the rules are at least as stringent as the 40 CFR part 51 requirements where the revisions are different from those in 40 CFR part 51.

Since there are no ambient air quality standards for air toxics, the area's compliance with any applicable maximum achievable control technology (MACT) standards, as well as, any federal mobile source control requirements under CAA sections 112 or 202(l) would constitute an acceptable demonstration of noninterference for air toxics.

Section 110(l) does not require a demonstration of noninterference for changes to federal requirements that are not included in the SIP. A revision to the SIP, however, cannot interfere with any federally mandated program such as a MACT standard (or related section 112 requirements).

IV. EPA's Review and Proposed Action on SIP Revisions

EPA is proposing to approve the new and revised rules as submitted by Montana on September 23, 2011, as identified above.

As discussed above, any minor NSR SIP revision submittal must meet section 110(l) of the CAA. Section 110(l) of the Act indicates that EPA cannot approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in Section 171), or any other applicable requirement of the Act. In a memo from Richard R. Long, Director, Region 8 Air and Radiation Program, to the Montana Board of Environmental Review on January 30, 2006 (see docket) we stated that MDEQ should provide an appropriate analysis showing that the proposed new rules will not impact the NAAQS or prevention of significant deterioration (PSD) increments. One of the concerns EPA expressed in 76 FR 758 related to the cumulative effect of numerous registration sources. We recommended that MDEQ perform a screening cumulative impact analysis showing what effect oil and gas well facilities would have on the ozone, NO_2, SO_2 and PM NAAQS and PSD increments. MDEQ performed such an analysis. (See docket, demonstration of noninterference pages 1–42 and attachments 1–11.) MDEQ's analysis went back prior to 2006, when Montana began implementing the Oil and Gas Registration Program as a state-approved rule, and provided data on the amount of oil and gas registration applications received. Monitoring and modeling data for all NAAQS pollutants from 2006 to present shows that the Oil and Gas Registration Program has not interfered with attainment or maintenance of any NAAQS, PSD increment, or any other requirement of the Act. Therefore, EPA has sufficient information to determine that the proposed new and revised rules would not interfere with any applicable requirement concerning attainment and maintenance of the NAAQS, PSD increments, or any other requirement of the Act.

EPA expressed concerns in 76 FR 758 that the new rules do not meet the requirements of CAA Section 110(a)(2)(A) and 40 CFR 51.160(a)(1), which require that SIP revision submittals be enforceable. The September 23, 1987, Memorandum from J. Craig Potter, Assistant Administrator for Air and Radiation, and Thomas L. Adams Jr., Assistant Administrator for Enforcement and Compliance Monitoring, entitled ''Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency'' provides EPA's guidance for interpreting this provision in the Act.

EPA initially viewed the new rules as a stand-alone program, which was not subject to provisions in the other parts of ARM 17.8. As such, we were concerned that the new and revised rules did not set forth legally enforceable procedures that would enable the State or local agency to determine whether construction of a minor source facility would result in interference with attainment or maintenance of the NAAQS (40 CFR 51.160(a)) and that such procedures did not include a means by which the State or local agency to prevent construction of a minor source facility if it would result in interference with attainment or maintenance of the NAAQS (40 CFR51.160(b)). In 76 FR 758, EPA did not consider other requirements in ARM 17.8 as being applicable to the Program. However, after reviewing the State's 110(l) demonstration and the requirements in ARM 17.8, it is clear that the rules in ARM 17.8 subchapters 1–6 and portions of subchapter 7 apply to the State's new rules for oil and gas facilities registration. (See 110(l) demonstration pages 2–9 and attachments 2 and 3 of the state's 110(l) analysis.) These subchapters provide, for example, testing requirements, source testing protocol, malfunction procedures, enforcement procedures, and specific ambient air monitoring requirements for criteria pollutants. Therefore, the new and revised rules which we are proposing for approval in this notice are in compliance with CAA Section 110(a)(2)(A), 40 CFR 51.160(a) and 40 CFR 51.160(b).

EPA also had concerns that a source did not need to provide notice to the State before construction begins. The new and revised rules allow sources to operate and emit criteria pollutants up to 60 days before submitting a registration or permit application; therefore there is no requirement that the State be notified before construction begins. However, the new rules in ARM 17.8.16 contain numerous safeguards that facilities must operate under until the MDEQ approves the registration or permit application. These safeguards include: limiting production; limiting hours of operation and/or fuel consumption to ensure that the facility's potential to emit is below major source thresholds (17.8.1604); emission control requirements (17.8.1605); inspection and repair requirements (17.8.1608); and reporting and recordkeeping requirements (17.8.1609). Sources must also comply with requirements in ARM 17.8.1 (general requirements), ARM 17.8.2 (ambient standards), and ARM 17.8.3 (emission standards), in addition to all other applicable requirements in ARM 17.8. Therefore, EPA concludes that the new and revised rules do not violate 40 CFR 51.160(a) and 40 CFR 160(b).

EPA also had concerns that the Program did not include the necessary monitoring, reporting and recordkeeping (MRR) requirements required for an oil and gas registration program to ensure accountability and provide a means to determine compliance. However, EPA did not consider the requirements of other subchapters of chapter 8 when considering MRR requirements. As described in the State's submittal (110(l) demonstration, Table 1 (pages 3–15) and Table 2 (pages 18–21), the MRR requirements in ARM 17.8.1 (General Requirements), ARM 17.8.2 (Ambient Air Quality), ARM 17.8.3 (Emission Standards) are all applicable to registered sources, in addition to the

MRR requirements in ARM 17.8.1605 and ARM 17.8.1713. Therefore, EPA proposes to find that the MRR requirements for a registered oil and gas facility are at least as stringent as what would be required for an oil and gas facility that would operate under a Montana Air Quality Permit (MAQP). The SIP approved MAQP rules contain no specific MRR requirements. Instead, a permitted facility is given MRR requirements through the actual permit. In existing MAQP regulations (ARM 17.8.7), the MRR requirements are specified in the facility permit pursuant to a case-by-case best available control technology analysis rather than uniform rule conditions.

EPA also finds that the regulatory provisions in 40 CFR 51.160(c), 40 CFR 51.160(d), 40 CFR 51.160(e) and 40 CFR 51.160(f), are met by the requirements in ARM 17.8.1703 (Registration Process and Information), ARM 17.8.1705 (Operating Requirements: Facility-Wide) and the requirements in ARM 17.8.1. The MDEQ issued a Notice of Public Hearing and allowed for public comment (see submittal, tabs 19 and 20), which meets the requirements in 40 CFR 51.161 (public availability of information). The requirements in 40 CFR 51.164 (stack height procedures) are met in ARM 17.8.4 (stack heights and dispersion techniques).

EPA also expressed concerns in 76 FR 758 with new rule ARM 17.8.1703(7), which provides that ''The owner or operator of a registration eligible facility for which a valid MAQP has been issued may register with the department and request a revocation of the MAQP.'' In 76 FR 758, EPA concluded this was a relaxation under CAA section 110(l), because it provides an exemption from SIP requirements not previously available to sources. This SIP relaxation would create a risk of interference with attainment and maintenance of the NAAQS and control strategy. EPA lacked sufficient information to determine that 17.8.1703(7) would not interfere with attainment and maintenance of the NAAQS, PSD increment, or any other requirement of the Act.

Montana issued approximately 30 MAQPs to oil and gas well facilities prior to implementing the oil and gas registration program. A comparison of MAQP requirements and registration requirements (see the state's110(l) analysis, pages 19–21) show comparable requirements.

EPA also expressed concerns in 76 FR 758 with new rule ARM 17.8.1712(1), which provides that, ''[l]eak detection methods may incorporate the use of sight, sound, or smell.'' After further review, we propose to find that this language is approvable because ARM 17.8.1712(1) is similar to EPA regulatory requirements in 40 CFR part 63, subpart BBBBBB and will not interfere with any applicable requirements of the Act. EPA notes that 40 CFR part 63, subpart BBBBBB provides similar leak detection methods using sight, sound, and smell. This regulation applies to area sources under the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities. EPA determined for this source category it was appropriate to allow leak detection methods using sight, sound, and smell.

V. Summary of Proposed Action

EPA is proposing to approve revisions to ARM 17.8.744 and new rules I–VI, codified as ARM 17.8.1601, 17.8.1602, 17.8.1603, 17.8.1604, 17.8.1605, and 17.8.1606, pertaining to the regulation of oil and gas well facilities, and new rules I–IX, codified as ARM 17.8.1701, 17.8.1702, 17.8.1703, 17.8.1704, 17.8.1705,17.8.1710, 17.8.1711, 17.8.1712 and 17.8.1713 pertaining to the regulation of oil and gas well facilities, as submitted by the State of Montana on September 23, 2011.

EPA is proposing to approve the new and revised rules as identified in this action and EPA is proposing approval based upon sufficient information to determine that the requested revision to add the new oil and gas registration program to the Montana SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress as required by CAA Section 110(l), or any other requirement of the Act. The new and revised rules comply with section 110(a)(2)(C), which requires states to include a minor NSR program in their SIP to regulate modifications and new construction of stationary sources within the area as necessary to assure the NAAQS are achieved. EPA also finds the new and revised rules comply with 40 CFR 51.160–40 CFR 51.164 and meet the requirements for appropriate MRR. EPA is also proposing to approve ARM 17.8.744 as these revisions are conforming changes to the addition of new rules.

VI. Statutory and Executive Order Reviews

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate

matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds, New Source Review, Minor New Source Review, Permitting, Incorporation by reference.

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

Dated: October 19, 2012.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2012–27566 Filed 11–9–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2012–0792;9750–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Nevada; Redesignation of Clark County to Attainment for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve, as a revision of the Nevada state implementation plan, the State's plan for maintaining the 1997 8-hour ozone standard in Clark County for ten years beyond redesignation, and the related motor vehicle emissions budgets, because they meet the applicable requirements for such plans and budgets. EPA is also proposing to approve a request from the Nevada Division of Environmental Protection to redesignate the Clark County ozone nonattainment area to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard because the request meets the statutory requirements for redesignation under the Clean Air Act.

DATES: Comments must be received on or before December 13, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R09–OAR–2012–0792, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: r9_airplanning@epa.gov.*
3. *Fax:* 415–947–3579.
4. *Mail or Deliver:* Ginger Vagenas (AIR–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, Air Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX, (415) 972–3964, *vagenas.ginger@epa.gov.*

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

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I. Summary of Today's Proposed Action

EPA is proposing to take several related actions. First, under Clean Air Act (CAA or ''Act'') section 110(k)(3), EPA is proposing to approve a submittal from the Nevada Division of Environmental Protection (NDEP) dated April 11, 2011 of Clark County's *Ozone Redesignation Request and Maintenance Plan* (March 2011) (''Clark County Ozone Maintenance Plan'' or ''Ozone Maintenance Plan'') as a revision to the Nevada state implementation plan (SIP).

In connection with the Clark County Ozone Maintenance Plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone national ambient air quality standard (NAAQS) for 10 years beyond redesignation (*i.e.,* through 2022) and the contingency provisions describing the actions that Clark County will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) in the Clark County Ozone Maintenance Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), EPA is proposing to approve NDEP's request that accompanied the submittal of the maintenance plan to redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for

redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Nevada SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that Nevada has met all requirements applicable to the Clark County 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the Clark County Ozone Maintenance Plan.

II. Background

Ground-level ozone is generally not emitted directly by sources. Rather, directly-emitted oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone, as a secondary pollutant, along with other secondary compounds. NO_X and VOC are ''ozone precursors.'' Reduction of peak ground-level ozone concentrations is typically achieved through controlling VOC and NO_X emissions.

In 1971, under section 109 of the Act, as amended in 1970, EPA promulgated the original NAAQS for several pervasive air pollutants, including photochemical oxidants. NAAQS represent concentration levels the attainment and maintenance of which, allowing for an adequate margin of safety, EPA has determined to be requisite to protect public health (''primary'' NAAQS) and welfare (''secondary'' NAAQS).

In 1978, EPA designated the Las Vegas Valley (hydrographic area No. 212) as a nonattainment area for the photochemical oxidant NAAQS. See 43 FR 8962 (March 3, 1978). In 1979, EPA revised the NAAQS from an hourly average of 0.08 parts per million (ppm) oxidant to an hourly average of 0.12 ppm ozone. See 44 FR 8202 (February 8, 1979). The nonattainment designation for Las Vegas Valley for photochemical oxidant carried over to the 1-hour ozone NAAQS.

During the 1980s, Clark County adopted a number of rules and prepared a number of nonattainment plans to address planning requirements under the CAA, as amended in 1977. NDEP submitted these rules and plans to EPA at various times, and EPA approved a number of them into the Nevada SIP. Among the rules approved by EPA as revisions to the Nevada SIP as part of the ozone control strategy in Las Vegas Valley are Clark County air pollution rules section 33, which relates to chlorine in chemical processes); sections 50, 51, and 52, which relate to storage and distribution of petroleum products; and section 60, which relates to evaporation and leakage. In 1986, in light of the approved control strategy and monitored levels below the NAAQS, EPA redesignated Las Vegas Valley to attainment for the 1-hour ozone NAAQS. See 51 FR 41788 (November 19, 1986).

In 1997, EPA revised the NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame (''1997 8-hour ozone standard''). EPA set the 1997 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 1997 8-hour standard would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.[1]

In 2004, EPA designated areas of the country with respect to the 1997 8-hour ozone NAAQS. See 69 FR 23858 (April 30, 2004). Under EPA's ''Phase 1'' implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.,* the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration at the worst-case monitoring site in the area or in its immediate downwind environs), if it had a 1-hour ozone design value[2] at the time of designation at or above 0.121 ppm. All other areas were covered under subpart 1 based on their 8-hour ozone design values[3] (69 FR 23951). Clark County was designated as a ''subpart 1'' ozone nonattainment area by EPA on April 30, 2004 based on air quality monitoring data from 2001–2003. The designation became effective on June 15, 2004. On September 17, 2004, EPA reduced the geographic extent of the ozone nonattainment area to encompass a portion of, but not all of, Clark County.[4] See 69 FR 55956 (September 17, 2004), 70 FR 71612 (November 29, 2005), and 40 CFR 81.329.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit) vacated EPA's Phase 1 implementation rule for the 1997 8-hour ozone standard (69 FR 23951, April 30, 2004). *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court (Court) clarified that the Phase 1 rule was vacated only for those parts of the rule that had been successfully challenged. The June 8, 2007, decision left intact the Court's rejection of EPA's reasons for implementing the 8-hour ozone standard in certain nonattainment areas under subpart 1 in lieu of subpart 2 of the CAA.

On May 14, 2012, in response to the Court's vacating of the provision of EPA's Phase 1 implementation rule for the 1997 8-hour ozone standard that placed certain nonattainment areas, including Clark County solely under subpart 1, EPA classified Clark County as a marginal ozone nonattainment area under subpart 2 of the CAA (77 FR 28424).

On July 28, 2008, NDEP submitted the *8-hour Ozone Early Progress Plan for Clark County, Nevada* (June 2008) (''Clark County Ozone EPP'') to EPA as a revision to the Nevada SIP. The purpose of the Clark County Ozone EPP was to establish motor vehicle emissions budgets (MVEBs) consistent with progress towards attainment of the 1997 8-hour ozone standard in advance of completion and submittal of an attainment demonstration. The Clark County EPP established MVEBs of 64.2 and 76.1 tons per day (ozone season) for VOC and NO_X, respectively, for 2008. On May 5, 2009, EPA found the MVEBs in the Clark County EPP adequate for the purposes of transportation conformity. See 74 FR 22738 (May 14, 2009). Since the effective date of EPA's adequacy finding (*i.e.,* May 29, 2009), the applicable metropolitan planning organization (MPO), *i.e.,* the Regional Transportation Commission of Southern Nevada (RTC), and the U.S. Department

[1] On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm (the 2008 8-hour ozone standard), and on May 21, 2012, EPA designated the entire state of Nevada unclassifiable/attainment for the 2008 8-hour ozone standard (77 FR 30088). This rulemaking relates only to the 1997 8-hour ozone standard and does not relate to the 2008 8-hour ozone standard.

[2] The design value for the 1-hour ozone standard is the fourth-highest daily maximum 1-hour ozone concentration over a three-year period at the worst-case monitoring site in the area.

[3] The design value for the 8-hour standard is the three-year average of the annual fourth-highest daily maximum 8-hour ozone concentration at the worst-case monitoring site in the area.

[4] The boundaries of the Clark County ozone nonattainment area are defined in 40 CFR 81.329. Specifically, the area is defined as: ''That portion of Clark County that lies in hydrographic areas 164A, 164B, 165, 166, 167, 212, 213, 214, 216, 217, and 218 but excluding the Moapa River Indian Reservation and the Fort Mojave Indian Reservation.'' The area includes a significant portion of the unincorporated portions of central and southern Clark County, as well as the cities of Las Vegas, Henderson, North Las Vegas, and Boulder City.

of Transportation have been required to use these budgets in transportation conformity analyses for regional transportation plans, programs and projects.

On March 29, 2011, EPA determined that the Clark County 8-hour ozone nonattainment area had attained the 1997 8-hour ozone NAAQS, based on complete, quality-assured, and certified ambient air monitoring data that showed the area monitored attainment of the 1997 8-hour ozone NAAQS for the 2007–2009 monitoring period (76 FR 17343). As a result, the obligation for the State of Nevada to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS was suspended until such time as: the area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the 1997 8-hour ozone NAAQS. See 40 CFR 51.918. In this action, we are updating the determination of attainment to account for more recent ozone monitoring data consistent with the applicable criterion for redesignation under CAA section 107(d)(3)(E)(i).

Lastly, on April 11, 2011, NDEP submitted the Clark County Ozone Maintenance Plan and requested that EPA redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone standard. We are proposing action today on the NDEP's April 11, 2011 redesignation request and submittal of the Clark County Ozone Maintenance Plan.

III. Procedural Requirements for Adoption and Submittal of SIP Revisions

Section 110(l) of the Act requires States to provide reasonable notice and public hearing prior to adoption of SIP revisions. In this action, we are proposing action on NDEP's April 11, 2011 submittal of the Clark County Ozone Maintenance Plan as a revision to the Nevada SIP.

Appendix C of the Clark County Ozone Maintenance Plan documents the public review process followed by Clark County in adopting the plan prior to transmittal to NDEP for subsequent submittal to EPA as a revision to the Nevada SIP. The documentation in appendix C provides evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption. Specifically, notice of the availability of, and opening of a 30-day comment period on, the draft ozone maintenance plan was published on December 12, 2010 in a newspaper of general circulation within the Las Vegas area and on the County's Web page. No comments were submitted.

On February 1, 2011, the Clark County Board of Commissioners set a public hearing for March 15, 2011 to consider and approve the Clark County Ozone Maintenance Plan. The announcement of the public hearing was subsequently published on the County's Web page. On March 15, 2011, the Clark County Board of Commissioners adopted the Clark County Ozone Maintenance Plan at the close of the public hearing. Following adoption, Clark County Department of Air Quality (DAQ) forwarded the plan to NDEP, the Governor of Nevada's designee for SIP matters, and NDEP then submitted the plan as a revision to the Nevada SIP to EPA for approval on April 11, 2011.

Based on the documentation contained in appendix C of the plan, we find that the submittal of the Clark County Ozone Maintenance Plan as a SIP revision satisfies the procedural requirements of section 110(l) of the Act for revising SIPs.

IV. Substantive Requirements for Redesignation

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under section 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollution control regulations, and other permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Section 110 identifies a comprehensive list of elements that SIPs must include, and part D establishes the SIP requirements for nonattainment areas. Part D is divided into six subparts. The generally-applicable nonattainment SIP requirements are found in part D, subpart 1, and the ozone-specific nonattainment SIP requirements are found in part D, subpart 2.

EPA provided guidance on redesignations in a document entitled, ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published in the **Federal Register** on April 16, 1992 (57 FR 13498), and supplemented on April 28, 1992 (57 FR 18070) (referred to herein as the ''General Preamble''). Another relevant EPA guidance document includes ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, September 4, 1992 (referred to herein as the ''Calcagni memo'').

For the reasons set forth below in section V of this document, we propose to approve NDEP's request for redesignation of the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS based on our conclusion that all of the criteria under CAA section 107(d)(3)(E) have been satisfied.

V. Evaluation of the State's Redesignation Request for the Clark County 8-Hour Ozone Nonattainment Area

A. Determination That the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. EPA generally makes the determination of whether an area's air quality meets the ozone NAAQS based upon the most recent three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state/local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas. *See* 40 CFR 50.10; 40 CFR part 50, appendix I; 40 CFR part 53; 40 CFR part 58, appendices A, C, D and E. All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, appendix I.

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest

daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm. See 40 CFR 50.10. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the three-year average percent of days with valid ambient monitoring data is at least 90%, and no single year has less than 75% data completeness as determined in appendix I of 40 CFR part 50.

The Clark County Department of Air Quality (DAQ), (previously known as Clark County Department of Air Quality and Environmental Management, or DAQEM) is responsible for monitoring ambient air quality within Clark County. DAQ submits monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. Beginning in 2007, EPA has reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to ozone, we have found DAQ's annual network plans to meet the applicable requirements under 40 CFR part 58. See EPA letters to DAQ concerning DAQ's annual network plan reports for 2010 and 2011, included in the docket for this rulemaking. Furthermore, we concluded in our Technical System Audit Report (February 2010) that Clark County DAQ's ambient air monitoring network currently meets or exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for all of the criteria pollutants. Also, DAQ annually certifies that the data it submits to AQS are complete and quality-assured. See, *e.g.,* the letter dated February 28, 2012, from Lewis Wallenmeyer, Director, DAQ, to Jared Blumenfeld, EPA Region IX Regional Administrator.

Clark County DAQ operated 13 ozone SLAMS monitoring sites during the 2009–2011 period [5] within the Clark County ozone nonattainment area: Apex (Apex Valley), Boulder City (City of Boulder City), Craig Road (City of North Las Vegas), J.D. Smith School (City of North Las Vegas), Jean (City of Jean, south of Las Vegas), Jerome Mack (near North Las Vegas Airport), Joe Neal (northwest Las Vegas), Lone Mountain (northwest Las Vegas), Orr School (central-southeast Las Vegas), Paul Meyer Park (southwest Las Vegas), Palo Verde School (west Las Vegas), Walter Johnson (west Las Vegas), and Winterwood (southeast Las Vegas). All 13 sites have monitored ozone concentrations on a continuous basis using ultraviolet absorption monitors.[6] The spatial scale and monitoring objective of most of DAQ's ozone monitoring sites are ''neighborhood'' and ''population exposure,'' respectively. The exceptions are the Apex and Jean sites, whose spatial scale and monitoring objective is ''regional'' and ''regional transport,'' respectively, and the Joe Neal site, whose spatial scale is ''neighborhood'' and monitoring objective is ''highest concentration.'' See ''Clark County Department of Air Quality and Environmental Management—Annual Network Plan Report (June 2011).''

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2009 through 2011 collected at the monitoring sites discussed above, as recorded in AQS and summarized in table 1, and found that the data meet our completeness criteria, except at the discontinued or newly-operating monitoring sites.[7]

Table 1 summarizes the site-specific annual fourth-high daily maximum 8-hour ozone concentrations and 3-year ozone design values for all monitoring sites within the Clark County 8-hour ozone nonattainment area for the period of 2009–2011. As shown in table 1, the design value for the 2009–2011 period was less than 0.084 ppm at all of the monitors. Therefore, we are proposing to determine, based on the complete, quality-assured data for 2009–2011, that the Clark County 8-hour ozone nonattainment area has attained the 1997 8-hour ozone standard. There are ten ozone monitors currently operating in the nonattainment area. Preliminary SLAMS data for 2012 from these monitors, which are summarized in table 2, are also consistent with continued attainment.

TABLE 1—SUMMARY OF AMBIENT DATA COLLECTED WITHIN CLARK COUNTY 8-HOUR OZONE NONATTAINMENT AREA, 2009–2011

Monitor	Site code	2009 4th highest	2010 4th highest	2011 4th highest	2009–2011 average (ppm)
Craig Road	32–003–0020	0.072	(*)	N/A	N/A
Apex	32–003–0022	0.070	0.068	0.070	0.069
Paul Meyer	32–003–0043	0.071	0.070	0.078	0.073
Walter Johnson	32–003–0071	0.074	0.073	0.077	0.074
Lone Mountain	32–003–0072	0.072	(*)	N/A	N/A
Palo Verde	32–003–0073	0.072	0.071	0.077	0.073
Joel Neal	32–003–0075	0.074	0.074	0.077	0.075
Winterwood	32–003–0538	0.070	0.068	0.073	0.070
Jerome Mack**	32–003–9540	N/A	N/A	0.073	N/A
Boulder City	32–003–0601	0.071	0.069	0.070	0.070
Jean	32–003–1019	0.072	0.074	0.074	0.073

[5] As allowed by 40 CFR 58.14, Clark County DAQ has periodically modified its monitoring network and therefore not all monitors operated over the entire 2009–2011 period. In 2010, the Craig Road, Lone Mountain, and Orr monitors were discontinued. EPA has approved the discontinuation of these sites (see letter dated October 23, 2012 from Matthew Lakin, Manager, Air Quality Analysis Office, EPA Region IX to Mike Sword, Engineering Manager, Clark County DAQ). Clark County's monitoring network has exceeded the number of required monitors throughout the referenced time period.

[6] DAQ operates Federal equivalent method (FEM) monitors for ozone. Specifically, API 400 Series ultraviolet absorption monitors. See the Clark County DAQ ''Annual Network Plan Report'', page 12, June 2011. These monitoring devices have an EPA designation number EQOA–0992–087. See EPA ''List of Designated Reference and Equivalent Methods'', page 28, June 6, 2012, available at: *http://www.epa.gov/ttn/amtic/criteria.html.*

[7] Also, the data from the Boulder City ozone monitor did not meet EPA's completeness criteria during year 2010 because of a temporary shutdown (from November 2009 through March 2010) (*i.e.*, the low ozone season) due to station repairs. This temporary shutdown was approved by EPA. See page 71 of the Clark County DAQ Annual Network Plan Report, June 2010. In addition, the data from the Apex ozone monitor likewise did not meet EPA completeness criteria during 2010 and 2011 but EPA has approved a shortened ozone monitoring season at the Apex site. See letter dated March 8, 2012 from Matthew Lakin, Manager, Air Quality Analysis Office, EPA Region IX to Mike Sword, Engineering Manager, Clark County DAQ.

TABLE 1—SUMMARY OF AMBIENT DATA COLLECTED WITHIN CLARK COUNTY 8-HOUR OZONE NONATTAINMENT AREA, 2009–2011—Continued

Monitor	Site code	2009 4th highest	2010 4th highest	2011 4th highest	2009–2011 average (ppm)
Orr	32–003–1021	0.071	(*)	N/A	N/A
J.D. Smith	32–003–2002	0.072	0.068	0.072	0.070

* Monitor discontinued. N/A = not available.
** 2011 was the first full year of operation of the Jerome Mack ozone monitor.

TABLE 2—PRELIMINARY 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS FOR 2012 [a]

Monitor	Site code	4th highest value (ppm)
Apex	32–003–0022	0.076
Paul Meyer	32–003–0043	0.077
Walter Johnson	32–003–0071	0.075
Palo Verde	32–003–0073	0.078
Joel Neal	32–003–0075	0.075
Winterwood	32–003–0538	0.074
Jerome Mack	32–003–0540	0.073
Boulder City	32–003–0601	0.077
Jean	32–003–1019	0.077
J.D. Smith	32–003–2002	0.076

[a] The data in this table are from AQS Preliminary Design Value Report. Report Date: Oct. 11, 2012. See docket.

B. The Area Must Have a Fully Approved SIP Meeting Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

Section 107(d)(3)(E)(ii) and (v) require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation.

1. Basic SIP Requirements Under CAA Section 110

Section 110(a)(2) sets forth the general elements that a SIP must contain in order to be fully approved. Although section 110(a)(2) was amended in 1990, a number of the requirements did not change in substance, and therefore, EPA believes that the pre-amendment EPA-approved SIP met these requirements in Clark County with respect to ozone. As to those requirements that were amended, (see 57 FR 27936 and 27939, June 23, 1992), many are duplicative of other requirements of the Act. EPA has analyzed the Nevada SIP and determined that it is consistent with the requirements of amended section 110(a)(2). The Clark County portion of the approved Nevada SIP contains enforceable emission limitations; requires monitoring, compiling and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides for adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the State maintains responsibility for ensuring that the CAA requirements are satisfied in the event that Clark County is unable to meet its CAA obligations.[8]

On numerous occasions over the past 38 years, NDEP has submitted and we have approved provisions addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable SIP submittals with respect to the Clark County portion of the SIP that prevent redesignation of the Clark County 8-hour ozone nonattainment area for the 1997 8-hour ozone standard.[9] Therefore, we propose to conclude that NDEP and Clark County have met all SIP requirements for Clark County applicable for purposes of redesignation under section 110 of the CAA (General SIP Requirements).

2. Part D Requirements

a. Introduction

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title I, part D of the CAA; sections 171–179 and sections 181–185, respectively. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, more specific requirements for ozone nonattainment areas classified under subpart 2.

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and 176 of the CAA. Under subpart 1, with respect to the Clark County 8-hour ozone nonattainment area, the State of Nevada is required to submit SIP revisions that provide for:

- Implementation of all reasonably available control measures (RACM), including, at a minimum, reasonably available control technology for existing sources and attainment of the standard (section 172(c)(1));
- Reasonable further progress (section 172(c)(2));

[8] The applicable SIP for NDEP and Clark County may be found at *http://yosemite.epa.gov/r9/r9sips.nsf/allsips?readform&state=Nevada.* We note that SIPs must be fully approved only with respect to applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the Clark County ozone planning area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability of conformity (*i.e.*, for redesignations) and oxygenated fuels requirement. See Reading, Pennsylvania, proposed and final rulemakings 61 FR 53174–53176 (October 10, 1996), 62 FR 24816 (May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking 61 FR 20458 (May 7, 1996); and Tampa, Florida, final rulemaking 60 FR 62748 (December 7, 1995). See also the discussion of this issue in the Cincinnati redesignation 65 FR 37890 (June 19, 2000), in the Pittsburgh redesignation 66 FR 50399 (October 19, 2001), and in the Los Angeles redesignation 72 FR 6986 (February 14, 2007) and 72 FR 26718 (May 11, 2007). EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation.

[9] Recently, EPA took final limited approval and limited disapproval on updated new source review (NSR) rules adopted by Clark County and submitted as a revision to the Nevada SIP (77 FR 64039, October 18, 2012) and issued a partial approval and partial disapproval of Nevada's ''infrastructure'' SIP for the 1997 8-hour ozone NAAQS (77 FR 64737, October 23, 2012). While these two final rules are not full approvals, they do not represent an obstacle to redesignation of the Clark County 8-hour ozone nonattainment area because EPA's rationale for finding that the State has met the requirements of CAA section 107(d)(3)(E)(ii) and (v) does not rely on a fully-approved nonattainment NSR program, and because the ''infrastructure'' SIP elements that EPA disapproved are not related to the nonattainment SIP requirements for the Clark County 8-hour ozone nonattainment area and thus are not relevant for the purposes of redesignation.

• A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area (section 172(c)(3));
• Identification and quantification of the emissions, if any, of any such pollutants which will be allowed in accordance with section 173(a)(1)(B) (*i.e.,* new or modified stationary sources located in established economic development zones) (section 172(c)(4));
• Permits for the construction and operation of new and modified major stationary sources in the nonattainment area (section 172(c)(5));
• Enforceable emission limitations as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date (section 172(c)(6));
• Compliance with section 110(a)(2) of the Act (section 172(c)(7));
• Use of equivalent modeling emission inventory, and planning procedures if approved by EPA (section 172(c)(8));
• Contingency measures (section 172(c)(9)); and
• Interagency consultation and enforceability for the purposes of transportation conformity (section 176(c)(5) and 40 CFR 51.390).

As noted above, EPA determined that the Clark County 8-hour ozone nonattainment area attained the 1997 8-hour ozone NAAQS based on 2007–2009 ozone data (76 FR 17343, March 29, 2011), and thereby suspended, under 40 CFR 51.918, the obligation on the State of Nevada to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS until such time as: the area is redesignated to attainment, at which time the requirements no longer apply; or EPA determines that the area has violated the 8-hour ozone NAAQS. As such, the State's compliance status with the attainment-related SIP requirements under subpart 1 is not relevant for the purposes of evaluating the State's redesignation request. In addition, we note that the State has not sought to exercise the options available under CAA sections 172(c)(4) (identification and quantification of certain emissions increases) or 172(c)(8) (equivalent techniques).

With respect to the requirements associated with subpart 2, we note that, as discussed in more detail above, the Clark County 8-hour ozone nonattainment area was initially designated nonattainment under subpart 1 of the CAA, but was subsequently classified as marginal nonattainment for the 1997 8-hour ozone standard under subpart 2 of part D of the CAA. See 77 FR 28424 (May 14, 2012). The effective date of EPA's classification of the Clark County 8-hour ozone nonattainment area as marginal was June 13, 2012, and under the final May 14, 2012 subpart 2 classifications rule, states have one year from the effective date of that final rule (*i.e.,* June 13, 2013) to submit SIP revisions.

NDEP has not submitted any SIP revisions for the Clark County 8-hour ozone nonattainment area in response to the area's recent classification to marginal.[10] However, EPA believes that this does not preclude this redesignation from being approved. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time redesignation request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted (*i.e.,* April 11, 2011), the Clark County 8-hour ozone nonattainment area was not classified under subpart 2, and thus, subpart 2 requirements were not yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. *See* the Calcagni memo and also the September 17, 1993, Michael Shapiro Memorandum (''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation), and 60 FR 12459, (March 7, 1995) (Redesignation of Detroit-Ann Arbor, Michigan); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004) (upholding this interpretation); 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemaking (see *Sierra Club* v. *Whitman* 285 F. 3d 63 (D.C. Cir. 2002)), in which the court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The court stated, ''[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the Clark County 8-hour ozone nonattainment area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the Clark County 8-hour ozone nonattainment area attained the NAAQS.

In the following paragraphs, we explain how the State has met the SIP revision requirements for those remaining requirements under part D that are not currently suspended or not otherwise applicable.

b. Emissions Inventory

EPA regulations at 40 CFR 51.915 extend the SIP requirements under CAA sections 172(c)(3) to areas designated as nonattainment for the 1997 8-hour ozone standard. CAA section 172(c)(3) requires States to submit a comprehensive, accurate, current inventory of actual VOC and NO_X emissions for the baseline year from all sources within the nonattainment area. The inventory is to address actual VOC and NO_X emissions during the ozone season, and all stationary (generally referring to larger stationary source or ''point'' sources), area (generally referring to smaller stationary and

[10] In any event, the State of Nevada would not be required to submit a SIP revision under section 182(a)(2)(A) to correct RACT rules for the Clark County 8-hour ozone nonattainment area because the area had not been identified by EPA under the pre-1990 CAA as an area that had RACT rule deficiencies. At that time, all of Clark County, including Las Vegas Valley, was designated as attainment for the then-current 1-hour ozone standard and had been so designated since 1986. See 51 FR 41788 (November 19, 1986). We also note that, for the purposes of meeting the SIP requirements for nonattainment areas for carbon monoxide, the State previously submitted, and EPA approved, SIP revisions that would meet the vehicle inspection and maintenance requirements under CAA section 182(a)(2)(B) for the Clark County 8-hour ozone nonattainment area, if those requirements were applicable for the purposes of redesignation. See at 69 FR 56351 (September 21, 2004), 73 FR 38124 (July 3, 2008), and 74 FR 3975 (January 22, 2009).

fugitive (non-smokestack) sources), and mobile (on-road, nonroad, locomotive and aircraft) sources are to be included in the inventory.

We interpret the Act such that the emission inventory requirements of section 172(a)(3) are satisfied by the inventory requirements of the maintenance plan. See 57 FR 13498, at 13564 (April 16, 1992). Thus, our proposed approval of the Clark County Ozone Maintenance Plan and related VOC and NO_X emission inventories and our proposed approval of NDEP's redesignation request would satisfy the requirements of sections 172(a)(3) for the purposes of redesignation of the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS.

c. Permits for New and Modified Major Stationary Sources

To meet the requirements of CAA section 172(c)(5), states must submit SIP revisions that meet the requirements under 40 CFR 51.165 (''Permit requirements''), and EPA regulations at 40 CFR 51.914 extend the SIP requirements of 40 CFR 51.165 to areas designated as nonattainment for the 1997 8-hour ozone standard.

Under 40 CFR 51.165, states are required to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that major new sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control, referred to as the Lowest Achievable Emission Rate (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment in the nonattainment area.

The process for reviewing permit applications and issuing permits for new or modified stationary sources of air pollution is referred to as ''New Source Review'' (NSR). With respect to nonattainment pollutants in nonattainment areas, this process is referred to as ''nonattainment NSR.'' With respect to pollutants for which an area is designated as attainment or unclassifiable, states are required to submit SIP revisions that ensure that major new stationary sources and major modifications of existing stationary sources meet the Federal requirements for Prevention of Significant Deterioration'' (PSD), including application of ''best available control technology,'' for each applicable pollutant emitted in significant amounts, among other requirements.

As noted above, under Nevada law, specific electric steam-generating emission units (*i.e.,* power plants) within Clark County are under NDEP jurisdiction. See Nevada Revised Statutes (NRS) section 445B.500. Thus, state regulations govern air pollution permits issued by NDEP to those units. Clark County DAQ is responsible for all other stationary sources emissions units, and Clark County regulations govern air pollutant permits issued to them.

Under the Clean Air Act Amendments of 1977, States with designated nonattainment areas were required to amend their NSR rules to impose LAER and offset requirements on new major sources and major modifications of nonattainment pollutants in nonattainment areas. As noted previously, under the 1977 Act Amendments, we designated Las Vegas Valley as a nonattainment area for photochemical oxidant, later changed to ozone. To address the nonattainment NSR requirements flowing from the 1977 Act Amendments, the State of Nevada amended its nonattainment NSR rules (Nevada Air Quality Regulations (NAQR) Article 13), and NDEP submitted them to EPA for approval as part of the Nevada SIP. We approved the amended NSR rules in 1981. See 46 FR 21758 (April 14, 1981). Under these EPA-approved rules, LAER and offsets have been required for new ''point sources'' that cause emissions greater than 100 tons per year of ozone precursors in ozone nonattainment areas. In the 1980's EPA also approved Clark County NSR rules for Las Vegas Valley as meeting the related requirements under the 1977 Amended Act and EPA regulations.

The 1990 Clean Air Act Amendments retained the core nonattainment NSR elements of LAER and offsets but added other requirements. To address the nonattainment designations of Las Vegas Valley for carbon monoxide and particulate matter for sources under NDEP jurisdiction and in lieu of amending the rules to meet the additional NSR requirements under the 1990 Act Amendments, the State of Nevada submitted a rule (Nevada Administrative Code (NAC) section 445B.22083) establishing a construction ban for new major sources and major modifications within the nonattainment area. NAC 445B.22083, with a limited exception, prohibits new power plants or major modifications to existing power plants under State jurisdiction within four hydrographic areas in Clark County, including Las Vegas Valley (hydrographic area No. 212). See 69 FR 31056, 31059 (June 2, 2004) and 69 FR 54006, at 54017 (September 7, 2004). We approved NAC 445B.22083 into the Nevada SIP most recently in 2008. See 73 FR 20536 (April 16, 2008). However, the prohibition in NAC 445B.22083 does not cover the entire Clark County 8-hour ozone nonattainment area, which includes the four hydrographic areas listed in NAC 445B.22083, but also includes all or portions of seven additional hydrographic areas in Clark County. See 40 CFR 81.329. Thus, the State of Nevada does not have a nonattainment NSR program meeting the requirements of 40 CFR 51.165 for those sources under NDEP jurisdiction within the Clark County 8-hour ozone nonattainment area.

With respect to Clark County regulations, EPA recently finalized a limited approval and limited disapproval of updated Clark County rules governing NSR, including nonattainment NSR, but also PSD. See 77 FR 64039 (October 18, 2012). Thus, Clark County does not have a nonattainment NSR program meeting the requirements of 40 CFR 51.165 for those sources under Clark County DAQ jurisdiction within the Clark County 8-hour ozone nonattainment area.

We have determined, however, that, since PSD requirements [11] will apply after redesignation, an area being redesignated to attainment need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the state demonstrates maintenance of the NAAQS in the area without implementation of nonattainment NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, titled ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' See redesignation rulemakings for Detroit, Michigan (60 FR 12459, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and, Grand Rapids, Michigan (61 FR 31831, June 21, 1996).

Based on our review of the Clark County Ozone Maintenance Plan, we conclude the maintenance demonstration included therein does not rely on implementation of nonattainment NSR because the plan applies standard growth factors to stationary source emissions and does not rely on NSR offsets to reduce the rate of increase in emissions over time from point sources. The Ozone

[11] PSD requirements control the growth of new source emissions in areas designated as attainment for a NAAQS.

Maintenance Plan does include a line-item for emission reduction credits for VOC and NO_X but adds them to future projected emissions rather than assuming that they would be used to reduce emissions growth from stationary sources. Therefore, EPA concludes that the State need not have a fully approved nonattainment NSR program as an applicable requirement for approval of the State's ozone redesignation request for the Clark County ozone planning area.

Because the State's PSD program has been disapproved with respect to sources under NDEP jurisdiction, the Federal PSD requirements under 40 CFR 52.21 will apply to new major sources or major modifications of ozone precursors under NDEP jurisdiction once the Clark County 8-hour ozone nonattainment area is redesignated to attainment. See 40 CFR 52.1485(b). NDEP implements and enforces the Federal PSD regulations under a delegation agreement with EPA Region IX.

With respect to stationary sources under Clark County DAQ jurisdiction, the County's PSD program will apply to ozone precursor emissions of new major sources or major modifications upon redesignation of the Clark County 8-hour ozone nonattainment area to attainment. We note that Clark County's PSD program is not fully approved, but the deficiencies that formed the basis for EPA's recent limited approval and limited disapproval action would not interfere with maintenance of the ozone standard for two reasons. First, the deficiencies that relate to ozone precursors are limited to a few definitions: ''allowable emissions,'' ''baseline actual emissions,'' ''net emissions increase,'' and ''major modification.'' See 77 FR 64039, at 64047 (October 18, 2012). Second, the limited disapproval triggered an obligation on EPA to promulgate a Federal implementation plan (FIP) to remedy the PSD deficiencies by November 19, 2014 unless NDEP submits, and EPA approves, amended Clark County rules that correct the deficiencies prior to that time. Thus, the overlap in time during which the Clark County 8-hour area would be redesignated to attainment but would not be subject to a fully-approved PSD program would be less than two years.

d. Compliance With Section 110(a)(2)

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we conclude the Nevada SIP meets the requirements of section 110(a)(2) applicable for purposes of this redesignation.

e. Conformity Requirements

Under section 176(c) of the Clean Air Act Amendments of 1990, States are required to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provided that State conformity provisions must be consistent with Federal conformity regulations that the CAA required EPA to promulgate. EPA's conformity regulations are codified at 40 CFR part 93, subparts A (referred to herein as ''transportation conformity'') and B (referred to herein as ''general conformity''). Transportation conformity applies to transportation plans, programs, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Act, and general conformity applies to all other Federally-supported or funded projects. SIP revisions intended to address the conformity requirements are referred to herein as ''conformity SIPs.''

In November 2008, EPA approved Clark County's transportation conformity criteria and procedures as meeting the related SIP requirements under part 51, subpart T (''Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Project Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws''). See 73 FR 66182 (November 7, 2008).

With respect to ''general conformity,'' we note that, in August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which eliminated the requirement for States to adopt and submit conformity SIPs addressing general conformity requirements. See 75 FR 17254 (April 5, 2010) for conforming changes to EPA's general conformity regulations. The State of Nevada is thus no longer required to submit a general conformity SIP for the Clark County 8-hour ozone planning area.

Therefore, based on our approval of Clark County's transportation conformity SIP and SAFETEA–LU's elimination of the general conformity SIP requirement, we find that Clark County and the State have met the requirements for conformity SIPs in the Clark County 8-hour ozone nonattainment area under CAA section 176(c). In any event, EPA believes it is reasonable to interpret the conformity requirements as not applicable for purposes of evaluating a redesignation request under section 107(d)(3)(E). See *Wall* v. *EPA,* 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.

C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emissions Reductions

Section 107(d)(3)(E)(iii) precludes redesignation of a nonattainment area to attainment unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollution control regulations and other permanent and enforceable regulations. Under this criterion, the state must be able to reasonably attribute the improvement in air quality to emissions reductions which are permanent and enforceable. Attainment resulting from temporary reductions in emissions rates (*e.g.,* reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

The Clark County Ozone Maintenance Plan credits the following control measures as providing the emissions reductions sufficient to attain the 1997 8-hour ozone NAAQS in the Clark County 8-hour ozone nonattainment area through year 2022: the Federal Tier 2 motor vehicle emissions standards; the Federal highway diesel rule; the Federal large nonroad diesel engines rule; the Federal nonroad spark-ignition engines and recreational engines standards; the Federal nonroad spark-ignition engines and equipment standard; the State's vehicle I/M program; and the County's NSR and stationary source prohibitory rules. As discussed above, the State's vehicle inspection and maintenance (I/M) program and the County's NSR rules and VOC-related prohibitory rules (such as section 52 (''Handling of Gasoline at Service Stations, Airports and Storage Tanks'')) have been approved into the SIP, and thus are federally enforceable.

The Federal on-road and nonroad vehicle and engine standards cited above have contributed to improved air quality through the gradual, continued turnover and replacement of older vehicle models with newer models manufactured to meet increasingly stringent Federal tailpipe emissions standards. The new Federal fuel standards cited above have resulted in more immediate emissions reductions of ozone precursors and provide for the use of advanced pollution control technology that would not otherwise be possible. The emissions reductions from

the Federal vehicle and fuel standards are reflected in the emissions inventories and maintenance demonstration discussed later in this document through the use of EPA's MOBILE emission factor model for on-road motor vehicles and NONROAD emission factor model for nonroad vehicles.

We note that some of the control measures cited in the Clark County Ozone Maintenance Plan provided emissions reductions since 2002, and thus, the improvement in air quality since 2002 may reasonably be attributed to them. For instance, the new Federal gasoline and diesel fuel standards have greatly lowered the allowable sulfur content of these fuels and have resulted in lower emissions from cars and trucks, particularly of sulfur dioxide, particulate matter, and NO_X. The Clark County Ozone Maintenance Plan (see Figure 4–1 from the plan) illustrates the ambient ozone trend in the nonattainment area from 2003-to 2009 and layers the sequence of Federal engine and fuel standards phase-in over that period to support the inference that the standards have contributed to the declining trend in ambient ozone concentrations.

A rough sense of the effectiveness of the control measures to reduce VOC and NO_X emissions can be gained by a comparison between area-wide emissions in 2002 (a nonattainment year) with those in 2008 (an attainment year). In 2002, area-wide VOC and NO_X emissions in the Clark County 8-hour ozone nonattainment area were estimated to be approximately 318 and 279 tons per day (summer average day), respectively, and in 2008, despite an increase in population and vehicle-miles-traveled (VMT) of approximately 27% and 48%, respectively, area-wide emissions dropped significantly (to 302 tons per day of VOC and 164 tons per day of NO_X).[12]

With respect to the connection between the emissions reductions and the improvement in air quality, we also conclude that the air quality improvement in the Clark County 8-hour ozone nonattainment area since 2002 is not the result of a local economic downturn or unusual or extreme weather patterns. To draw this conclusion, we reviewed temperature and precipitation data for Las Vegas[13] and did not observe any anomaly over the period from 2002 relative to long-term averages. We do recognize that a significant economic slowdown occurred nationally starting in 2008, and that the Las Vegas metropolitan area was more significantly affected than most other areas, but we note that the downward ozone trend had already been established before that time (see Figure 4–1 on page 4–8 of the Ozone Maintenance Plan).

Thus, we find that the improvement in air quality in the Clark County 8-hour ozone nonattainment area is the result of permanent and enforceable emissions reductions from a combination of the Federal vehicle and fuel measures and EPA-approved State and local control measures. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(3)(E)(iii) is satisfied.

D. The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memo, pages 8 through 13.

Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions, that EPA deems necessary, to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Based on our review and evaluation of the plan, as detailed below, we are proposing to approve the Clark County Ozone Maintenance Plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventory

A maintenance plan for the 1997 8-hour ozone standard must include an inventory of emissions of ozone precursors (VOC and NO_X) in the area to identify a level of emissions that are sufficient to attain the 1997 8-hour ozone NAAQS. This inventory must be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary point sources, area sources, nonroad mobile sources, and on-road mobile sources, and must be based on actual ''ozone season data'' (*i.e.,* summertime) emissions.

Clark County DAQ selected year 2008 as the year for the attainment inventory in the Clark County Ozone Maintenance Plan. Year 2008 is one of the years of the three-year period (2007–2009) on which EPA made an attainment determination for the Clark County 8-hour ozone nonattainment area in 2011. See 76 FR 17343 (March 29, 2011). The attainment inventory will generally be the actual inventory during the time period the area attained the standard. Thus, Clark County DAQ's selection of 2008 for the attainment inventory is acceptable.

Based on our review of the Clark County Ozone Maintenance Plan, we find that the emissions inventories in the plan are comprehensive in that they include estimates of VOC and NO_X emissions from all of the relevant source categories, which the plan divides among point sources,[14] nonpoint sources,[15] commercial aviation, Federal aviation (*i.e.,* Nellis Air Force Base), on-road mobile, nonroad mobile, and biogenic[16] sources. See table 6–2 and pages 6–2 through 6–5 in the Ozone Maintenance Plan. Appendix A to the Ozone Maintenance Plan contains source-specific descriptions of emission calculation procedures and sources of input data.

For point sources, Clark County DAQ based the inventory estimates on source-reported actual 2008 emissions data but adjusted the reported values to reflect a typical summer day at each emissions unit within the source facilities based on information provided by the

[12] See table 4–1, and appendix A, table 3–1, from Clark County DAQ's 8-Hour Ozone Early Progress Plan for Clark County, Nevada (June 2008) and tables 4–1, 6–1, 6–2, and 6–3 from the Clark County Ozone Maintenance Plan.

[13] Our reference for climate data is ''Climate of Las Vegas, Nevada,'' by Andrew Gorelow and Chris Stachelski, updated October 2012, as well as the climate data discussed on pages 4–2 and 4–3 of the Ozone Maintenance Plan.

[14] The Ozone Maintenance Plan uses the term, ''point sources,'' to refer to those stationary source facilities that are required to report their emissions to Clark County DAQ or NDEP.

[15] The Ozone Maintenance Plan uses the term, ''nonpoint sources,'' to refer to those stationary and area sources that fall below point source reporting levels and that are too numerous or small to identify individually.

[16] For the Ozone Maintenance Plan, ''biogenic sources'' include agricultural crops; lawn grass; forests that produce isoprene, monoterpene, alpha-pinene, and other VOC emissions; and soils that generate trace amounts of NO_X.

facilities. For nonpoint sources, Clark County DAQ used several methods to estimate area source activity levels and emissions, including applying local activity levels, apportioning national or statewide activity levels to the local level, applying per capita emission factors considering county-specific populations and using specific method abstracts detailed within the submittal. The documentation supplied in the emissions inventory submittal (*i.e.,* appendix A to the Ozone Maintenance Plan) shows how the specific emissions were calculated for each area source category.

With respect to most nonroad mobile sources, Clark County DAQ used EPA's nonroad emissions model NONROAD2008a, the current version of the model at the time the plan was created. The model includes both emissions factors and default county level population and activity data. The model estimates both emissions factors and emissions. This includes more than 80 basic and 260 specific types of non-road equipment, and further stratifies equipment by horsepower rating and fuel type. The model has default estimates, variables and factors used in the calculations. No local data sets were available for Clark County, therefore only model defaults were used.

With respect to commercial and Federal aviation sources, Clark County DAQ relied on airport-specific emissions inventory information provided by the Clark County Aviation Department for the five commercial airports located within the nonattainment area (McCarran International Airport, North Las Vegas Airport, Henderson Executive Airport, Jean Airport, and Perkins Field Airport) and information provided by the U.S. Air Force for Nellis Air Force Base. Airport support equipment and airport-related stationary source emissions were included in the airport-specific inventories rather than in the general source categories such as point sources or nonroad mobile. Locomotive emissions were estimated by Clark County DAQ based on fuel consumption within the nonattainment area by the Union Pacific Railroad and included in the aggregate emissions estimates for ''nonroad mobile.'' To estimate biogenic emissions, Clark County DAQ used the Model of Emissions of Gasses and Aerosols from Nature (MEGAN) estimates, measured emission factors, and species information from completed surveys.

The on-road mobile source emissions estimates in the Ozone Maintenance Plan were prepared by Clark County DAQ using the CONCEPT MV emissions model,[17] EPA's MOBILE6.2 emissions factors, the Regional Transportation Commission of Southern Nevada's (RTC's) transportation demand modeling results,[18] and Highway Performance Monitoring System (HPMS) data from the Nevada Department of Transportation.

MOBILE6.2 estimates emissions by vehicle class, and provides emissions factors for exhaust emissions; evaporative emissions; and brake and tire wear emissions. There are a total of 28 vehicle classes used in MOBILE6.2. For the Ozone Maintenance Plan, Clark County DAQ aggregated the emissions factors calculated from MOBILE6.2 into eight vehicle classes, which are the same as used in MOBILE5. The VMT was adjusted by comparisons to observed vehicle counts by facility types, by using HPMS adjustment factors and to account for additional transit vehicles. The CONCEPT MV model processes detailed inputs (*e.g.,* VMT mix varying by hour of day, day of week, and month of year) and adjusts speeds to account for congestion based on transportation demand modeling outputs. For areas outside of the Las Vegas Valley, county level VMT estimates based on HPMS data was used and no reductions associated with the State's motor vehicle inspection and maintenance (I/M) program were included since vehicles in the rural portions of the county are not required to participate in the program.

The on-road emissions estimates for the Ozone Maintenance Plan assumed the implementation of the Federal heavy-duty diesel rule, limits to Reid Vapor Pressure (RVP) of 9 pounds per square inch (psi) with a 1.0 psi waiver for ethanol-blended fuels [19] and the phase-in of tier 2 motor vehicle emission standards, and the operation of an enhanced vehicle I/M program in the urban areas of Clark County.

Table 3 presents the VOC and NO_X emissions estimates contained in the Ozone Maintenance Plan for 2008 and also presents the plan's projected emissions inventories of ozone precursors in an interim year (2015) and the maintenance plan's horizon year (2022).[20] Based on the estimates in Table 3, on-road emissions sources accounted for approximately 22% of the VOC and 42% of the NO_X emissions generated within the 8-hour ozone nonattainment area in 2008. Nonroad sources (including nonroad equipment, airports, and locomotives) accounted for approximately 15% and 34% of the VOC and NO_X inventory, respectively. Point and area source emissions accounted for approximately 19% and 21% of the VOC and NO_X inventory, respectively, while biogenic emissions contributed 44% of the VOC inventory but little (3%) to the overall NO_X inventory.

TABLE 3—2008 AND PROJECTED 2015 AND 2022 VOC AND NO_X EMISSIONS TOTAL DAILY EMISSIONS

(Tons per day, average summer weekday) [a]

Emission source	Category	2008		2015		2022	
		VOC	NO_X	VOC	NO_X	VOC	NO_X
Point	Clark County Point	1	12	1	12	1	12
	Projected Power Plant	0	0	< 0.5	3	< 0.5	3
	Clark County NDEP Point	< 0.5	17	< 0.5	17	< 0.5	17
Airports	Clark County DOA	3	11	3	15	3	17
	Ivanpah Airport	0	0	< 0.5	< 0.5	1	11
Nellis AFB	Nellis AFB	1	1	1	2	1	2

[17] ''CONCEPT'' refers to the CONsolidated Community Emissions Processor Tool (CONCEPT,) and ''MV'' refers to the motor vehicle module of the CONCEPT model.

[18] One of the principal sources of transportation data used to develop the emissions inventories in the *Ozone Maintenance Plan is the Regional Transportation Plan 2009–2030,* approved by the RTC in November 2008. See page 6–1 of the maintenance plan.

[19] The market share of ethanol blend in summertime is assumed to be approximately 63% for 2008 and 100% for 2015 and 2022.

[20] The emissions inventories reflect county-wide emissions which include both the nonattainment area portion of the county and the portion of the county designated as ''unclassifiable/attainment'' for the 1997 8-hour ozone NAAQS. County-wide emissions are acceptable to characterize emissions within the Clark County ozone nonattainment area because over 95% of the population of the county resides in the nonattainment area.

TABLE 3—2008 AND PROJECTED 2015 AND 2022 VOC AND NO_X EMISSIONS TOTAL DAILY EMISSIONS—Continued

(Tons per day, average summer weekday) [a]

Emission source	Category	2008		2015		2022	
		VOC	NO_X	VOC	NO_X	VOC	NO_X
Nonpoint Sources	Nonpoint Sources	57	5	66	6	76	6
Locomotive	Locomotive	< 0.5	2	< 0.5	2	< 0.5	2
On-road Mobile	On-road Mobile	65	68	45	35	37	23
Nonroad Mobile	Nonroad Mobile	43	41	32	28	30	18
Biogenic	Biogenic	132	5	132	5	132	5
Banked Emission Reduction Credits (ERCs.	DAQ ERC Bank	0	0	< 0.5	1	< 0.5	1
	ERCs from Mohave Generating	0	0	< 0.5	20	< 0.5	20
	ERCs from Reid-Gardner	0	0	0	2	0	2
Total		302	164	282	146	282	139

[a] Derived from table 1–1 of appendix A to the Ozone Maintenance Plan. For the purposes of this table, the estimates contained in the maintenance plan have been rounded to the nearest whole number (except for values greater than zero but less than 0.5, which are shown as "< 0.5"). The sum of the values in each column may not equal the total shown due to rounding. DOA = Clark County Department of Aviation; AFB = Air Force Base; and ERCs = emission reduction credits.

Based on our review of the emissions inventories (and related documentation) from the Ozone Maintenance Plan, we find that the inventories for 2008 are comprehensive, that the methods and assumptions used by Clark County DAQ to develop the 2008 emission inventory are reasonable, and that the inventories reasonably estimate actual ozone season emissions in an attainment year. Moreover, we find that the 2008 emissions inventories in the Ozone Maintenance Plan reflect the latest planning assumptions and emissions models available at the time the plan was developed, and provide a comprehensive and reasonably accurate basis upon which to forecast ozone precursor emissions for years 2015 and 2022.

2. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the ozone NAAQS by either showing that future emissions will not exceed the level of the attainment inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should use the same type of modeling. Calcagni memorandum, page 9. The Clark County 8-hour ozone nonattainment area was not required to submit a modeled attainment demonstration, and thus, the Clark County Ozone Maintenance Plan may demonstrate maintenance based on a comparison of existing and future emissions of ozone precursors.[21]

Clark County DAQ used projected emissions [22] for point and non-point sources from calendar years 2008 and 2018 to back calculate the growth factors for all ozone precursor emissions for both inventory years. The derived growth factors were then mathematically extrapolated to account for a 14-year (2008 through 2022) spread. These 2022 growth factors were then multiplied by the 2008 actual emissions to produce the 2022 projected point source emissions. An interim year (2015) projected emissions inventory is also included. The 2015 emissions were calculated using half of the growth value of the 2022 projections. Corrections for rule effectiveness were not applied to these projected emissions. On-road emissions were estimated for the 2008 base year and for projection years 2015 and 2022 and reflect a 26% increase in VMT from 2008 to 2015 and a 63% increase in VMT from 2008 to 2022 based on RTC projections. See table 6–1 in the Ozone Maintenance Plan.

In addition to accounting for area-wide growth trends, Clark County DAQ added emissions from specific projects that are expected to become operational during the maintenance period, including the Nellis Air Force Base F–35 beddown project, a new power plant, a new airport (Ivanpah), and new heliport (Sloan), in the future-year emissions inventories, and also added in emissions reduction credits (ERCs) from certain stationary sources in the event that the ERCs are used for the purposes of issuing permits for new or modified stationary sources in the air quality planning area. We have reviewed the methods and assumptions, as described in connection with the attainment inventory, that Clark County DAQ used to project emissions to 2015 and 2022 for the various source categories and find them to be reasonable.

Table 3 compares the VOC and NO_X emissions estimated for the Clark County 8-hour ozone nonattainment area for 2008 with those for 2015 and 2022 by source category. The projected VOC and NO_X emissions show that VOC and NO_X emissions would remain well below the attainment levels throughout the 10-year maintenance period and thereby adequately demonstrating maintenance through that period.

3. Monitoring Network

Continued ambient monitoring of an area is generally required over the maintenance period. As discussed in section V.A of this document, ozone is currently monitored by Clark County DAQ at ten sites within the Clark County 8-hour ozone nonattainment area. In the Ozone Maintenance Plan (see page 6–11 of the plan), Clark County DAQ indicates its intention to continue operation of an air quality monitoring network to verify continued attainment of the 1997 8-hour ozone NAAQS.[23] The Clark County Ozone

[21] A maintenance demonstration need not be based on ozone modeling. See *Wall v. EPA,* 375 F.3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), and 68 FR 25413, 25430–25432 (May 12, 2003).

[22] The projected emissions were obtained from the 2005 Clark County Consolidated Emission Inventory Report (Environ, May 31, 2007, Appendix A).

[23] Although the Ozone Maintenance Plan is not explicit in this regard, we presume that Clark County DAQ's intention to continue operation of a monitoring network means that the agency intends to do so consistent with EPA's monitoring

Maintenance Plan also notes that Clark County DAQ's SLAMS air quality monitoring system (which includes ambient ozone monitoring) will be reviewed annually pursuant to 40 CFR 58.20(d) to determine whether the system continues to meet the applicable monitoring objectives.[24] We find the County's commitment for continued ambient ozone monitoring as set forth in the Ozone Maintenance Plan to be acceptable.

4. Verification of Continued Attainment

NDEP and the Clark County Board of County Commissioners have the legal authority to implement and enforce the requirements of the Ozone Maintenance Plan. This includes the authority to adopt, implement and enforce any emission control contingency measures determined to be necessary to correct ozone NAAQS violations. To verify continued attainment, Clark County DAQ commits in the Ozone Maintenance Plan to the continued operation of an ozone monitoring network that meets EPA ambient air quality surveillance requirements.

Second, the transportation conformity process, which would require a comparison of on-road motor vehicle emissions that would occur under new or amended regional transportation plans and programs with the MVEBs in the Ozone Maintenance Plan, represents another means by which to verify continued attainment of the 1997 8-hour ozone NAAQS in the Clark County 8-hour ozone area given the relative importance of motor vehicle emissions to the overall emissions inventories of ozone precursors. See page 6–13 of the Ozone Maintenance Plan. Lastly, while not cited in the plan, NDEP and Clark County DAQ must inventory emissions sources and report to EPA on a periodic basis under 40 CFR part 51, subpart A (''Air Emissions Reporting Requirements''). These emissions inventory updates will provide a third means with which to track emissions in the area relative to those projected in the maintenance plan and thereby verify continued attainment of the NAAQS. These methods are sufficient for the purpose of verifying continued attainment.

5. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Such provisions must include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the SIP for the area before redesignation of the area as an attainment area.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. As a necessary part of the plan, the State should also identify specific indicators or triggers, which will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, Clark County DAQ has adopted a contingency plan to address possible future ozone air quality problems. See section 6.8 of the maintenance plan. Clark County DAQ commits to examining ambient air quality data within 30 days of collection to determine if the ozone NAAQS has been exceeded. The contingency plan will be triggered 60 days after Clark County DAQ confirms a violation of the 1997 8-hour ozone NAAQS (*i.e.,* a design value equal to or greater than 0.085 ppm). Within 45 days of the trigger date, Clark County will notify EPA that it is evaluating potential contingency measures. Within 90 days of that notification, Clark County will send a report to EPA and then will initiate a public process to consider the recommended contingency measures, including soliciting stakeholder involvement and holding public hearings. The necessary emission control measures will be adopted and implemented no later than 18 months after the information report is submitted to EPA.

Contingency measures contained in the maintenance plan are those emission controls or other measures that Clark County, the Nevada State Board of Agriculture, and/or the Nevada State Environmental Commission choose to adopt and implement in response to the contingency trigger. The contingency plan in the Ozone Maintenance Plan lists the following potential contingency measures that will be considered for adoption and implementation by the applicable State or County agency, but the plan indicates that the list is not to be considered exclusive:

- Reid vapor pressure reduction (*i.e.,* in gasoline sold during the summer ozone season; would need to be adopted and implemented by the Nevada State Board of Agriculture);
- Inspection/maintenance program changes and additions (*e.g.,* lowering the cutpoints for VOCs and NO_X applicable to pre-1996 vehicles; would need to be adopted and implemented by the State Environmental Commission and/or the State Department of Motor Vehicles);
- Consumer and commercial products (Clark County would be responsible for adoption and implementation);
- Architectural surface coatings (Clark County would be responsible for adoption and implementation);
- Lawn and garden equipment use (Clark County would be responsible for adoption and implementation); and
- Establish/enhance trip reduction programs (Clark County and the RTC would be responsible for adoption and implementation).

Upon our review of the plan, as summarized above, we find that the contingency provisions of the Ozone Maintenance Plan clearly identify specific contingency measures, contain tracking and triggering mechanisms to determine when contingency measures are needed, contain a description of the process of recommending and implementing contingency measures, and contain specific timelines for action. Thus, we conclude that the contingency provisions of the Clark County Ozone Maintenance Plan are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the Act.

6. Subsequent Maintenance Plan Revisions

CAA section 175A(b) provides that States shall submit a SIP revision 8 years after redesignation providing for maintaining the NAAQS for an additional 10 years. The Clark County Ozone Maintenance Plan provides that Clark County commits to prepare and submit a revised maintenance plan eight years after redesignation to attainment. See page 6–13 of the Ozone Maintenance Plan.

7. Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 40 CFR part 93, subpart A) requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for

requirements in 40 CFR part 58 (''Ambient Air Quality Surveillance'').

[24] EPA's requirements for annual review of monitoring networks are no longer codified at 40 CFR 58.20(d), but are now found at 40 CFR 58.10.

determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

Maintenance plan submittals must specify the maximum emissions of transportation-related VOC and NO_X emissions allowed in the last year of the maintenance period, *i.e.,* the motor vehicle emissions budgets (MVEBs). (MVEBs may also be specified for additional years during the maintenance period.) The MVEBs serve as a ceiling on emissions that would result from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble describes how to establish MVEBs in the SIP and how to revise the MVEBs if needed.

The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm.*

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and, (3) making a finding of adequacy. The process for determining the adequacy of a submitted MVEB is codified at 40 CFR 93.118.

The Clark County Ozone Maintenance Plan submitted by NDEP for Clark County, contains new VOC and NO_X MVEBs for Clark County for 2008, 2015, and 2022. The availability of the SIP submission with MVEBs was announced for public comment on EPA's Adequacy Web site on June 14, 2011, at: *http://www.epa.gov/otaq/stateresources/tansconf/currsips.htm,* which provided a 30-day public comment period. The comment period for this notification ended on July 14, 2011, and EPA received no comments from the public. Note, however, that a second mechanism is also provided for EPA review and public comment on MVEBs, as described in 40 CFR 93.118(f)(2). This mechanism provides for EPA's review of the adequacy of an implementation plan MVEB simultaneously with its review and approval and disapproval of the implementation plan itself. In this action, EPA used the web notification discussed above to solicit public comments on the adequacy of Clark County's MVEBs, but is taking comment on the approvability of the submitted MVEBs through this proposed rule.

Clark County's ozone maintenance plan contains VOC and NO_X MVEBs for 2008, 2015 and 2022. Any and all comments on the approvability of the MVEBs should be submitted during the comment period stated in the **DATES** section of this document.

EPA proposes to approve 2008, 2015, and 2022 MVEBs in the Clark County Ozone Maintenance Plan for transportation conformity purposes in the final rulemaking on Clark County's ozone redesignation request. If EPA approves the MVEBs in the final rulemaking action, the new MVEBs must be used in future transportation conformity determinations for Clark County. The new MVEBs, if approved in the final rulemaking, will be effective on the date of EPA's final rulemaking in the **Federal Register**. The existing 2008 VOC and NO_X MVEBs from the Clark County EPP, which EPA found adequate in 2009, will be replaced by these budgets. The applicable VOC and NO_X MVEBs for the Clark County ozone nonattainment area are defined in table 4.

TABLE 4—MOTOR VEHICLE EMISSIONS BUDGETS IN THE CLARK COUNTY OZONE MAINTENANCE PLAN [a]

Budget year	VOC (tpd, average summer weekday)	NO_X (tpd, average summer weekday)
2008	65.08	68.46
2015	45.32	34.69
2022	36.71	23.15

[a] From Table 7–1 (page 7–1) of the Ozone Maintenance Plan.

The MVEBs are the on-road mobile source VOC and NO_X emissions for Clark County for 2008, 2015 and 2022. The MVEBs are compatible with the 2008, 2015, and 2022 on-road mobile source VOC and NO_X emissions included in Clark County's 2008, 2015, and 2022 VOC and NO_X emission inventories, as summarized above in table 3. The derivation of the MVEBs is thoroughly discussed in appendix A, chapter 7 of Clark County's Ozone Maintenance Plan. Updated vehicle miles traveled (VMT) data from the Regional Transportation Commission's TRANSCAD transportation demand model was adjusted with Highway Performance Monitoring System (HPMS) data and then combined with emission factors from MOBILE6 to estimate ozone precursor emissions.

We note that the MVEBs in the Ozone Maintenance Plan for 2008 differ from those contained for that same year in the Clark County Ozone EPP, but Clark County DAQ has explained the differences stem not from a different approach but from changes with regard to the fuel parameters and updated vehicle activity data for 2008. Specifically, the MOBILE input files used for the Ozone Maintenance Plan were updated to show the use of ethanol in summertime with a 1.0 psi waiver, resulting in higher VOC emissions, and the VMT estimates for 2008 were adjusted downwards to reflect the latest transportation data from RTC. The net effect of these changes resulted in higher VOC emissions but lower NO_X emissions for 2008 relative to the corresponding estimates in the Clark County Ozone EPP.

EPA is proposing to approve the MVEBs for 2008, 2015 and 2022 as part of our approval of Clark County's Ozone Maintenance Plan. EPA has determined that the MVEB emission targets are consistent with emission control measures in the SIP and that Clark County can maintain attainment of the 1997 8-hour ozone NAAQS. The details of EPA's evaluation of the MVEBs for compliance with the budget adequacy criteria of 40 CFR 93.118(e) are provided

in a separate memorandum [25] included in the docket of this rulemaking.

VI. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth above, EPA is proposing to approve NDEP's submittal dated April 11, 2011 of Clark County's *Ozone Redesignation Request and Maintenance Plan* (March 2011) (''Clark County Ozone Maintenance Plan'') as a revision to the Nevada state implementation plan (SIP). In connection with the Clark County Ozone Maintenance Plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone NAAQS for 10 years beyond redesignation (*i.e.,* through 2022) and the contingency provisions describing the actions that Clark County will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also proposing to approve the motor vehicle emissions budgets (MVEBs) in the Clark County Ozone Maintenance Plan (shown in table 4 of this document) because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), we are proposing to approve NDEP's request, which accompanied the submitted of the maintenance plan, to redesignate the Clark County 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Nevada SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that Nevada has met all requirements applicable to the Clark County 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the Clark County Ozone Maintenance Plan.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

[25] See EPA memorandum dated October 15, 2012 titled, ''Adequacy Documentation for Motor Vehicle Emission Budgets in April 2011 Clark County Ozone Maintenance State Implementation Plan.''

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a State plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these proposed actions:

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

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law. Nonetheless, EPA has discussed the proposed action with the one Tribe, the Las Vegas Paiute Tribe, located within the Clark County 8-hour ozone nonattainment area.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

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

Dated: November 2, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2012–27562 Filed 11–9–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 386

[Docket No. FMCSA–2011–0321]

RIN 2126–AB42

Patterns of Safety Violations by Motor Carrier Management

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes amendments to its regulations that would enable the Agency to suspend or revoke the operating authority registration of motor carriers that have

shown egregious disregard for safety compliance or that permit persons who have shown egregious disregard for safety compliance to act on their behalf. These amendments would implement section 4113 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) as amended by section 32112 of the Moving Ahead for Progress in the 21st Century Act (MAP–21), and are designed to enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways.

DATES: You must submit comments on or before January 14, 2013.

ADDRESSES: You may submit comments identified by docket number FMCSA–2011–0321 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' heading under the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Juan Moya, Transportation Specialist, Enforcement Division, Federal Motor Carrier Safety Administration, telephone: 202–366–4844; email: *juan.moya@dot.gov.* 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:

Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2011–0321), 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 or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Rules,'' insert ''FMCSA–2011–0321'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Submit a Comment'' in the ''Actions'' column. 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.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

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* and click on the ''Read Comments'' box in the upper right hand side of the screen. Then, in the ''Keyword'' box, insert ''FMCSA–2011–0321'' and click ''Search.'' Next, click ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act

All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. Anyone is able to search the electronic form for all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Background

Implementation of this proposed rule would enable the Agency to suspend or revoke the operating authority registration of motor carriers that have shown egregious disregard for safety compliance, permit persons who have shown egregious disregard for safety compliance to exercise controlling influence over their operations or operate multiple entities under common control to conceal noncompliance with safety regulations. Motor carriers that engage in such conduct may face suspension or revocation of their operating authority registration. FMCSA acknowledges that loss of operating authority registration is a significant penalty, but the Agency believes this rule is necessary and appropriate for the small number of motor carriers that engage in the most egregious instances of noncompliance.

FMCSA has determined that each year a small number of motor carriers have attempted to avoid regulatory compliance or mask or otherwise conceal noncompliance by submitting new applications for registration, often under a different name, to continue operations after being placed out of service. Motor carriers and individuals do this for a variety of reasons that include avoiding payment of civil penalties, circumventing denial of operating authority registration based on a determination that they are not willing or able to comply with the applicable statutes or regulations, or avoiding a negative compliance history. Other motor carriers attempt to avoid compliance, or mask or otherwise conceal noncompliance, by creating or using an affiliated company under common operational control. They shift customers, vehicles, drivers, and other operational activities to one of the affiliated companies when FMCSA places one of the other commonly controlled companies out of service.

On August 8, 2008, a fatal bus crash occurred in Sherman, Texas, highlighting the danger posed by motor carriers and other persons who avoid regulatory compliance or mask or otherwise conceal noncompliance. Seventeen motorcoach passengers died, and the driver and 38 other passengers received minor-to-serious injuries. The investigations conducted by FMCSA and the National Transportation Safety Board revealed that the motor carrier was operating without authority and a reincarnation of another bus company

that had been recently placed out of service for safety violations and that both companies were under the control of the same person. FMCSA determined that the companies' flagrant disregard for safety under this person's control demonstrated a hazard to the safety of the motoring public.

Based on these findings, FMCSA instituted a vetting process for for-hire passenger and household goods carriers that involves a comprehensive review of registration applications to determine whether the applicants are reincarnations or affiliates of other motor carriers with negative compliance histories or are otherwise not willing and able to comply with the applicable regulations. Although the vetting process was a significant improvement to the previous registration review and regulatory compliance process, it is not a complete solution to the problem of regulatory avoidance because it does not impose sanctions, and, therefore, deter, the motor carriers or individuals who engage in or condone egregious disregard for safety compliance.

The Sherman crash is but one example that demonstrates how the practice of avoiding compliance or masking or otherwise concealing noncompliance to circumvent Agency enforcement action or to avoid a negative safety compliance history creates an unacceptable risk of harm to the public, resulting in the continued operation of at-risk carriers and impeding FMCSA's ability to execute its safety mission. This rule would help address these problems by providing a significant enforcement tool that allows the Agency to suspend, or revoke the operating authority registration of motor carriers that have shown egregious disregard for safety compliance, permit persons who have shown egregious disregard for safety compliance to exercise controlling influence on their operations or operate multiple entities under common control to conceal noncompliance with safety regulations.

Section 31135 of title 49, United States Code, originally enacted as § 4113 of SAFETEA–LU (Pub. L. 109–59, 119 Stat. 1144) and subsequently amended by § 32112 of MAP–21 (Pub. L. 112–141, 126 Stat. 405), authorizes FMCSA to withhold, suspend, amend, or revoke the operating authority registration of a motor carrier if it or any person has engaged in a pattern or practice of avoiding compliance, or concealing noncompliance with regulations governing CMV safety prescribed under 49 U.S.C., Chapter 311, subchapter III. That section, as amended, also permits FMCSA to revoke the individual operating authority registration of any officer of a motor carrier that engages in or has engaged in a pattern or practice of, or assisted in avoiding compliance, or masking or otherwise concealing noncompliance while serving as an officer of such motor carrier. FMCSA is required to issue standards to implement the authority granted in § 31135.

To assist the Agency in developing those standards, FMCSA tasked the Motor Carrier Safety Advisory Committee (MCSAC) with identifying ideas and concepts that FMCSA should consider. On June 21, 2011, the MCSAC issued a number of recommendations, some of which formed the foundation for this proposed rule described below. These recommendations include the concepts that a pattern is both widespread and continuing over time, involves more than isolated violations, and does not require a specific number of violations. The Agency also embraced the idea that the Agency would have to exercise discretion to identify those motor carriers whose officers have shown egregious disregard for safety compliance.

Legal Basis for the Rulemaking

The FMCSA has authority, delegated by the Secretary of Transportation (Secretary) under 49 CFR 1.87, to establish the minimum safety standards governing the operation and equipment of a motor carrier operating in interstate commerce (49 U.S.C. 31136(a) and 31502(b)). Also, as amended by section 4114 of SAFETEA–LU, 49 U.S.C. 31144(a) requires that the Secretary shall determine whether an owner or operator is fit to safely operate CMVs; periodically update the safety determinations of motor carriers; and prescribe, by regulation, penalties for violations of applicable commercial safety fitness requirements.

Section 31135 of title 49, United States Code, was originally enacted as part of § 4113 of SAFETEA–LU and was subsequently amended by § 32112 of MAP–21. Section 31135 requires employers and employees to comply with FMCSA's safety regulations that apply to the employees' and the employers' conduct. It prohibits motor carriers from using common ownership, common management, common control or common familial relationships to avoid compliance or mask or otherwise conceal noncompliance, or a history of noncompliance. It also authorizes FMCSA to withhold,[1] suspend, amend, or revoke the operating authority registration of a motor carrier if it or any person has engaged in a pattern or practice of avoiding compliance, or concealing noncompliance with regulations governing CMV safety prescribed under 49 U.S.C., Chapter 311, subchapter III. FMCSA may suspend, amend, or revoke the individual registration of an officer of a motor carrier who has engaged in a pattern or practice of or assisted in avoiding compliance, or masking or otherwise concealing noncompliance while serving as an officer of such motor carrier. FMCSA is required to establish standards implementing § 31135 through rulemaking.

FMCSA relies on 49 U.S.C. 13902, 13905, 31134, and 31135 for the authority and procedures to suspend and revoke operating authority registration in this proposed rule. The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543) authorized the Interstate Commerce Commission (ICC) to issue operating authority registration to motor carriers, brokers, and freight forwarders subject to its jurisdiction and to suspend or revoke such operating authority registration for willful failure to comply with applicable statutes and regulations. The ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) transferred this authority to the Secretary by enacting 49 U.S.C. 13902 (establishing standards for issuing operating authority registration) and 13905 (establishing standards and procedures for suspending and revoking operating authority registration). Section 4113 of SAFETEA–LU amended 49 U.S.C. 13902 to authorize FMCSA to deny an application for operating authority registration of a for-hire motor carrier if the motor carrier is not willing and able to comply with the duties of employers and employees established under 49 U.S.C. 31135. In addition, section 32105 of MAP–21 created new 49 U.S.C. 31134 establishing requirements for motor carriers seeking to obtain operating authority registration and USDOT numbers. This new section authorizes FMCSA to withhold, suspend or revoke operating authority registration for failing to disclose, among other things, common management or control with any other person or applicant for operating authority registration or any other person or applicant for operating authority registration that has been determined to be unfit, unwilling or

[1] Although MAP–21 includes authority for FMCSA to withhold operating authority registration under § 31135, FMCSA has elected not to incorporate that authority into this proposed rule. The Agency has existing authority to withhold operating authority registration and will continue to exercise this authority under its current registration process.

unable to comply with the requirements for registration. The changes enacted as a part of MAP–21 are effective October 1, 2012.

Section-by-Section Analysis

FMCSA proposes to amend 49 CFR parts 385 and 386 in the following ways.

Section 385.901

The proposed rule would apply to for-hire motor carriers, employers, officers, or other persons subject to FMCSA's safety jurisdiction that are also required to register (have operating authority) under 49 U.S.C. 13902. This would include for-hire motor carriers that transport passengers and/or property, including household goods carriers and hazardous materials carriers. The rule would not apply to private motor carriers and for-hire motor carriers that are exempt from registering with the Agency under section 13902 because of the commodities they haul or the nature of the services they provide.

Section 385.903

FMCSA proposes to add new § 385.903, which would define the terms ''Agency Official'' and ''officer.''

The term ''Agency Official'' would mean the Director of FMCSA's Office of Enforcement and Compliance or his or her designee. The Agency Official is the person within FMCSA authorized to initiate suspension (§ 385.913) or revocation proceedings (§ 385.915) and rule on petitions for rescission (§ 385.917) on behalf of the Agency, as described below.

The term ''officer'' would identify those individuals whose conduct would trigger the proposed rule's suspension and revocation procedures. The definition is identical to the statutory definition codified at 49 U.S.C. 31135. It would make clear that a person may be an officer not only because of the title or position that person holds, but also because of the functions he or she performs or the control the person exercises over the operations of the motor carrier. This could extend beyond just direct employees of the company, including, but not limited to, contractors and consultants.

The term ''motor carrier'' when used in this proposed rule would mean any motor carrier, employer, officer or other person, however characterized, required to register under 49 U.S.C. 13902.

Section 385.905

Section 385.905 describes the conduct that could trigger suspension or revocation of a motor carrier's operating authority registration and how the Agency would determine whether that conduct occurred. Paragraph (a)(1) would set forth the Agency's authority to suspend or revoke the motor carrier's operating authority registration if it engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance. This paragraph would apply to any motor carrier that holds operating authority registration and has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance.

Paragraph (a)(2) would set forth the Agency's authority to suspend or revoke a motor carrier's operating authority registration if it permits any person to exercise controlling influence over the motor carrier's operations if that person engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance while acting on behalf of any motor carrier. This would include conduct the person engaged in on behalf of a previous or current motor carrier. A person exercising controlling influence could be an employee, contractor, consultant or other advisor acting on behalf the motor carrier, and the conduct triggering enforcement could have been undertaken by an employee, contractor, consultant or advisor acting on behalf of another motor carrier.

A motor carrier would not necessarily avoid liability under the rule by asserting it was not aware that the person had previously engaged in a pattern or practice of avoiding compliance or masking noncompliance on behalf of another motor carrier. Motor carriers are responsible for evaluating the qualifications of people who act on their behalf or plan to engage to act on their behalf. They can do this by, among other things, reviewing the person's application, resume or work proposal, checking references, if any, and reviewing the person's history working in or with the motor carrier industry. If a person previously worked for or on behalf of motor carriers subject to FMCSA jurisdiction, it is possible to review previous motor carriers' safety performance history and registration status during the time the person was employed by or engaged to act on behalf of these previous motor carriers by accessing FMCSA's publically available information systems located at the Agency Web site *http://www.fmcsa.dot.gov.* Using these and other available resources may provide valuable information to help determine whether motor carriers should permit a person to exercise controlling influence over their operations.

Paragraph (a)(3) would set forth the Agency's authority to suspend or revoke the operating authority registration of two or more motor carriers that use common ownership, common control, or common familial relationships to avoid regulatory compliance, or mask or otherwise conceal noncompliance. Under this subparagraph, motor carriers that use or create other motor carriers in an effort to avoid the consequences of regulatory noncompliance would be subject to suspension or revocation.

Paragraph (b) would authorize FMCSA's Director of the Office of Enforcement and Compliance or his or her designee (the Agency Official) to exercise the authorities established in paragraph (a).

Section 385.907

The Agency Official would determine whether a motor carrier or person acting on its behalf has avoided regulatory compliance or masked or otherwise concealed regulatory noncompliance based on the results of an investigation by FMCSA, State, or local enforcement personnel. A motor carrier or person acting on its behalf engages in this conduct when he, she or it, either individually or on behalf of another motor carrier, fails to or conceals failure to: (1) Comply with statutory or regulatory safety requirements; (2) comply with FMCSA, State, or local orders intended to redress violations of Federal regulatory safety requirements; (3) pay civil penalties for violations of regulatory safety requirements; or (4) respond to enforcement actions arising out of violations of regulatory safety requirements. Failure to respond to an enforcement action includes, but is not limited to, failure to: Respond to a Notice of Claim, participate in binding arbitration, respond to a demand for records, or respond to FMCSA correspondence if required. Regulatory safety requirements include statutory or regulatory requirements prescribed under 49 U.S.C. Chapter 311, subchapter III, which include 49 U.S.C. sections 31131–31151 and 49 CFR parts 380–387 and 390–398.

Section 385.909

If the Agency Official concludes that the motor carrier or person acting on its behalf has failed, or concealed failure, to do one or more of the actions described in § 385.907, the Agency Official would determine whether such conduct constitutes a pattern or practice of noncompliance or masking noncompliance by considering certain factors. These factors would include, but are not limited to, the frequency, remoteness in time or continuing nature

of the conduct; the extent to which the regulatory violations caused by the conduct create a risk to safety; the effect the conduct had on safety performance, taking into account crashes, deaths and injuries, if any; whether the motor carrier or person acting on its behalf knew or should have known the conduct violated regulatory requirements; existing or closed enforcement actions; whether the motor carrier or person acting on its behalf engaged in the conduct for the purpose of avoiding compliance; and the extent to which the person exercises a controlling influence on the motor carrier's operations, if applicable. Inadvertent, isolated, or sporadic violations of FMCSA's regulations generally would not rise to the level of a pattern or practice. To establish a pattern or practice, the Agency would look for evidence of knowledge, conduct, or intent that shows egregious disregard for FMCSA's safety regulations.

Section 385.911

To determine whether two or more motor carriers have common ownership, common management, common control or common familial relationships, the Agency Official must determine whether there is substantial continuity between the motor carrier that has engaged in regulatory noncompliance and another motor carrier so as to conclude that one is merely the continuation of another. In making that determination, the Agency Official may consider, among other things, the following factors: (1) Whether there is a new or affiliated motor carrier that was used for the purpose of avoiding regulatory compliance or masking or otherwise concealing noncompliance; (2) the motor carriers' safety performance histories; (3) consideration exchanged for assets sold or transferred between motor carriers; (4) dates the motor carriers were created, dissolved or ceased operations; (5) whether and to what extent the motor carriers have shareholders, investors, officers, managers and employees in common; (6) whether and to what extent relationships exist between the motor carriers' shareholders, investors, officers, managers, employees or other persons; (7) whether and to what extent the motor carriers share or have proximity of physical or mailing addresses, telephone, fax numbers, or email addresses; (8) whether and to what extent the motor carriers share or have motor vehicle equipment in common; (9) whether and to what extent the motor carriers share or have continuity of liability insurance policies or coverage under such policies; (10) whether and to what extent the motor carriers use, share or take over each other's facilities and other physical assets; (11) continuity or commonality of nature and scope of operations, including customers for whom transportation is provided; and (12) advertising, corporate name, or other acts through which the motor carriers hold themselves out to the public. The Agency does not consider any one of these factors to be dispositive, and the proof of all twelve would not be required to indicate substantial continuity. When considered collectively, however, they would show whether two or more motor carriers are operationally the same.

Section 385.913

If the Agency Official makes a determination in accordance with § 385.905, § 385.913(a) would authorize the Agency Official to issue an order suspending the motor carrier's registration. Paragraphs (b) through (e) would establish the procedures FMCSA would follow to suspend an motor carrier's registration.

Under paragraph (b), the Agency Official would initiate a suspension proceeding by issuing an order directing the motor carrier to show good cause, within 30 days of service of the order, why its operating authority registration should not be suspended. The order would provide the motor carrier with notice of the alleged conduct and would explain how to respond to the order. If the proceeding is based on the conduct of another person, the Agency Official would be required to serve a copy on the person alleged to have engaged in the conduct giving rise to the order, and to inform the person that he or she may—but is not required to—intervene by filing a response in the proceeding in accordance with the procedures in paragraph (c). Finally, the order would state that it would be effective on the 35th day after it was served, if the motor carrier or an intervening person does not respond appropriately.

Paragraph (c) would establish an independent right for the person on whose conduct the proceeding is based to intervene in the suspension proceeding. This provision would give the person an opportunity to respond to allegations about his or her conduct to protect his or her interests, which may diverge from the interests of the motor carrier. If the person does not respond within 30 days of being served with the order, he or she would waive the right to participate in the proceeding. By declining to intervene at this stage, he or she would also waive the right to participate in any future proceedings that arise out of the initial show cause order, such as revocation, administrative review, or rescission proceedings under this proposed rule. When the motor carrier is a sole proprietor or other corporate structure under which the interests of the company and the person in question are one and the same, the person may want to specify that he or she is responding both as the motor carrier and the intervening person to preserve his or her right to participate in a proceeding at a later date as an intervening person in the event that the motor carrier's ownership structure changes.

Under paragraph (d), the Agency Official who issued the order would review all responses to the order. In reviewing the responses, the Agency Official would consider, among other things, the factors described in proposed §§ 385.907, 385.909 and/or 385.911. After reviewing the response, the Agency Official would take one of three actions. First, he or she could enter an order suspending the motor carrier's operating authority registration. Second, he or she could enter an order directing the motor carrier to come into compliance with this proposed rule. Based on the motor carrier's response and the factors described in proposed §§ 385.907, 385.909 and/or 385.911, an order directing compliance might be more appropriate than suspension. Third, the Agency Official could determine that neither suspension nor an order directing compliance is appropriate. In this case, the Agency Official would enter an order terminating the proceeding. The Agency Official could enter a termination order in a number of different circumstances. The Agency Official could terminate the proceeding after determining that the motor carrier or person acting on its behalf did not engage in the alleged conduct. Alternatively, the Agency Official could determine that although the motor carrier or person acting on its behalf had engaged in the alleged conduct, the motor carrier had already taken the appropriate remedial action, rendering an order unnecessary. In this example, the motor carrier might not be subject to an order under § 385.905 but it could nonetheless remain subject to civil or criminal penalties under § 385.921.

If the Agency Official issues an order under paragraph (d) of this section, the motor carrier or the intervening person may submit a petition for administrative review with FMCSA's Assistant Administrator within 15 days of service of that order. The effective date of the order would be stayed, if either the

motor carrier or the intervening person seeks administrative review within the required timeframe, unless the Assistant Administrator finds good cause not to stay the order. Should neither the motor carrier nor the intervening person seek administrative review, the order would become a Final Agency Order 20 days after being served. Failure to submit a petition for administrative review would constitute a waiver of the right to contest the order.

Paragraph (e) would establish the procedures for motor carriers and intervening persons to petition for administrative review of an order issued under this section. If a person did not intervene under paragraph (c), he or she would have waived the right to seek administrative review under this section. Any party seeking administrative review under this section would be limited to challenging errors of fact and/or law. The Assistant Administrator would review the petition(s), and his or her decision regarding the petition(s) would become the Final Agency Order.

Section 385.915

The Agency Official would be able to initiate a proceeding to revoke the motor carrier's operating authority registration for failure to comply with a suspension or compliance order issued under § 385.913. FMCSA's ability to revoke a motor carrier's operating authority registration is limited to specific circumstances. Under FMCSA's current statutory authority, the Agency may revoke a motor carrier's operating authority registration only after: (1) Issuing an order to the registrant requiring compliance with the statute, an FMCSA regulation, or a condition of the operating authority registration; and (2) the registrant willfully does not comply with the order for a period of 30 days (49 U.S.C. 13905(d)). That means that, under this proposed rule, the Agency Official could only seek revocation if he or she determined that the motor carrier willfully failed to comply with the suspension or compliance order issued under § 385.913 for at least 30 days. For that reason, there must be a separate procedure under which the Agency Official could issue a suspension or compliance order prior to initiating a revocation proceeding under § 385.915.

The procedure for commencing a revocation proceeding under § 385.915 would be similar to the procedure for commencing a suspension proceeding under § 385.913. Under paragraph (b), the Agency Official would issue an order to the motor carrier directing it to show good cause within 30 days of service of the order why its operating authority registration should not be revoked for failure to comply with an order issued under § 385.913. The order would provide the motor carrier with notice of the alleged violation and would explain how to respond to the order. The order would inform any person who intervened in the initial proceeding that he or she may—but is not required to—intervene under paragraph (c) of this section. Any person who did not intervene in the initial proceeding in accordance with § 385.913(c) would have waived the right to participate under this section and would not be entitled to submit an independent response. Finally, the order would inform the motor carrier that the order would be effective on the 35th day after it was served if the motor carrier or an intervening person does not respond.

Paragraph (c) would establish an independent right for the person to intervene in the revocation proceeding, provided he or she intervened in the initial proceeding under § 385.913(c). If the person does not respond within 30 days of being served with the order, he or she waives the right to participate in the proceeding and any future proceedings that may arise out of the show cause order. This would include administrative review or rescission proceedings under this proposed rule.

Under paragraph (d), the Agency Official who issued the order would review all responses. After reviewing the responses, the Agency Official would either enter an order revoking the motor carrier's operating authority registration or terminating the proceeding. If the Agency Official issues an order revoking operating authority registration, the motor carrier and the intervening person would within 15 days of service have the right to seek administrative review of the order by the Assistant Administrator of the order. The effective date of the order would be stayed if either the motor carrier or intervening person seeks review, unless the Assistant Administrator finds good cause not to stay the order. If neither the motor carrier nor the intervening person seeks review, the order would become a Final Agency Order 20 days after being served. Failure to submit a petition for review would constitute a waiver of the right to contest the order. An order revoking registration under this section would remain in effect and prevent the motor carrier from obtaining new registration until that order is rescinded in accordance with § 385.917. Paragraph (e) would provide that any party seeking review under this section must follow the procedures set forth in § 385.913(e).

Section 385.917

Section 385.917 would permit the motor carriers as well as intervening persons to file petitions for rescission of an order issued under this proposed rule suspending or revoking the motor carrier's operating authority registration. Rescission would be appropriate when a motor carrier or intervening person has taken action to correct the deficiencies that resulted in the suspension or revocation. Motor carriers or intervening persons could seek rescission of an order in addition to, or in lieu of, seeking administrative review. However, any person who does not intervene under §§ 385.913(c) and/or 385.915(c) would have waived the right to petition for rescission.

Paragraph (b) would require that the petition be made in writing to the Agency Official who suspended or revoked the operating authority registration. Paragraph (c) would require the petitioning motor carrier or intervening person to include a copy of the order suspending or revoking the registration, a statement identifying the corrective action taken, and supporting documentation. Paragraph (d) would give the Agency Official 60 days in which to issue a written decision that includes the factual and legal basis for that decision.

Paragraph (e) provides that, if the Agency Official grants the petition, the order rescinding the suspension or revocation would be a Final Agency Order. A motor carrier that obtains an order rescinding an order of suspension could resume operations without seeking additional authorization, as long as it was otherwise eligible under FMCSA's regulations. A motor carrier whose order of revocation is rescinded, however, must reapply for and receive operating authority registration as a new entrant under 49 CFR part 385 before resuming operations.

Paragraph (f) would provide that if the Agency Official denied the petition for rescission, the motor carrier or intervening person could petition the Assistant Administrator for administrative review of this decision. Motor carriers or intervening persons would be required to serve a petition for review with the Assistant Administrator within 15 days after service of the order denying the petition for rescission. The petitioner would be required to identify the disputed factual or procedural issues relevant to the denial of the petition for rescission and would not be permitted to challenge the underlying suspension or revocation order. Paragraph (g) would give the Assistant Administrator 60 days to issue a written

decision, which would become the Final Agency Order.

Section 385.919

Section 385.919 would clarify that orders issued under the proposed rule would not amend or supersede existing FMCSA orders, prohibitions, or requirements. Orders issued under the new rule would be separate from and in addition to existing orders, prohibitions, or requirements. Rescission of an order suspending or revoking operating authority registration under this proposed rule would not affect other suspension or revocation orders either pending or in effect at the time of rescission. Once an order is rescinded, a motor carrier would not be able to resume operations unless it was otherwise eligible under FMCSA's regulations and was in compliance with any other orders issued by the Agency.

Section 385.921

Section 385.921 would clarify that existing statutory civil and criminal penalties and sanctions could apply to motor carriers subject to enforcement under this proposed rule. These motor carriers could be subject to civil and criminal penalties, regardless of whether the Agency Official determines that suspension, revocation, or other remedial action is appropriate. A motor carrier that takes corrective action after receiving notice of a show cause order, but before a final order is entered, would not necessarily avoid civil or criminal penalties. An intervening person or any other person whose conduct precipitates an enforcement action would not be subject to civil or criminal penalties under this section, if that person does not hold operating authority registration. Currently, maximum civil penalties for violations of Subchapter III of Title 49, United States Code (which includes section 31135) are $11,000 per violation. The criminal penalties for knowingly and willfully violating Subchapter III include up to one year's imprisonment and a fine not to exceed $25,000.

Section 385.923

Section 385.923 would provide that the regulations governing the service of documents and the computation of time at 49 CFR §§ 386.6 and 386.8 would apply to proceedings under this proposed rule.

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

This proposed rule would add a new paragraph (i) to Appendix A to Part 386, establishing a penalty of up to $11,000 for each day that a motor carrier operated in violation of an order suspending or revoking operating authority registration under this proposed rule based on 49 U.S.C. 521(b)(2)(A), as adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996.

Rulemaking Analyses

Executive Order 12866 (Regulatory Planning and Review) as Supplemented by E.O. 13563 and DOT Regulatory Policies and Procedures

This action does not meet the criteria for a significant regulatory action, either as specified in Executive Order 12866 as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011) or within the meaning of the DOT regulatory policies and procedures (44 FR1103, February 26, 1979). The estimated economic costs of the rule do not exceed the $100 million annual threshold nor does the Agency expect the rule to have substantial Congressional or public interest. Therefore, this rule has not been formally reviewed by the Office of Management and Budget.

FMCSA assessed the potential costs associated with this proposed rule. While there should be no cost associated with this rule, there could potentially be cost associated with the transfer to other firms of assets from motor carriers that have had their operating authority registration suspended or revoked, but found these costs to be insignificant. Moreover, these transfer costs could have been avoided by complying with the FMCSRs or declining to mask or otherwise conceal evidence of noncompliance with the FMCSRs. Motor carriers that have their operating authority registration suspended or revoked would lose revenue, but this revenue would be reallocated to other firms.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with a population of less than 50,000.[2]

Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Consequently, I certify the proposed action would not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Juan Moya, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

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 FMCSA, call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act of 1995

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

[2] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html.*

$143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year. Though this proposed rule would not result in such expenditure, FMCSA discusses the effects of this rule elsewhere in this preamble.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published February 24, 2004 (69 FR 9680), that this proposed action does not have any effect on the quality of the environment. Therefore, this NPRM is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(u) of Appendix 2. The Categorical Exclusion under paragraph 6(u) relates to regulations implementing ''Motor carrier identification and registration reports * * *'', which is the focus of this rulemaking. A Categorical Exclusion determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. No additional contributions to air emissions are expected from this rule and FMCSA expects the rule to not be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

FMCSA seeks comment on these determinations.

Paperwork Reduction Act

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 12988 (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.

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an Agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an Agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. The FMCSA has preliminarily determined that this proposed rule is not a covered regulatory action as defined under Executive Order 13045. This determination is based upon the fact that this proposed rule is not economically significant under Executive Order 12866, because the changes proposed in this rule would not have an impact of $100 million or more in any given year. In addition, this proposal would not constitute an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 13132 (Federalism)

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

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Executive Order 13211 (Energy Supply, Distribution, or Use)

The FMCSA has analyzed this proposed rule under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This proposal is not a significant energy action within the meaning of section 4(b) of the Executive Order. This proposal is a procedural action, is not economically significant, and would not have a significant adverse effect on the supply, distribution, or use of energy.

Privacy Impact Analysis

FMCSA conducted a Privacy Threshold Analysis for the NPRM and determined that the rulemaking has privacy implications that will be addressed by modifying the following two documentations: FMCSA Enforcement Management Information System (EMIS), Privacy Impact Assessment (PIA) and DOT/FMCSA 002 System of Records Notice (SORN) for Motor Carrier Safety Proposed Civil and Criminal Enforcement Cases. These documents have been placed in the docket.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

For the reasons stated in the preamble, FMCSA proposes to amend title 49 CFR, Code of Federal Regulations, chapter III, to read as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 14701, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.86.

2. Add a new subpart K, consisting of §§ 385.901 through 385.923, to read as follows:

Subpart K—Pattern or Practice of Safety Violations by Motor Carrier Management

385.901 Applicability.
385.903 Definitions.
385.905 Suspension or revocation of registration.
385.907 Regulatory noncompliance.

385.909 Pattern or practice of avoiding, masking, or concealing.
385.911 Common ownership, management, control or familial relationship.
385.913 Suspension proceedings.
385.915 Revocation proceedings.
385.917 Petitions for rescission.
385.919 Other orders unaffected.
385.921 Penalties.
385.923 Service and computation of time.

Subpart K—Pattern or Practice of Safety Violations by Motor Carrier Management

§ 385.901 Applicability.

The requirements in this subpart apply to for-hire motor carriers, employers, officers and persons registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368. When used in this subpart, the term ''motor carrier'' includes all for-hire motor carriers, employers, officers and other persons, however designated, that are registered under 49 U.S.C. 13902, 49 CFR part 365, and 49 CFR part 368.

§ 385.903 Definitions.

As used in this subpart:

Agency Official means the Director of FMCSA's Office of Enforcement and Compliance or his or her designee.

Officer means an owner, director, chief executive officer, chief operating officer, chief financial officer, safety director, vehicle maintenance supervisor, and driver supervisor of a motor carrier, regardless of the title attached to those functions, and any person, however designated, exercising controlling influence over the operations of a motor carrier.

§ 385.905 Suspension or revocation of registration.

(a) *General.* (1) If a motor carrier engages or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety under this subchapter, FMCSA may suspend or revoke the motor carrier's registration.

(2) If a motor carrier permits any person to exercise controlling influence over the motor carrier's operations and that person engages in or has engaged in a pattern or practice of avoiding compliance, or masking or otherwise concealing noncompliance, with regulations on commercial motor vehicle safety under this subchapter while acting on behalf of any motor carrier, FMCSA may suspend or revoke the motor carrier's registration.

(3) If two or more motor carriers use common ownership, common management, common control, or common familial relationship to enable any or all such motor carriers to avoid compliance, or mask or otherwise conceal noncompliance with regulations under this subchapter, FMCSA may suspend or revoke the motor carriers' registrations.

(b) *Determination.* (1) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with this subpart, upon a determination that the motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

(2) The Agency Official may issue an order to revoke or suspend a motor carrier's registration, or require compliance with this subpart, upon a determination that the motor carrier permitted a person to exercise controlling influence over the motor carrier's operations if that person engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking or otherwise concealing regulatory noncompliance.

(3) The Agency Official may issue an order to revoke or suspend two or more motor carriers' registrations, or require compliance with this subpart, upon a determination that the motor carriers use or have used common ownership, common management, common control, or common familial relationships to enable any or all such motor carriers to avoid compliance, or to mask or otherwise conceal noncompliance with regulations under this subchapter.

§ 385.907 Regulatory noncompliance.

A motor carrier or person acting on behalf of a motor carrier avoids regulatory compliance or masks or otherwise conceals regulatory noncompliance by, independently or on behalf of another motor carrier, failing to or concealing failure to:

(a) Comply with statutory or regulatory requirements prescribed under 49 U.S.C., Chapter 311, subchapter III;

(b) Comply with an FMCSA or State order issued to redress violations of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III;

(c) Pay a civil penalty assessed for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III; or

(d) Respond to an enforcement action for a violation of a statutory or regulatory requirement prescribed under 49 U.S.C., Chapter 311, subchapter III.

§ 385.909 Pattern or practice of avoiding, masking or concealing.

The Agency Official may determine that a motor carrier or person acting on behalf of a motor carrier engages or has engaged in a pattern or practice of avoiding regulatory compliance, or masking or otherwise concealing regulatory noncompliance for purposes of this subpart, by considering, among other things, the following factors, which, in the case of persons acting on behalf of a motor carrier, may be related to conduct undertaken on behalf of any motor carrier:

(a) The frequency, remoteness in time, or continuing nature of the conduct;

(b) The extent to which the regulatory violations caused by the conduct create a risk to safety;

(c) The degree to which the conduct has affected the safety of operations, including taking into account any crashes, deaths, or injuries associated with the conduct;

(d) Whether the motor carrier or person acting on a motor carrier's behalf knew or should have known that the conduct violated applicable statutory or regulatory requirements;

(e) Pending or closed enforcement actions, if any;

(f) Whether the motor carrier or person acting on a motor carrier's behalf engaged in the conduct for the purpose of avoiding compliance or masking or otherwise concealing noncompliance; and

(g) In the case of a person acting on a motor carrier's behalf, the extent to which the person exercises a controlling influence on the motor carrier's operations.

§ 385.911 Common ownership, management, control or familial relationship.

(a) The Agency Official may determine that two or more motor carriers have common ownership, common management, common control or common familial relationship if there is substantial continuity between the motor carriers such that one is merely a continuation of the other.

(b) In making the determination in paragraph (a) of this section, the Agency Official may consider, among other things, the following factors:

(1) Whether a new or affiliated motor carrier was used for the purpose of avoiding compliance or masking or otherwise concealing noncompliance with the regulations prescribed under 49 U.S.C., Chapter 311, subchapter III. In weighing this factor, the Agency Official may consider the stated business purpose for the creation of the new or affiliated motor carrier;

(2) The motor carriers' safety performance histories, including, among other things, safety violations and enforcement actions, if any;

(3) Consideration exchanged for assets sold or transferred between motor carriers;

(4) Dates the motor carriers were created, dissolved or ceased operations;

(5) Commonality of shareholders, investors, officers, managers and employees;

(6) The relationships, if any, between the motor carriers' shareholders, investors, officers, managers, employees or other persons;

(7) Commonality or proximity of physical or mailing addresses, telephone, fax numbers, or email addresses;

(8) Identity of motor vehicle equipment;

(9) Continuity of liability insurance policies or commonality of coverage under such policies;

(10) Continuation of facilities and other physical assets;

(11) Continuity or commonality of nature and scope of operations, including customers for whom transportation is provided; and

(12) Continuation or commonality of advertising, corporate name, or other acts through which the motor carriers hold themselves out to the public.

§ 385.913 Suspension proceedings.

(a) *General.* The Agency Official may issue an order to suspend a motor carrier's registration based on a determination made in accordance with § 385.905.

(b) *Commencement of proceedings.* The Agency Official commences a proceeding under this section by issuing an order, to the motor carrier and, if the proceeding is based on the conduct of another person, by also serving a copy on the person alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section, which:

(1) Provides notice that the Agency is considering whether to suspend the motor carrier's registration;

(2) Provides notice of the factual and legal basis for the order;

(3) Directs the motor carrier to show good cause within 30 days why its registration should not be suspended;

(4) Informs the motor carrier that its response to the show cause order must be in writing and include all documentation, if any, the motor carrier wants considered;

(5) Informs the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provides notice to the person(s) who are alleged to have engaged in the pattern or practice that resulted in the proceeding instituted under this section, if any, of their right to intervene in the proceeding; and

(7) Informs the motor carrier that its registration will be suspended on the 35th day after service of the order, if the motor carrier or an intervening person does not respond to the order.

(c) *Right of individual person(s) to intervene.* A person(s) alleged to have engaged in the pattern or practice that resulted in a proceeding instituted under this section may intervene in the proceeding. The person(s) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene.

(d) *Review of response.* The Agency Official will review the responses to the order to show cause and determine whether the motor carrier's registration should be suspended.

(1) The Agency Official may take the following actions:

(i) If the Agency Official determines that the motor carrier's registration should be suspended, he or she will enter an order suspending the registration;

(ii) If the Agency Official determines that it is not appropriate to suspend the motor carrier's registration, he or she may enter an order directing the motor carrier to correct the compliance deficiencies; or

(iii) If the Agency Official determines the motor carrier's registration should not be suspended and a compliance order is not warranted, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to suspend the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition the Assistant Administrator for administrative review of the order within 15 days of service of the order suspending registration;

(ii) Provide notice that a timely petition for administrative review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely petition for administrative review constitutes waiver of the right to contest the order suspending the registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(e) *Administrative review.* The motor carrier or the intervening person(s) may petition the Assistant Administrator for review of an order issued under this section. The petition must be in writing and served on the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Attention: Adjudications Counsel or by electronic mail to *FMCSA.Adjudication@dot.gov.* A copy of the petition must also be served on the Agency Official.

(1) A petition for review must be served within 15 days of the service date of the order for which review is requested. Failure to timely request review waives the right to review.

(2) A petition for review must include:

(i) A copy of the order in dispute;

(ii) A copy of the petitioner's response to the order in dispute, with supporting documents if any;

(iii) A statement of all factual and procedural issues in dispute; and

(iv) Written argument in support of the petitioner's position regarding the procedural or factual issues in dispute.

(3) The Agency Official may serve a response to the petition for review no later than 15 days following service of the petition.

(4) The Assistant Administrator may ask the parties to submit additional information or attend a conference to facilitate review.

(5) The Assistant Administrator will issue a written decision on the petition for review within 30 days of the close of the time period for serving a response to the petition for review or the date of service of the response, whichever is earlier.

(6) If a petition for review is timely served in accordance with this section, the disputed order is stayed, pending the Assistant Administrator's review. The Assistant Administrator may enter an order vacating the automatic stay in accordance with the following procedures:

(i) The Agency Official may file a motion to vacate the automatic stay demonstrating good cause why the order should not be stayed. The Agency Official's motion must be in writing, state the factual and legal basis for the motion, be accompanied by affidavits or other evidence relied on, and be served on the petitioner and Assistant Administrator.

(ii) The petitioner may file an answer in opposition, accompanied by affidavits or other evidence relied on. The answer must be served within 10 days of service of the motion.

(iii) The Assistant Administrator will issue a decision on the motion to vacate within 10 days of the close of the time period for serving the answer to the motion. The 30-day period for review of the petition for review in paragraph (e)(5) of this section is tolled from the time the Agency Official's motion to lift a stay is served until the Assistant Administrator issues a decision on the motion.

(7) The Assistant Administrator's decision on a petition for review of an order issued under this section constitutes the Final Agency Order.

§ 385.915 Revocation proceedings.

(a) *General.* The Agency Official may issue an order to revoke a motor carrier's registration, if he or she determines that the motor carrier has willfully violated an order issued under § 385.913(d)(1)(i) or (ii), for a period of at least 30 days.

(b) *Commencement of proceedings.* The Agency Official may commence a proceeding under this section by issuing an order to the motor carrier and serving a copy on the person(s), if any, who intervened under § 385.913(c). The order must:

(1) Provide notice that the Agency is considering whether to revoke the motor carrier's registration;

(2) Provide notice of the factual and legal basis for the order;

(3) Direct the motor carrier to show good cause within 30 days why registration should not be revoked;

(4) Inform the motor carrier that the response to the show cause order must be in writing and include all documentation, if any, the motor carrier wants considered;

(5) Inform the motor carrier of the address and name of the person to whom the response should be directed and served;

(6) Provide notice to the person(s), if any, who have intervened under § 385.913(c) of their right to intervene in the proceeding; and

(7) Inform the motor carrier that its registration will be revoked on the 35th day after service of the order if the motor carrier or an intervening person does not respond to the order.

(c) *Right of individual person(s) to intervene.* The person(s) who exercised their right to intervene under § 385.913(c) may—but are not required to—serve a separate response and supporting documentation to an order served under paragraph (b) of this section, within 30 days of being served with the order. Failure to timely serve a response constitutes waiver of the right to intervene. A person who did not intervene under § 385.913(c) may not intervene under this section.

(d) *Review of response.* The Agency Official will review the responses to the order to show cause and determine whether the motor carrier's registration should be revoked.

(1) The Agency Official will take one of the following actions:

(i) If the Agency Official determines the motor carrier's registration should be revoked, he or she will enter an order revoking the motor carrier's registration; or

(ii) If the Agency Official determines the motor carrier's registration should not be revoked, he or she will enter an order terminating the proceeding.

(2) If the Agency Official issues an order to revoke the motor carrier's registration, the order will:

(i) Provide notice to the motor carrier and any intervening person(s) of the right to petition the Assistant Administrator for review of the order within 15 days of service of the order revoking the motor carrier's registration;

(ii) Provide notice that a timely petition for review will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(iii) Provide notice that failure to timely petition for review constitutes waiver of the right to contest the order revoking the motor carrier's registration and will result in the order becoming a Final Agency Order 20 days after it is served.

(iv) Provide notice that a Final Agency Order revoking the motor carrier's registration will remain in effect and bar approval of any subsequent application for registration until rescinded by the Agency Official pursuant to § 385.917.

(e) *Administrative review.* The motor carrier or an intervening person may petition the Assistant Administrator for review of an order issued under this section by following the procedures set forth in § 385.913(e).

§ 385.917 Petitions for rescission.

(a) A motor carrier or intervening person may submit a petition for rescission of an order suspending or revoking registration under this subpart based on action taken to correct the deficiencies that resulted in the suspension or revocation.

(b) A petition for rescission must be made in writing to the Agency Official.

(c) A petition for rescission must include a copy of the order suspending or revoking the motor carrier's registration, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(d) The Agency Official will issue a written decision on the petition within 60 days of service of the petition. The decision will state the factual and legal basis for the decision.

(e) If the Agency Official grants the petition, the written decision is the Final Agency Order. Rescinding an order revoking a motor carrier's registration does not have the effect of reinstating the revoked registration. In order to resume operations in interstate commerce, the motor carrier whose registration was revoked must reapply for registration as a new entrant under 49 CFR part 385 and comply with all applicable new entrant requirements.

(f) If the Agency Official denies the petition, the petitioner may submit a petition for review of the denial with the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Attention: Adjudication Counsel, or by electronic mail to *FMCSA.Adjudication@dot.gov.* The petition for review of the denial must be served within 15 days of the service of the decision denying the petition for rescission. The petition for review must identify the disputed factual or procedural issues with respect to the denial of the petition for rescission. The petition for review may not, however, challenge the basis of the underlying suspension or revocation order.

(g) The Assistant Administrator will issue a written decision on the petition for review within 60 days. The Assistant Administrator's decision constitutes the Final Agency Order.

§ 385.919 Other orders unaffected.

If a motor carrier subject to an order issued under this subpart is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this subpart is in addition to, and does not amend or supersede the other order, prohibition, or requirement. A motor carrier subject to an order issued under this subpart remains subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of regulations governing their operations.

§ 385.921 Penalties.

(a) Any motor carrier that the Agency determines engages or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance or violates an order issued under this subpart shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

(b) Any motor carrier who permits the exercise of controlling influence over its operations by any person that the Agency determines, under this subpart, engages in or has engaged in a pattern or practice of avoiding regulatory compliance or masking noncompliance while acting on behalf of any motor carrier, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

(c) Any two or more motor carriers that the Agency determines, under this subpart, use or have used common ownership, common management, common control, or common familial relationships to enable such motor carriers to avoid compliance, or mask or otherwise conceal noncompliance, shall be subject to the civil or criminal penalty provisions of 49 U.S.C. 521(b) and applicable regulations.

§ 385.923 Service and computation of time.

Service of documents and computations of time will be made in accordance with §§ 386.6 and 386.8 of this subchapter.

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

3. The authority citation for part 386 is revised to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; 49 CFR 1.86 and 1.87; and Sec. 32112, Pub. L. 112–141.

4. In Appendix A to Part 386, add a new paragraph IV.j. to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notice and Orders

* * * * *

IV. * * *

j. Violation—Conducting operations during a period of suspension or revocation under §§ 385.913 or 385.915.

Penalty—Up to $11,000 for each day that operations are conducted during the suspension or revocation period.

Issued on: October 31, 2012 .

Anne S. Ferro,

Administrator.

[FR Doc. 2012–27569 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 121022572–2572–01]

RIN 0648–XC318

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Adjustment to 2013 Annual Catch Limits

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

ACTION: Proposed rule; request for comments.

SUMMARY: Through this action NMFS proposes to reduce the 2013 annual catch limits (ACLs) for the Atlantic herring (herring) fishery to account for catch overages in 2011 and to prevent overfishing.

DATES: Public comments must be received no later than 5 p.m., Eastern Standard Time, on December 13, 2012.

ADDRESSES: Copies of supporting documents, the 2010–2012 Herring Specifications and Amendment 4 to the Herring Fishery Management Plan (FMP) are available from: Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950, telephone (978) 465–0492. These documents are also accessible via the Internet at *http://www.nero.nmfs.gov.*

You may submit comments, identified by NOAA–NMFS–2012–0197, 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–2012–0197 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:* NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Adjustment to 2013 Herring Catch Limits.''
- *Fax:* (978) 281–9135, Attn: Lindsey Feldman.

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) 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 formats only.

FOR FURTHER INFORMATION CONTACT: Lindsey Feldman, Fishery Management Specialist, 978–675–2179, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

The New England Fishery Management Council (Council) developed herring specifications for 2010–2012, which were approved by NMFS on August 12, 2010 (75 FR 48874). The stock-wide herring ACL (91,200 mt) is divided among three management areas, one of which has two sub-areas. Area 1 is located in the Gulf of Maine (GOM) and is divided into an inshore section (Area 1A) and an offshore section (Area 1B). Area 2 is located in the coastal waters between Massachusetts and North Carolina, and Area 3 is on Georges Bank (GB). The herring stock complex is considered to be a single stock, but there are inshore (GOM) and offshore (GB) stock components. The GOM and GB stock components segregate during spawning and mix during feeding and migration. Each management area has its own sub-ACL to allow greater control of the fishing mortality on each stock component. The management area sub-ACLs established for 2010–2012 were: 26,546 mt for Area 1A, 4,362 mt for Area 1B, 22,146 mt for Area 2, and 38,146 mt for Area 3.

Amendment 4 to the Herring FMP (Amendment 4) (76 FR 11373, March 2, 2011) revised the specification-setting process, bringing the Herring FMP into compliance with ACL and accountability measure (AM) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). Under the FMP, if NMFS determines catch will reach 95 percent

of the sub-ACL allocated to a management area or seasonal period, then NMFS prohibits vessels from fishing for, possessing, catching, transferring, or landing more than 2,000 lb (907.2 kg) of herring per trip from that area or period. This AM slows catch to prevent or minimize catch in excess of a management area or seasonal period sub-ACL. As a way to account for ACL overages in the herring fishery, Amendment 4 established an AM that provided for overage deductions. If the catch of herring in any given fishing year exceeds any ACL or sub-ACL, the overage will subsequently be deducted from the corresponding ACL/sub-ACL. A range of reasonable alternatives to the current AMs will be considered as a part of the 2013–2015 specifications process. Until then, the current AMs, including the overage deduction addressed in this proposed rule, are still in place.

Fishing year 2010 was the first year that NMFS monitored herring catch against the management area sub-ACLs. Herring catch from Areas 1B and 1A exceeded their 2010 allocations by 1,639 mt and 1,878 mt respectively. NMFS deducted the 2010 overages from the 2012 herring specifications in a final rule, which became effective on February 24, 2012 (77 FR 10978). Due to the overages that occurred in 2010, NMFS had previously revised vessel reporting requirements to obtain more timely catch reports (76 FR 54385, September 1, 2011). Accordingly, limited access herring vessels are now required to report herring catch daily via vessel monitoring systems (VMS), open access herring vessels are required report catch weekly via the interactive voice response system (IVR), and all herring-permitted vessels are required to submit vessel trip reports (VTRs) weekly.

The 2011 Atlantic herring fishing year began on January 1 and ended on December 31, 2011. Based on dealer, VTR, and observer data, 2011 herring catch exceeded the sub-ACL in Area 1A by 1,425 mt. There were no sub-ACL overages in the other herring management areas. Therefore, NMFS is required to deduct the Area 1A overage in 2011 from the 2013 Area 1A sub-ACL. At the time of this proposed rule, the Atlantic herring 2013 specifications have not yet been finalized. The 2013–2015 herring specifications are currently in development and are not likely to be effective prior to the 2013 herring fishing year, which begins on January 1, 2013.

The Council's Scientific and Statistical Committee (SSC) met on September 13, 2012, to recommend acceptable biological catch (ABC) levels for the herring fishery. The Council is expected to take final action at its November meeting, and a proposed and final rule will follow. Although the 2013 herring specifications won't be in place on January 1, 2013, the regulations at § 648.200(d) include a provision that allows the previous years' specifications to roll over when the specifications are delayed past the start of the fishing year. Therefore, the 2012 herring specifications will be in place on January 1, 2013, until the 2013–2015 specifications are finalized, and the 2011 overage will be deducted initially from the 2011 herring specifications. Once the 2013–2015 specifications are final, the 2011 overage will be deducted from that amount as part of the rulemaking for the 2013–2015 specifications.

Proposed Measures

In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 1,425-mt 2011 overage in Area 1A from the 2013 Area 1A sub-ACL. Since the 2012 herring specifications will not be in place on January 1, 2013, this action proposes adjusting the rolled over sub-ACL in Area 1A until the 2013–2015 specifications are finalized. Therefore, on January 1, 2013, the sub-ACL for Area 1A would be revised from 26,546 mt to 25,121 mt (a reduction of 1,425 mt) to account for the 2011 catch overage. When the 2013 specifications are finalized, we will deduct the 1,425-mt overage from the final 2013 Area 1A sub-ACL.

NMFS determined 2011 herring landings based on dealer reports (Federal and state) containing herring purchases, supplemented with VTRs (Federal and State of Maine) containing herring landings. NMFS compared dealer reports to VTRs for all trips that landed herring in 2011. Because VTRs are generally a hail weight or estimate of landings, with an assumed 10 percent margin of error, dealer reports are a more accurate source of landings data. However, if the amount of herring reported via VTR exceeded by 10-percent or more the amount of herring reported by the dealer, it was assumed that the dealer report for that trip was in error. In those instances, the amount of herring reported via VTR was used to determine the amount of herring landed on that trip. Herring landings in the VTR database were checked for accuracy against the scanned image of the paper VTRs submitted by the owner/operator of the vessel. VTR landings were also verified by comparing reported landings to harvesting potential and applicable possession limits for each vessel. Federal dealer reports and state reports for 2011 were finalized in June 2012.

Herring landings reported on VTRs were assigned to herring management areas using latitude and longitude coordinates. VTRs with missing or invalid latitude/longitude coordinates were manually corrected using the statistical area reported on the VTR. If no statistical area was reported on the VTR, then a combination of recent fishing activity and a review of the scanned images of the original VTR were used to assign landings to a herring management area. Dealer reports without corresponding VTRs were prorated to a herring management area using the proportion of total herring landings stratified by week, gear type, and management area.

NMFS resolved data errors resulting from misreporting. This was done by reviewing the 2011 herring data, and comparing VMS daily catch reports. Common dealer reporting issues included: Missing dealer reports; incorrect or missing VTR serial numbers; incorrect or missing vessel permit numbers; and misidentification of pair trawling vessels landing catch. VMS daily catch reports and VTRs had similar errors. Common VMS daily catch report errors included: Missing reports; data entry mistakes (including too many or not enough zeros); and missing kept all data reported by haddock stock area. Common VTR reporting issues included: Missing VTRs; missing or incorrect dealer information; incorrect amounts of landed herring; incorrect dates; and missing or incorrect statistical area. The quality of herring landings data is affected by unresolved data errors; therefore, NMFS strongly encourages vessel owner/operators and dealers to double check reports for accuracy and ensure reports are submitted on a timely basis.

Discards of herring in 2011 were determined by extrapolating Northeast Fisheries Observer Program (observer) data to the entire herring fishery. The amount of observed herring discards (''Atlantic herring'' and ''herring unknown'') was divided by the amount of observed fish (all species) landed. That discard ratio was then multiplied by the amount of all fish landed for each trip to calculate total amount of herring discards in 2011. The amount of discards was determined for each management area and gear type. Observer data for 2011 were finalized on March 30, 2012.

NMFS calculated the total herring catch for 2011 by adding the amount of herring landings to the amount of

herring discarded. The methodology used by NMFS to calculate the amount of landed herring and the amount of discarded herring was reviewed and approved by the Council's Herring Plan Development Team (PDT) in August 2012. The final 2011 herring catch data differs from the catch data presented on the NOAA Fisheries Northeast Regional Office Web page (*www.nero.noaa.gov*) at the end of the 2011 fishing year due to differences in real-time quota monitoring and end of the year accounting methods. Herring catch was monitored in real time using weekly IVR reports supplemented with dealer data until September 8, 2011, when the VMS catch reports were required for limited access vessels. From September 8, 2011, through the remainder of the fishing year, herring catch was monitored in real-time using daily VMS catch reports for limited access herring vessels, and IVR reports for open access vessels. While using daily VMS catch reports are crucial for monitoring high volume fisheries such as the herring fishery in real-time, the final 2011 herring catch estimates used a combination of dealer and VTR data, which tends to have fewer errors and is more accurate. In addition, the year-end accounting method includes any late reported landings. Therefore, the final 2011 herring catch estimates can differ (sometimes significantly) from the real-time estimates shown on the NOAA Fisheries Northeast Regional Office Web site.

The following chart contains information on the 2011 herring fishery:

TOTAL CATCH OF ATLANTIC HERRING IN 2011

Management area	Sub-ACL (mt)	Landed herring (mt)	Discarded herring (mt)	Total herring catch (mt)	Herring catch as percentage of sub-ACL
1A	26,546	30,621	55	30,676	105
1B	4,362	3,528	2	3,530	81
2	22,146	14,919	81	15,001	68
3	38,146	36,966	71	37,038	97

Classification

Pursuant to section 304(b)(1)(A) of the MSA, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Herring FMP, other provisions of the MSA, and other applicable law, subject to further consideration after public comment.

The National Environmental Policy Act analysis to support this action was completed in Amendment 4 (76 FR 11373, March 2, 2011).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA) in the Environmental Assessment for Amendment 4. The IRFA describes the economic impact that herring accountability measures, including overage deductions, would have on small entities. A summary of the analysis and additional analysis on the economic impact of this proposed rule follows. A copy of the Amendment 4 analysis is available from the Council or NMFS (see **ADDRESSES**) or via the Internet at *http://www.nero.noaa.gov.*

Statement of Objective and Need

In 2011, there was a herring catch limit overage in herring management area 1A equal to 1,425 mt. In accordance with regulations at § 648.201(a)(3), this action proposes to deduct the 2011 management Area 1A overage from the 2013 management Area 1A catch limits. Since the 2013 specifications will not be finalized by January 1, 2013, and the 2012 specifications will be in place at the start of the herring fishing year, NMFS proposes to revise the rolled over sub-ACL for Area 1A for 2013 from 26,546 mt to 25,121 mt to account for 2011 the catch overage. When the 2013 herring specifications are finalized, NMFS will deduct the 1,425 mt from the final 2013 Area 1A sub-ACL.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

In 2011, 93 vessels were issued limited access herring permits, and 2,149 were issued open access herring permits. All participants in the herring fishery are small entities as defined by the SBA under the Regulatory Flexibility Act, as none grossed more than $4 million annually, so there would be no disproportionate economic impacts on small entities.

Total herring revenue in 2011 equaled approximately $22.4 million for limited access vessels and $43,000 for open access vessels. The reduced sub-ACL in Areas 1A is estimated to equal approximately $400,000 in lost revenue for the fishery in 2013. While this action reduces the amount of fish available for harvest, both the fishery-wide and individual-vessel economic effects are anticipated to be minimal, because the reduction is relatively minor, as compared with the fishery's overall revenue, and because it only affects one of the herring management areas.

Minimizing Significant Economic Impacts on Small Entities

Amendment 4 analyzed the effects of deducting ACL/sub-ACL overages from the subsequent corresponding ACL/sub-ACL. During a year when the ACL/sub-ACL is exceeded, fishery participants may benefit economically from higher catch. In the subsequent year, when the amount of the overage is deducted from that ACL/sub-ACL and the amount of harvest is lower, fishery participants may experience negative economic impacts. Since the participants in the fishery from year to year vary, there could be a minor economic impact on the fishery participants operating in Area 1A in 2013 due to the overage deduction from 2011.

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

Dated: November 7, 2012.

Samuel D. Rauch III,

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

[FR Doc. 2012–27543 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 219
Tuesday, November 13, 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

Forest Service

Prince of Wales Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Cancellation of meeting.

SUMMARY: The Prince of Wales Resource Advisory Committee cancelled the Resource Advisory Committee meeting to be held on September 28, 2012. The purpose of this meeting was to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2008.

FOR FURTHER INFORMATION CONTACT: Rebecca Sakraida, RAC Coordinator Craig Ranger District, Tongass National Forest, (907) 826–1601 or *rsakraida@fs.fed.us.*

Maeve L. Taylor,

District Ranger.

[FR Doc. 2012–27453 Filed 11–9–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a meeting of the Nevada Advisory Committee (Committee) to the Commission will convene on Wednesday, December 12, 2012, at 1:30 p.m. and adjourn at approximately 3:00 p.m. The meeting will take place at the Department of Employment, Training and Rehabilitation, 2800 East St. Louis Ave., Las Vegas, Nevada 89104. The purpose of the meeting is for the Committee to consider a draft report on bullying in public schools and plan future activities.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office by January 12, 2013. The mailing address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles St., Suite 2010, Los Angeles, CA 90032. Persons wishing to email their comments may do so to *atrevino@usccr.gov.* Persons that desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, November 6, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–27455 Filed 11–9–12; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the California Advisory Committee (Committee) to the Commission will hold a briefing meeting and a planning meeting on Wednesday, December 5, 2012. The briefing meeting will begin at 1:30 p.m. and adjourn about 2:30 p.m. The purpose of the briefing meeting is for the members to receive information on immigration issues in the state. The planning meeting will begin at approximately 2:30 p.m. and adjourn at about 3:30. The purpose of the planning meeting is for the Committee to consider future activities. The meetings will be held at the Mexican American Legal Defense and Education Fund (MALDEF), 634 South Spring Street, 11th Floor, Los Angeles, CA 90014.

Members of the public are entitled to submit written comments. The comments must be received in the Western Regional Office of the Commission by January 5, 2013. The address is Western Regional Office, U.S. Commission on Civil Rights, 300 N. Los Angeles Street, Suite 2010, Los Angeles, CA 90012. Persons wishing to email their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Angelica Trevino, Office Manager, Western Regional Office, at (213) 894–3437, (or for hearing impaired TDD 913–551–1414), or by email to *atrevino@usccr.gov.* Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Western Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *www.usccr.gov,* or to contact the Western Regional Office at the above email or street address. The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, November 6, 2012.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2012–27450 Filed 11–9–12; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Fire Codes: Request for Public Input for Revision of Codes and Standards

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: This notice contains the list of National Fire Protection Association (NFPA) documents opening for Public Input, and it also contains information on the NFPA Revision Process. The National Institute of Standards and Technology (NIST) is publishing this notice on behalf of the National Fire Protection Association (NFPA) to announce the NFPA's proposal to revise some of its fire safety codes and standards and requests Public Input to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards.

DATES: Interested persons may submit Public Input by 5:00 p.m. EST/EDST on or before the date listed with the code or standard.

ADDRESSES: Amy Beasley Cronin, Secretary, Standards Council, NFPA, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

FOR FURTHER INFORMATION CONTACT: Amy Beasley Cronin, NFPA, Secretary, Standards Council, at above address, (617) 770–3000. David F. Alderman, NIST, 100 Bureau Drive, MS 2100, Gaithersburg, MD 20899, email: *david.alderman@nist.gov,* or at 301–975–4019.

SUPPLEMENTARY INFORMATION: The National Fire Protection Association (NFPA) proposes to revise some of its fire safety codes and standards and requests Public Input to amend existing or begin the process of developing new NFPA fire safety codes and standards. The purpose of this request is to increase public participation in the system used by NFPA to develop its codes and standards. The publication of this notice of request for Public Input by the National Institute of Standards and Technology (NIST) on behalf of NFPA is being undertaken as a public service; NIST does not necessarily endorse, approve, or recommend any of the standards referenced in the notice.

The NFPA process provides ample opportunity for public participation in the development of its codes and standards. All NFPA codes and standards are revised and updated every three to five years in Revision Cycles that begin twice each year and take approximately two years to complete. Each Revision Cycle proceeds according to a published schedule that includes final dates for all major events in the process. The Code Revision Process contains four basic steps that are followed for developing new documents as well as revising existing documents. Step 1: Public Input Stage, which results in the First Draft Report (formerly ROP); Step 2: Comment Stage, which results in the Second Draft Report (formerly ROC); Step 3: the Association Technical Meeting at the NFPA Conference & Expo; and Step 4: Standards Council consideration and issuance of documents.

Note: NFPA rules state that anyone wishing to make Amending Motions on the Second Draft Report must signal his or her intention by submitting a Notice of Intent to Make a Motion by 5:00 p.m. EST/EDST of the Deadline stated in the Second Draft Report. Certified motions will then be posted on the NFPA Web site. Documents that receive notice of proper Amending Motions (Certified Amending Motions) will be presented for action at the Association Technical Meeting at the NFPA Conference & Expo. Documents that receive no motions will be forwarded directly to the Standards Council for action on issuance.

For more information on these rules and for up-to-date information on schedules and deadlines for processing NFPA Codes and Standards, check the NFPA Web site at *www.nfpa.org,* or contact NFPA Codes and Standards Administration.

Background

The National Fire Protection Association (NFPA) develops building, fire, and electrical safety codes and standards. Federal agencies frequently use these codes and standards as the basis for developing Federal regulations concerning fire safety. Often, the Office of the Federal Register approves the incorporation by reference of these standards under 5 U.S.C. 552(a) and 1 CFR Part 51.

When a Technical Committee begins the development of a new or revised NFPA code or standard, it enters one of two Revision Cycles available each year. The Revision Cycle begins with the Call for Public Input, that is, a public notice asking for any interested persons to submit specific Input for developing or revising a code or standard. The Call for Public Input is published in a variety of publications.

Following the Call for Public Input period, the Technical Committee holds a meeting to consider all the submitted Public Input and make Revisions accordingly. A document known as the First Draft Report (formerly ROP), is prepared containing all the Public Input, the Technical Committee's response to each Input, as well as all Committee-generated First Revisions. The First Draft Report is then submitted for the approval of the Technical Committee by a formal written ballot. Any Revisions that do not receive approval by a two-thirds vote calculated in accordance with NFPA rules will not appear in the First Draft Report. If the necessary approval is received, the Revisions are published in the First Draft Report that is posted on the NFPA Web site at *www.nfpa.org* for public review and comment, and the process continues to the next step.

Once the First Draft Report becomes available, there is a ten-week comment period during which anyone may submit a Comment on the proposed changes in the First Draft Report. The Committee then reconvenes at the end of the Comment period and acts on all Comments.

As before, a two-thirds approval vote by written ballot of the eligible members of the Committee is required for approval of the Second Revisions. All of this information is compiled into a second report, called the Second Draft Report (formerly ROC), which, like the First Draft Report, is published, and is made available for public review for a five-week period.

The process of public input and review does not end with the publication of the First and Second Draft Reports. Following the completion of the Public Input and Comment periods, there is further opportunity for debate and discussion through the Association Technical Meeting that takes place at the NFPA Conference & Expo.

The Association Technical Meeting provides an opportunity for the Technical Committee Report (i.e., the First Draft Report and Second Draft Report) on each proposed new or revised code or standard to be presented to the NFPA membership for the debate and consideration of motions to amend the Report. Before making an allowable motion at an Association Technical Meeting, the intended maker of the motion must file, in advance of the session, and within the published deadline, a Notice of Intent to Make a Motion (NITMAM). A Motions Committee appointed by the Standards Council then reviews all notices and certifies all amending motions that are proper. Only these Certified Amending Motions, together with certain allowable

Follow-Up Motions (that is, motions that have become necessary as a result of previous successful amending motions) will be allowed at the Association Technical Meeting.

For more information on dates/locations of NFPA Technical Committee meetings and NFPA Conference & Expo, check the NFPA Web site at: *www.nfpa.org/tcmeetings*.

The specific rules for the types of motions that can be made and who can make them are set forth in NFPA's Regulations Governing the Development of NFPA Standards which should always be consulted by those wishing to bring an issue before the membership at an Association Technical Meeting.

Request for Public Input

Interested persons may submit Public Input supported by data, views, and substantiation. Public Input should be submitted online for each specific document (i.e., *www.nfpa.org/publicinput*). Public Input received by 5:00 p.m. EST/EDST on or before the closing date indicated with each code or standard would be acted on by the Committee, and then considered by the NFPA Membership at the Association Technical Meeting.

Document—edition	Document title	Public input closing date
NFPA 2—2011	Hydrogen Technologies Code	1/4/2013
NFPA 11—2010	Standard for Low-, Medium-, and High-Expansion Foam	1/4/2013
NFPA 12—2011	Standard on Carbon Dioxide Extinguishing Systems	1/4/2013
NFPA 12A—2009	Standard on Halon 1301 Fire Extinguishing Systems	1/4/2013
NFPA 13—2013	Standard for the Installation of Sprinkler Systems	5/31/2013
NFPA 13D—2013	Standard for the Installation of Sprinkler Systems in One- and Two-Family Dwellings and Manufactured Homes.	5/31/2013
NFPA 13E—2010	Recommended Practice for Fire Department Operations in Properties Protected by Sprinkler and Standpipe Systems.	1/4/2013
NFPA 13R—2013	Standard for the Installation of Sprinkler Systems in Low-Rise Residential Occupancies.	5/31/2013
NFPA 16—2011	Standard for the Installation of Foam-Water Sprinkler and Foam-Water Spray Systems.	1/4/2013
NFPA 20—2013	Standard for the Installation of Stationary Pumps for Fire Protection	7/8/2013
NFPA 24—2013	Standard for the Installation of Private Fire Service Mains and Their Appurtenances	5/31/2013
NFPA 31—2011	Standard for the Installation of Oil-Burning Equipment	1/4/2013
NFPA 33—2011	Standard for Spray Application Using Flammable or Combustible Materials	1/4/2013
NFPA 34—2011	Standard for Dipping, Coating, and Printing Processes Using Flammable or Combustible Liquids.	1/4/2013
NFPA 40—2011	Standard for the Storage and Handling of Cellulose Nitrate Film	7/8/2013
NFPA 45—2011	Standard on Fire Protection for Laboratories Using Chemicals	1/4/2013
NFPA 55—2013	Compressed Gases and Cryogenic Fluids Code	7/8/2013
NFPA 59A—2013	Standard for the Production, Storage, and Handling of Liquefied Natural Gas (LNG)	7/8/2013
NFPA 72—2013	National Fire Alarm and Signaling Code	5/20/2013
NFPA 73—2011	Standard for Electrical Inspections for Existing Dwellings	7/8/2013
NFPA 80—2013	Standard for Fire Doors and Other Opening Protectives	7/8/2013
NFPA 85—2011	Boiler and Combustion Systems Hazards Code	1/4/2013
NFPA 91—2010	Standard for Exhaust Systems for Air Conveying of Vapors, Gases, Mists, and Noncombustible Particulate Solids.	1/4/2013
NFPA 92—2012	Standard for Smoke Control Systems	1/4/2013
NFPA 101A—2013	Guide on Alternative Approaches to Life Safety	7/8/2013
NFPA 105—2013	Standard for the Installation of Smoke Door Assemblies and Other Opening Protectives.	7/8/2013
NFPA 110—2013	Standard for Emergency and Standby Power Systems	7/8/2013
NFPA 111—2013	Standard on Stored Electrical Energy Emergency and Standby Power Systems	7/8/2013
NFPA 120—2010	Standard for Fire Prevention and Control in Coal Mines	1/4/2013
NFPA 122—2010	Standard for Fire Prevention and Control in Metal/Nonmetal Mining and Metal Mineral Processing Facilities.	1/4/2013
NFPA 150—2013	Standard on Fire and Life Safety in Animal Housing Facilities	7/8/2013
NFPA 160—2011	Standard for the Use of Flame Effects Before an Audience	7/8/2013
NFPA 170—2012	Standard for Fire Safety and Emergency Symbols	1/4/2013
NFPA 204—2012	Standard for Smoke and Heat Venting	1/4/2013
NFPA 253—2011	Standard Method of Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source.	1/4/2013
NFPA 262—2011	Standard Method of Test for Flame Travel and Smoke of Wires and Cables for Use in Air-Handling Spaces.	1/4/2013
NFPA 265—2011	Standard Methods of Fire Tests for Evaluating Room Fire Growth Contribution of Textile or Expanded Vinyl Wall Coverings on Full Height Panels and Walls.	1/4/2013
NFPA 276—2011	Standard Method of Fire Tests for Determining the Heat Release Rate of Roofing Assemblies with Combustible Above-Deck Roofing Components.	1/4/2013
NFPA 286—2011	Standard Methods of Fire Tests for Evaluating Contribution of Wall and Ceiling Interior Finish to Room Fire Growth.	1/4/2013
NFPA 291—2013	Recommended Practice for Fire Flow Testing and Marking of Hydrants	5/31/2013
NFPA 303—2011	Fire Protection Standard for Marinas and Boatyards	7/8/2013
NFPA 307—2011	Standard for the Construction and Fire Protection of Marine Terminals, Piers, and Wharves.	7/8/2013
NFPA 312—2011	Standard for Fire Protection of Vessels During Construction, Conversion, Repair, and Lay-Up.	7/8/2013

Document—edition	Document title	Public input closing date
NFPA 326—2010	Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair.	1/4/2013
NFPA 329—2010	Recommended Practice for Handling Releases of Flammable and Combustible Liquids and Gases.	1/4/2013
NFPA 400—2013	Hazardous Materials Code	7/8/2013
NFPA 405—2010	Standard for the Recurring Proficiency of Airport Fire Fighters	1/4/2013
NFPA 408—2010	Standard for Aircraft Hand Portable Fire Extinguishers	1/4/2013
NFPA 409—2011	Standard on Aircraft Hangars	7/8/2013
NFPA 410—2010	Standard on Aircraft Maintenance	1/4/2013
NFPA 415—2013	Standard on Airport Terminal Buildings, Fueling Ramp Drainage, and Loading Walkways.	7/8/2013
NFPA 422—2010	Guide for Aircraft Accident/Incident Response Assessment	1/4/2013
NFPA 423—2010	Standard for Construction and Protection of Aircraft Engine Test Facilities	7/8/2013
NFPA 520—2010	Standard on Subterranean Spaces	1/4/2013
NFPA 556—2011	Guide on Methods for Evaluating Fire Hazard to Occupants of Passenger Road Vehicles.	7/8/2013
NFPA 557—2012	Standard for Determination of Fire Loads for Use in Structural Fire Protection Design.	1/4/2013
NFPA 600—2010	Standard on Industrial Fire Brigades	1/4/2013
NFPA 601—2010	Standard for Security Services in Fire Loss Prevention	1/4/2013
NFPA 701—2010	Standard Methods of Fire Tests for Flame Propagation of Textiles and Films	1/4/2013
NFPA 804—2010	Standard for Fire Protection for Advanced Light Water Reactor Electric Generating Plants.	1/4/2013
NFPA 805—2010	Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants.	1/4/2013
NFPA 806—2010	Performance-Based Standard for Fire Protection for Advanced Nuclear Reactor Electric Generating Plants Change Process.	1/4/2013
NFPA 820—2012	Standard for Fire Protection in Wastewater Treatment and Collection Facilities	7/8/2013
NFPA 850—2010	Recommended Practice for Fire Protection for Electric Generating Plants and High Voltage Direct Current Converter Stations.	1/4/2013
NFPA 851—2010	Recommended Practice for Fire Protection for Hydroelectric Generating Plants	1/4/2013
NFPA 853—2010	Standard for the Installation of Stationary Fuel Cell Power Systems	1/4/2013
NFPA 914—2010	Code for Fire Protection of Historic Structures	1/4/2013
NFPA 950—P*	Standard for Data Development and Exchange for the Fire Service	1/4/2013
NFPA 1003—2010	Standard for Airport Fire Fighter Professional Qualifications	1/4/2013
NFPA 1035—2010	Standard for Professional Qualifications for Fire and Life Safety Educator, Public Information Officer, and Juvenile Firesetter Intervention Specialist.	1/4/2013
NFPA 1071—2011	Standard for Emergency Vehicle Technician Professional Qualifications	7/8/2013
NFPA 1126—2011	Standard for the Use of Pyrotechnics Before a Proximate Audience	7/8/2013
NFPA 1128PYR—2013	Standard Method of Fire Test for Flame Breaks	7/8/2013
NFPA 1129PYR—2013	Standard Method of Fire Test for Covered Fuse on Consumer Fireworks	7/8/2013
NFPA 1145—2011	Guide for the Use of Class A Foams in Manual Structural Fire Fighting	7/8/2013
NFPA 1150—2010	Standard on Foam Chemicals for Fires in Class A Fuels	1/4/2013
NFPA 1201—2010	Standard for Providing Fire and Emergency Services to the Public	1/4/2013
NFPA 1221—2013	Standard for the Installation, Maintenance, and Use of Emergency Services Communications Systems.	7/8/2013
NFPA 1250—2010	Recommended Practice in Fire and Emergency Service Organization Risk Management.	1/4/2013
NFPA 1407—2010	Standard for Training Fire Service Rapid Intervention Crews	1/4/2013
NFPA 1408—P*	Standard on Thermal Imaging Training	1/4/2013
NFPA 1410—2010	Standard on Training for Initial Emergency Scene Operations	1/4/2013
NFPA 1452—2010	Guide for Training Fire Service Personnel to Conduct Dwelling Fire Safety Surveys	1/4/2013
NFPA 1581—2010	Standard on Fire Department Infection Control Program	1/4/2013
NFPA 1583—2008	Standard on Health-Related Fitness Programs for Fire Department Members	1/4/2013
NFPA 1584—2008	Standard on the Rehabilitation Process for Members During Emergency Operations and Training Exercises.	1/4/2013
NFPA 1620—2010	Standard for Pre-Incident Planning	1/4/2013
NFPA 1901—2009	Standard for Automotive Fire Apparatus	7/8/2013
NFPA 1906—2012	Standard for Wildland Fire Apparatus	7/8/2013
NFPA 1917—2013	Standard for Automotive Ambulances	7/8/2013
NFPA 1931—2010	Standard for Manufacturer's Design of Fire Department Ground Ladders	1/4/2013
NFPA 1932—2010	Standard on Use, Maintenance, and Service Testing of In-Service Fire Department Ground Ladders.	1/4/2013
NFPA 1936—2010	Standard on Powered Rescue Tools	1/4/2013
NFPA 1952—2010	Standard on Surface Water Operations Protective Clothing and Equipment	1/4/2013
NFPA 1953—P*	Standard on Protective Ensembles for Contaminated Water Diving	1/4/2013
NFPA 1991—2005	Standard on Vapor-Protective Ensembles for Hazardous Materials Emergencies	1/4/2013
NFPA 2001—2012	Standard on Clean Agent Fire Extinguishing Systems	1/4/2013
NFPA 2010—2010	Standard for Fixed Aerosol Fire-Extinguishing Systems	1/4/2013

*Proposed new drafts are available from NFPA's Web site—*www.nfpa.org* or may be obtained from NFPA's Codes and Standards Administration, 1 Batterymarch Park, Quincy, Massachusetts 02169–7471.

Dated: November 5, 2012.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2012–27463 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC348

Endangered Species; File Nos. 17367 and 17364

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

ACTION: Notice; receipt of applications.

SUMMARY: Notice is hereby given that the U.S. Fish and Wildlife Service (USFWS), Southeast Regional Office, Century Boulevard, Atlanta, GA 30602 [Thomas Sinclair: Responsible Party], has applied in due form for a permit [File No. 17367] to take shortnose sturgeon (*Acipenser brevirostrum*) and Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) for purposes of conducting scientific research; and also that the USFWS, Northeast Fishery Center, PO Box 75, Lamar, PA 16848 [Michael Millard: Responsible Party], has applied in due form for a permit [File No. 17364] to take Atlantic sturgeon for purposes of conducting scientific research.

DATES: Written, telefaxed, or email comments must be received on or before December 13, 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 Nos. 17367 or 17364 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;

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309; and

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394.

Written comments on either application should be submitted to the Chief, Permits and Conservation Division

- By email to *NMFS.Pr1Comments@noaa.gov* (include the File No. in the subject line of the email);
- By facsimile to (301)713–0376; or
- At the address listed above.

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 the application(s) would be appropriate.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Colette Cairns at (301)427–8401.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

File No. 17367: The applicant proposes using existing captive populations of shortnose and Atlantic sturgeon to conduct scientific research facilitating the development of new methods needed for achieving species recovery in four facilities in the Southeast Region of the USFWS. Research would include nutrition, physiology, propagation, contaminants, genetics, fish health, cryopreservation, tagging, refugia, and other collaborative research with others. Additionally, work would examine abiotic factors (e.g., pH, temperature, salinity dissolved oxygen, etc.) potentially influencing distribution and abundance in the wild. The permit would be valid for five years from the date of issuance.

File No. 17364: The applicant proposes refining propagation and culture techniques of captive Atlantic sturgeon held in refugia at the USFWS's Northeast Fisheries Center providing a source of research animals for studies related to tagging, tracking, behavior, physiology, genetics, health, cryopreservation, and other methods for population conservation, recovery, or enhancement of the species in the wild. The permit would be valid for five years from the date of issuance.

Dated: November 7, 2012.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2012–27514 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC280

Atlantic Highly Migratory Species; Atlantic Shark Management Measures; 2013 Research Fishery

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

ACTION: Notice of intent; request for applications.

SUMMARY: NMFS announces its request for applications for the 2013 shark research fishery from commercial shark fishermen with directed or incidental shark limited access permits. The shark research fishery allows for the collection of fishery-dependent data for future stock assessments to meet the shark research objectives of the Agency. The only commercial vessels authorized to land sandbar sharks are those participating in the shark research fishery. Shark research fishery permittees may also land non-sandbar large coastal sharks (LCS), small coastal sharks (SCS), and pelagic sharks. Commercial shark fishermen who are interested in participating in the shark research fishery need to submit a completed Shark Research Fishery Permit Application in order to be considered.

DATES: Shark Research Fishery Applications must be received no later than 5 p.m., local time, on December 13, 2012.

ADDRESSES: Please submit completed applications to the HMS Management Division at:

- *Mail:* Attn: Delisse Ortiz, HMS Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910.
- *Fax:* (301) 427–8503

For copies of the Shark Research Fishery Permit Application, please write to the HMS Management Division at the address listed above, call (301) 427–8503 (phone), or fax a request to (301) 713–1917. Copies of the Shark Research Fishery Application are also available at the HMS Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm.* Additionally, please be advised that your application may be released under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz or Delisse Ortiz, at (301) 427–8503 (phone) or (301) 713–1917 (fax).

SUPPLEMENTARY INFORMATION: The Atlantic shark fisheries are managed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Consolidated HMS Fishery Management Plan (FMP) is implemented by regulations at 50 CFR part 635.

The final rule for Amendment 2 to the Consolidated HMS FMP (Amendment 2) (73 FR 35778, June 24, 2008, corrected at 73 FR 40658, July 15, 2008) established, among other things, a shark research fishery to maintain time series data for stock assessments and to meet NMFS' research objectives. The shark research fishery also allows selected commercial fishermen the opportunity to earn revenue from selling additional sharks, including sandbar sharks. Only the commercial shark fishermen selected to participate in the shark research fishery are authorized to land sandbar sharks subject to the sandbar quota available each year. The selected shark research fishery permittees will also have access to the non-sandbar LCS, SCS, and pelagic shark quotas. Generally, the shark research fishery permits are valid only for the calendar year for which they are issued. Commercial fishermen not participating in the shark research fishery may land non-sandbar LCS, SCS, and pelagic sharks subject to retention limits and quotas per §§ 635.24 and 635.27, respectively.

As established in Amendment 2, since 2008, the base quotas for the sandbar and non-sandbar LCS research fisheries have been reduced to account for earlier overharvests in the non-sandbar LCS and sandbar shark fisheries. These 5-year quota reductions end on December 31, 2012. Given the end of the 5-year reduction period on December 31, 2012, and because the fishery did not exceed its quota in 2012 and thus no further reductions are required, in the 2013 shark specifications (77 FR 61562) the sandbar research fishery quota reverts to the initial base quota (i.e., prior to the overharvest deduction) of 116.6 mt dw and the 2013 non-sandbar LCS research fishery quota reverts to 50 mt dw.

The specific 2013 trip limits and number of trips per month will depend on the number of selected vessels, the availability of observers, the available quota, and the objectives of the research fishery and will be included in the permit terms at time of issuance. The trip limits and the number of trips taken per month have changed each year the research fishery has been active. Participants may also be limited on the amount of gear they can deploy on a given set (e.g., number of hooks and sets, soak times, length of longline). In 2012, we split the sandbar and non-sandbar LCS research fishery quotas equally among selected participants, with each vessel allocated 14 metric tons (mt) dressed weight (dw) of sandbar shark research fishery quota and 6 mt dw of non-sandbar large coastal shark research fishery quota. Participants were also required to keep any dead sharks, unless they were a prohibited species, in which case they were required to release them, and were restricted by the number of longline sets as well as the number of hooks they could deploy and have on board the vessel. The vessels participating in the shark research fishery fished an average of one trip per month.

In order to participate in the shark research fishery, commercial shark fishermen need to submit a completed Shark Research Fishery Application by the deadline noted above (see **DATES**) showing that the vessel and owner(s) meet the specific criteria outlined below.

Research Objectives

Each year, the research objectives are developed by a shark board, which is comprised of representatives within NMFS, including representatives from the Southeast Fisheries Science Center (SEFSC) Panama City Laboratory, Northeast Fisheries Science Center (NEFSC) Narragansett Laboratory, the Southeast Regional Office, Protected Species Division (SERO\PSD), and the HMS Management Division. The research objectives for 2013 are based on the 2008 Biological Opinion for Continued Authorization of Shark Fisheries in Amendment 2 to the Consolidated HMS FMP, the 2008 Southeast Data, Assessment and Review (SEDAR) 11, 2005/2006 LCS stock assessment and SEDAR 21, 2010/2011 U.S. South Atlantic blacknose, U.S Gulf of Mexico blacknose, sandbar, and dusky sharks stock assessment and SEDAR 29, 2012 U.S. Gulf of Mexico blacktip shark stock assessment. The 2013 research objectives are:

- Collect reproductive, length, sex, and age data from sandbar and other sharks throughout the calendar year for species-specific stock assessments;
- Monitor the size distribution of sandbar sharks and other species captured in the fishery;
- Continue on-going tagging shark programs for identification of migration corridors and stock structure using dart and/or spaghetti tags;
- Maintain time-series of abundance from previously derived indices for the shark BLL observer program;
- Acquire fin-clip samples of all shark and other species for genetic analysis;
- Attach satellite archival tags to endangered smalltooth sawfish to provide information on critical habitat and preferred depth, consistent with ESA requirements for such tagging under the SEFSC observer program take permit obtained through the 2008 Section 7 Consultation and Biological Opinion for the Continued Authorization of Shark Fisheries (Commercial Shark Bottom Longline, Commercial Shark Gillnet and Recreational Shark Handgear Fisheries) as Managed under the Consolidated Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (Consolidated HMS FMP), including Amendment 2 to the Consolidated HMS FMP (F/SER/2007/05044);
- Attach satellite archival tags to prohibited dusky and other sharks, as needed, to provide information on daily and seasonal movement patterns, and preferred depth;
- Evaluate hooking mortality and post-release survivorship of dusky, hammerhead, blacktip, and other sharks using hook timers and temperature-depth recorders;
- Evaluate the effects of controlled gear experiments in order to determine the effects of potential hook changes to prohibited species interactions and fishery yields; and
- Examine the size distribution of sandbar and other sharks captured in the Mid-Atlantic shark time/area closure off the coast of North Carolina from January 1 through July 31.

Selection Criteria

Shark Research Fishery Permit Applications will be accepted only from commercial shark fishermen who hold a current directed or incidental shark limited access permit. While incidental permit holders are welcome to submit an application, to ensure that an appropriate number of sharks are landed to meet the research objectives for this year, we will give priority to directed permit holders as recommended by the shark board. As such, qualified incidental permit holders will be selected only if there are not enough qualified directed permit holders to meet research objectives.

The Shark Research Fishery Permit Application includes, but is not limited to, a request for the following information: type of commercial shark permit possessed; past participation in the commercial shark fishery (not including sharks caught for display); past involvement and compliance with HMS observer programs per § 635.7;

past compliance with HMS regulations at 50 CFR part 635; availability to participate in the shark research fishery; ability to fish in the regions and season requested; ability to attend necessary meetings regarding the objectives and research protocols of the shark research fishery; and ability to carry out the research objectives of the Agency. An applicant who has been charged criminally or civilly (e.g., issued a Notice of Violation and Assessment (NOVA) or Notice of Permit Sanction) for any HMS-related violation will not be considered for participation in the shark research fishery. In addition, applicants who were selected to carry an observer in the previous 2 years for any HMS fishery, but failed to contact NMFS to arrange the placement of an observer as required per § 635.7, will not be considered for participation in the 2013 shark research fishery. Applicants who were selected to carry an observer in the previous 2 years for any HMS fishery and failed to comply with all the observer regulations per § 635.7 will also not be considered. Exceptions will be made for vessels that were selected for HMS observer coverage but did not fish in the quarter when selected and thus did not require an observer. Applicants who do not possess a valid USCG safety inspection decal when the application is submitted will not be considered. Applicants who have been non-compliant with any of the HMS observer program regulations in the previous 2 years, as described above, may be eligible for future participation in shark research fishery activities by demonstrating 2 subsequent years of compliance with observer regulations at § 635.7.

Selection Process

The HMS Management Division will review all submitted applications and develop a list of qualified applicants from those applications that are deemed complete. A qualified applicant is an applicant that has submitted a complete application by the deadline (see **DATES**) and has met the selection criteria listed above. Qualified applicants are eligible to be selected to participate in the shark research fishery for 2013. The HMS Management Division will provide the list of qualified applicants without identificating information to the SEFSC. The SEFSC will then evaluate the list of qualified applicants and, based on the temporal and spatial needs of the research objectives, the availability of observers, the availability of qualified applicants, and the available quota for a given year, will randomly select approximately 10 qualified applicants to conduct the prescribed research. Where there are multiple qualified applicants that meet the criteria, permittees will be randomly selected through a lottery system. If a public meeting is deemed necessary, NMFS will announce details of a public selection meeting in a subsequent **Federal Register** notice.

Once the selection process is complete, we will notify the selected applicants and issue the shark research fishery permits. The shark research fishery permits will be valid only in calendar year 2013. If needed, we will communicate with the shark research fishery permit holders to arrange a captain's meeting to discuss the research objectives and protocols. The shark research fishery permit holders must contact the NMFS observer coordinator to arrange the placement of a NMFS-approved observer for each shark research trip.

A shark research fishery permit will only be valid for the vessel and owner(s) and terms and conditions listed on the permit, and, thus, cannot be transferred to another vessel or owner(s). Issuance of a shark research permit does not guarantee that the permit holder will be assigned a NMFS-approved observer on any particular trip. Rather, issuance indicates that a vessel may be issued a NMFS-approved observer for a particular trip, and on such trips, may be allowed to harvest Atlantic sharks, including sandbar sharks, in excess of the retention limits described in § 635.24(a). These retention limits will be based on available quota, number of vessels participating in the 2013 shark research fishery, the research objectives set forth by the shark board, the extent of other restrictions placed on the vessel, and may vary by vessel and/or location. When not operating under the auspices of the shark research fishery, the vessel would still be able to land non-sandbar LCS, SCS, and pelagic sharks subject to existing retention limits on trips without a NMFS-approved observer. The shark research permit may be revoked or modified at any time and does not confer the right to engage in activities beyond those listed on the shark research fishery permit.

NMFS annually invites commercial shark permit holders (directed and incidental) to submit an application to participate in the shark research fishery. Permit applications can be found on the HMS Management Division's Web site at *http://www.nmfs.noaa.gov/sfa/hms/index.htm* or by calling (301) 427–8503. Final decisions on the issuance of a shark research fishery permit will depend on the submission of all required information by the deadline (see **DATES**), and NMFS' review of applicant information as outlined above. The 2013 shark research fishery will start after the opening of the shark fishery and under available quotas as published in a separate **Federal Register** final rule.

Dated: November 7, 2012.

Lindsay Fullenkamp,

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

[FR Doc. 2012–27542 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC349

North Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage, AK.

DATES: The meetings will be held December 3, 2012 through December 11, 2012. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: David Witherell, Council staff; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Council will begin its plenary session at 8 a.m. on Wednesday, December 5 continuing through Tuesday, December 11. The Scientific Statistical Committee (SSC) will begin at 8 a.m. on Monday, December 3 and continue through Wednesday, December 5, the Council's Advisory Panel (AP) will begin at 8 a.m. on Tuesday, December 4 and continue through Saturday, December 8. The Enforcement Committee will meet Tuesday, December 4, from 1 p.m. to 4 p.m. The Halibut Charter Committee will meet Tuesday, December 4, from 3 p.m. to 7 p.m. All meetings are open to the public, except executive sessions.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The

Council may take appropriate action on any of the issues identified.

Reports:

1. Executive Director's Report
NMFS Management Report (including report on observer deployment and implementation, report on Essential Fish Habitat (EFH) consultation, update on response to halibut subsistence proposal)
Alaska Department of Fish & Game (ADF&G) Report (including report on Chinook salmon conference and update on halibut subsistence)
NOAA Enforcement Report
United States Coast Guard (USCG) Report (including Aleutian Island Risk Assessment)
United State Fish & Wildlife (USFWL) Report
International Pacific Halibut Commission (IPHC) Report (T)(including a report on the IPHC closed area)(T)
Protected Species Report

2. Groundfish Specifications: Review Gulf of Alaska (GOA) pollock Exempted Fishing Permit (EFP): Adopt final catch specifications for GOA groundfish; Adopt final catch specifications for Bering Sea Aleutian Island (BSAI) groundfish.

3. Salmon Prohibited Species Catch (PSC): Initial review on BSAI Chum Salmon Bycatch; Initial review on GOA Chinook Bycatch All Trawl Fisheries.

4. Halibut Issues: Recommendations for 2013 Charter Halibut; Discussion paper on Community Quota Entity (CQE) small block restrictions; discussion paper on retention of 4A halibut in sablefish pots.

5. Steller Sea Lion (SSL) Mitigation: Identify Alternatives for SSL Environmental Impact Statement (EIS) Analysis.

6. Miscellaneous Groundfish: Progress report on Programmatic Supplemental Environmental Impact Statement (PSEIS)/Supplemental Information Report (SIR); Discussion paper on Vessel Monitoring System (VMS) use and requirements.

7. Staff Tasking: Review Committees and tasking; Review halibut/sablefish Individual Fishing Quota (IFQ) issues for tasking/timing; provide direction on Round Island transit analysis scope, purpose and need.

8. Other Business.

The SSC agenda will include the following issues:

1. Groundfish Specifications
2. Update on Salmon Genetics
3. Review BSAI Salmon Bycatch
4. Review GOA Chinook Bycatch all trawl fisheries

The Advisory Panel will address most of the same agenda issues as the Council except B reports. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/.*

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 7, 2012.

Tracey L. Thompson,

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

[FR Doc. 2012–27501 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The Hydrographic Services Review Panel (HSRP) is a Federal Advisory Committee established to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

Date and Time: The public meeting will be held on November 27–29, 2012. November 27th from 8:30 a.m. to 5:30 p.m.; November 28th from 8:30 a.m. to 5:30 p.m.; and November 29th from 8:30 a.m. to 5:30 p.m.

Location: Astor Crowne Plaza, 739 Canal Street, New Orleans, Louisiana, 70130, tel: (504) 962–0500. Refer to the HSRP Web site listed below for the most current meeting agenda. Times and agenda topics are subject to change.

FOR FURTHER INFORMATION CONTACT: Kathy Watson, HSRP Program Coordinator, National Ocean Service (NOS), Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770ext. 158; Fax: 301–713–4019; Email: Hydroservices.panel@noaa.gov or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm.*

SUPPLEMENTARY INFORMATION: The HSRP meeting will be open to the publicand public comment periods (on-site) will be scheduled in the meeting agenda. Commentperiods are scheduled in the afternoon, will be limited to a total time of five (5) minutes per person, and are recorded as part of the meeting minutes. A final meeting agenda will be posted on the HSRP Web site at: *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm* before November 27, 2012. Written comments should be subn1itted to Hydroservices.panel@noaa.gov by November 19, 2012. Written comments received after November 19, 2012, will be distributed, but may not reach Panel members for review until the meeting date. Approximately 30 seats will be available for the public, on a first-come, first-served basis.

Special Accommodations: HSRP public meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Watson, HSRP Program Coordinator, National Ocean Service (NOS), Office of Coast Survey, NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770 ext. 158, or Email: *Kathy.Watson@noaa.gov* by November 8, 2012.

Matters to be Considered: Regional and local stakeholders will present to the HSRP on issues relevant to NOAA's navigation services and products. Broad topic areas to be heard about include: (1) Current and future needs of regional ports and navigation users; (2) use of coastal observation systems for coastal protection and restoration programs and surge and inundation models to protect coastal populations; and (3) use of geospatial services and spatial reference systems to support sea level rise and land subsidence observations.

The HSRP will also hold focused Stakeholder Breakout Sessions with regional and local stakeholders to further discuss challenges and issues presented during the Stakeholder Panel presentations, and other issues not previously presented. Three Stakeholder Breakout Sessions will be held on Thursday, November 29, 2012 with the general themes: Hydrographic Surveying/Charting; Geospatial Positioning; and Tides, Currents and Water Levels. Regional and local stakeholders with interests in NOAA's navigation services and products are invited to actively participate in these breakout sessions. You can sign up for these sessions by contacting the NOAA's Gulf of Mexico Navigation Manager, Mr. Tim Osborn at email: Tim.Osbon@noaa.gov; or the HSRP Program Coordinator, Kathy Watson at email: Kathy.Watson@noaa.gov. The breakout sessions are the opportunity for stakeholders to raise concerns and develop recommended actions to address the issues facing the Gulf of Mexico region. The HSRP will consider input from these breakout sessions, and from the other meeting presentations, to develop its recommendations to the NOAA Under Secretary for improving NOAA's suite of navigation data, products, and services for the Gulf of Mexico region.

Other matters to be discussed will include HSRP working group updates, meetingadministration, and public comments.

Dated: October 31, 2012.

Gerd F. Glang,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–27295 Filed 11–9–12; 8:45 am]

BILLING CODE 3510–JE–P

DENALI COMMISSION

Fiscal Year 2013 Draft Work Plan

AGENCY: Denali Commission.

ACTION: Notice.

SUMMARY: The Denali Commission (Commission) is an independent federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure and support for economic development and training in Alaska by delivering federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998 Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121). The Act requires that the Commission develop proposed work plans for future spending and that the annual Work Plan be published in the **Federal Register**, providing an opportunity for a 30-day period of public review and written comment. This **Federal Register** notice serves to announce the 30-day opportunity for public comment on the Denali Commission Draft Work Plan for Federal Fiscal Year 2013 (FY2013).

DATES: Comments and related material to be received by December 11, 2012.

ADDRESSES: Submit comments to the Denali Commission, Attention: Sabrina Hoppas, 510 L Street, Suite 410, Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: Ms. Sabrina Hoppas, Denali Commission, 510 L Street, Suite 410, Anchorage, AK 99501. Telephone: (907) 271–1414. Email: *shoppas@denali.gov.*

Background: The Denali Commission (Commission) is an independent federal agency based on an innovative federal-state partnership designed to provide critical utilities, infrastructure and support for economic development and training in Alaska by delivering federal services in the most cost-effective manner possible. The Commission was created in 1998 with passage of the October 21, 1998, Denali Commission Act (Act) (Title III of Pub. L. 105–277, 42 U.S.C. 3121).

The Commission's mission is to partner with tribal, federal, state, and local governments and collaborate with all Alaskans to improve the effectiveness and efficiency of government services, to develop a well-trained labor force employed in a diversified and sustainable economy, and to build and ensure the operation and maintenance of Alaska's basic infrastructure.

By creating the Commission, Congress mandated that all parties involved partner together to find new and innovative solutions to the unique infrastructure and economic development challenges in America's most remote communities.

Pursuant to the Act, the Commission determines its own basic operating principles and funding criteria on an annual federal fiscal year (October 1 to September 30) basis. The Commission outlines these priorities and funding recommendations in an annual Work Plan. The Work Plan is adopted on an annual basis in the following manner, which occurs sequentially as listed:

- Project proposals are solicited from local government and other entities.
- Commissioners forward a draft version of the Work Plan to the Federal Co-Chair.
- The Federal Co-Chair approves the draft Work Plan for publication in the **Federal Register** providing an opportunity for a 30-day period of public review and written comment. During this time, the draft Work Plan is also disseminated widely to Commission program partners including, but not limited to, the Bureau of Indian Affairs (BIA), the Economic Development Administration (EDA), and the United States Department of Agriculture—Rural Development (USDA–RD).
- Public comment concludes and Commission staff provides the Federal Co-Chair with a summary of public comment and recommendations, if any, associated with the draft Work Plan.
- If no revisions are made to the draft, the Federal Co-Chair provides notice of approval of the Work Plan to the Commissioners, and forwards the Work Plan to the Secretary of Commerce for approval; or, if there are revisions the Federal Co- Chair provides notice of modifications to the Commissioners for their consideration and approval, and upon receipt of approval from Commissioners, forwards the Work Plan to the Secretary of Commerce for approval.
- The Secretary of Commerce approves the Work Plan.
- The Federal Co-Chair then approves grants and contracts based upon the approved Work Plan.

FY 2013 Appropriations Summary

The Commission has historically received federal funding from several sources.

These fund sources are governed by the following general principles:

- In FY 2013 no project specific direction was provided by Congress.
- The Energy and Water Appropriation is eligible for use in all programs.
- Certain appropriations are restricted in their usage. Where restrictions apply, the funds may be used only for specific program purposes.
- Final appropriation funds received may be reduced due to Congressional action, rescissions by the Office of Management and Budget, and other federal agency action. Final program available figures may not be provided until later in FY2013.
- All Energy and Water Appropriation funds, including operating funds, designated as ''up to'' may be reassigned to other programs, if they are not fully expended in a program component area or a specific project.
- Total FY 2013 Budgetary Resources provided: These are the figures that

appear in the rows entitled ''FY 2013 Appropriation'' and are the original appropriations amounts which do not include Commission operating funds. These funds are identified by their source name (i.e., Energy and Water Appropriation, USDA–RUS, etc.). The grand total for all appropriations appears at the end of the FY 2013 Funding Table.

• Total FY 2013 Program Available Funding: These are the figures that appear in the rows entitled ''FY 2013 Appropriations—Program Available'' and are the amounts of funding available for program(s) activities after Commission operating funds have been deducted. The FY 2013 appropriations bill contains language that the Commission may utilize more than 5 percent for operating costs, *Notwithstanding the limitations contained in section 306(g) of the Denali Commission Act of 1998.* However only, 5 percent of Trans Alaska Pipeline Liability (TAPL) Trust Funds are used for agency operating purposes. The grand total for all program available funds appears at the end of the FY 2013 Funding Table.

• Program Funding: These are the figures that appear in the rows entitled with the specific Program and Sub-Program area, and are the amounts of funding the Draft FY 2013 Work Plan recommends, within each program fund source for program components.

• Subtotal of Program Funding: These are the figures that appear in rows entitled ''subtotal'' and are the subtotals of all program funding within a given fund source. The subtotal must always equal the Total FY 2013 Program Available Funding.

DENALI COMMISSION FY 2013 FUNDING TABLE

	Totals
FY 2013 Energy & Water Appropriation	$10,165,000
FY 2013 Energy & Water Appropriation—Operating Funds	$3,000,000
FY 2013 Energy & Water Appropriation—Program Available	$7,165,000
Energy:	
• *Bulk Fuel Tank Replacement*	
• *Rural Power System Upgrades*	
• *Transportation—Related Barge Landing, Mooring Points and Marine*	
Total Energy Projects	Up to $6,865,000
Pre-Development Program	Up to $300,000
Sub-total $	$7,165,000
FY 2013 TAPL Trust	$6,800,000
FY 2013 TAPL Program Available (less 5% operating funds)	$6,460,000
Bulk Fuel Planning, Design & Construction	$6,460,000
Sub-total $	$6,460,000
Total FY 2013 Federal Program Available	$13,625,000

FY 2013 Program Details & General Information

The following section provides narrative discussion for each of the Commission Programs identified for funding in the FY 2013 funding table above.

Energy Program

Basic Rural Energy Infrastructure

The Energy Program is the Commission's original program and focuses on bulk fuel facilities and rural power system upgrades/power generation (RPSU) across rural Alaska. About 94% of electricity in rural communities is produced by diesel generators and about half of the fuel storage in most villages is used for these power plants. The majority of the Commission's work in the energy program is carried out by two of our long-standing partners: Alaska Energy Authority (AEA), an agency of the State of Alaska, and the Alaska Village Electric Cooperative (AVEC), a non-profit member organization.

FY 2013 Project Selection Process (Bulk Fuel/RPSU/Mooring Ponts and Marine Headers)

The projects selected for FY 2013 funding are prioritized within the two energy program themes: bulk fuel and RPSU. The selected projects (in the table below) exceed FY 2013 funding levels (both TAPL and Energy and Water Appropriations), with the understanding that projects may proceed out of order due to factors such as the extended period of time between project selections, draft Work Plan development, and grant execution; match funding availability; and due diligence requirements. The Commission has been working in partnership with the U.S. Army Corps of Engineers (USACE) since 2009 to complete an assessment of prioritized barge landing and mooring point upgrades throughout Alaska. In many communities barge landing and mooring points are positioned adjacent to marine fuel headers to allow for the safe and efficient bulk delivery of community fuel that is used for heating and electric generation. However, in some cases communities have multiple marine header sites and are currently undertaking development and positioning of new barge landing and mooring point locations. Base funds (Energy & Water Appropriation) will be used in FY 2013, leveraged with existing transportation funds from prior years, to develop centralized marine header locations in coordination with prioritized barge landing and mooring points design and construction.

	Total project cost	Cost share	DC funding	Program partner	Priority
Bulk Fuel Projects					
St. George	$2,000,000	$1,000,000	$1,000,000	AEA	1

	Total project cost	Cost share	DC funding	Program partner	Priority
Emmonak/Alakanuk	4,000,000	800,000	3,200,000	AVEC	2
Tatitlek	2,300,000	460,000	1,840,000	AEA	3
Pilot Station	3,000,000	600,000	2,400,000	AVEC	4
RPSU Projects					
Emmonak/Alakanuk	6,000,000	1,200,000	4,800,000	AVEC	1
Nunam Iqua	3,000,000	600,000	2,400,000	AEA	2
New Stuyahok/Ekwok	3,250,000	650,000	2,600,000	AVEC	3
Koliganek	3,800,000	760,000	3,040,000	AEA	4
Alaska Energy Authority Project Management	157,200	0	157,200	AEA	
Alaska Village Electric Cooperative Project Management	480,000	0	480,000	AVEC	
Barge Landing and Mooring Points Projects					
Barge Landings and Mooring Points	1,200,000	800,000	400,000	USACE	

Pre-Development Program

The Pre-Development Program (Pre-D) is a service provided by The Foraker Group in collaboration with the Alaska Mental Health Trust Authority, The Commission, Mat- Su Health Foundation and Rasmuson Foundation. Pre-D offers guidance and technical resources for planning new facilities and renovating or expanding existing ones. Services are provided to nonprofit, municipal and tribal organizations to determine the feasibility of their projects and develop the documentation needed for funding applications.

Pre-D's core purpose is planning *Sustainable Capital Projects* – projects that contribute to the long-term viability of the organization and the community it serves. The Commission has been committed to contributing to sustainable projects since its inception. Pre-D supports successful projects by assisting with early planning which considers community needs, potential collaboration, organizational capacity and sustainability.

The Commission is a founding member of Pre-D since 2007. As the agency's capital funds have decreased in recent years, the benefits of Pre-D have become more evident. It is ever more critical to ensure that limited federal appropriations be invested in sustainable, realistic, right-sized capital projects.

Further information about the program can be obtained at the following link:

http://www.forakergroup.org/index.cfm/Shared-Services/Pre-Development

Joel Neimeyer,

Federal Co-Chair.

[FR Doc. 2012–27525 Filed 11–9–12; 8:45 am]

BILLING CODE 3300–01–P

DEPARTMENT OF EDUCATION

Equity and Excellence Commission

AGENCY: U.S. Department of Education, Office for Civil Rights.

ACTION: Notice of an open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the Equity and Excellence Commission (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act (FACA) and is intended to notify the public of their opportunity to attend.

Date: November 27 and 28, 2012.

Time: 9:00 a.m. to 4:00 p.m. Eastern Standard Time.

ADDRESSES: The Commission will meet in Washington, DC at the National Museum of the American Indian at Fourth Street & Independence Ave. SW., Washington, DC 20560. The Commission will meet in the Patron's Lounge of the museum on November 27 and in the museum's fourth-floor conference room on November 28.

FOR FURTHER INFORMATION CONTACT: Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. Email: *equitycommission@ed.gov.* Telephone: (202) 453–6567.

SUPPLEMENTARY INFORMATION: On November 27, 2012 from 9:00 a.m. to 4:00 p.m. Eastern Standard Time, and on November 28, 2012, from 9:00 a.m. to 4:00 p.m. Eastern Standard Time, the Equity and Excellence Commission will hold an open meeting in Washington, DC at the National Museum of the American Indian at Fourth Street & Independence Ave. SW., Washington, DC 20560. The Commission will meet in the Patron's Lounge of the museum on November 27 and in the museum's fourth-floor conference room on November 28.

The purpose of the Commission is to collect information, analyze issues, and obtain broad public input regarding how the Federal government can increase educational opportunity by improving school funding equity. The Commission will also make recommendations for restructuring school finance systems to achieve equity in the distribution of educational resources and further student performance, especially for the students at the lower end of the achievement gap. The Commission will examine the disparities in meaningful educational opportunities that give rise to the achievement gap, with a focus on systems of finance, and recommend appropriate ways in which Federal policies could address such disparities.

The agenda for the Commission's November 27–28, 2012 meeting will include final review and deliberation of the drafts prepared by the writing teams for consideration in the draft report to the Secretary of the U.S. Department of Education (Secretary), summarizing the Commission's findings and recommendations for appropriate ways in which Federal policies can improve equity in school finance. The Commission will also discuss the form and substance of the report. Due to time constraints, there will not be a public comment period. However, individuals wishing to provide written comments may send their comments to the Commission via email at *equitycommission@ed.gov* or via U.S. mail to Guy Johnson, Designated Federal Official, Equity and Excellence Commission, U.S. Department of Education, 400 Maryland Avenue SW., Washington, DC 20202. For comments

related to the upcoming meeting, please submit comments for receipt no later than November 21, 2012.

Individuals interested in attending the meeting must register in advance, as meeting room seating may be limited. Please contact Guy Johnson at (202) 453–6567 or by email at *equitycommission@ed.gov.* Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, or materials in alternative format) should notify Guy Johnson at (202) 453–6567 no later than November 21, 2012. We will attempt to meet requests for accommodations after this date but cannot guarantee availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all Commission proceedings and are available for public inspection at the Department of Education, 400 Maryland Avenue SW., Washington, DC 20202 between the hours of 9 a.m. to 5 p.m. Eastern Standard Time. You may contact Guy Johnson, Designated Federal Official, Equity and Excellence Commission, at *equitycommission@ed.gov*, or at (202) 453–6567 if you have additional questions regarding inspection of records.

Seth Galanter,

Deputy Assistant Secretary for Policy, Office for Civil Rights, United States Department of Education.

[FR Doc. 2012–27538 Filed 11–9–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC13–2–000]

Commission Information Collection Activities (FERC–729); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–729 (Electric Transmission Facilities).

DATES: Comments on the collection of information are due January 14, 2013.

ADDRESSES: You may submit comments (identified by Docket No. IC13–2–000) by either of the following methods:

- *eFiling at Commission's Web Site:http://www.ferc.gov/docs-filing/efiling.asp.*
- *Mail/Hand Delivery/Courier:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov/help/submission-guide.asp.* For user assistance contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov/docs-filing/docs-filing.asp.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION:

Title: FERC–729 (Electric Transmission Facilities).

OMB Control No.: 1902–0238.

Type of Request: Three-year extension of the FERC–729 information collection requirements with no changes to the current reporting requirements.

Abstract: This information collection implements the Commission's mandates under EPAct 2005 Section 1221 which authorizes the Commission to issue permits under FPA Section 216(b) for electric transmission facilities and the Commission's delegated responsibility to coordinate all other federal authorizations under FPA Section 216(h). The related FERC regulations seek to develop a timely review process for siting of proposed electric transmission facilities. The regulations provide for (among other things) an extensive pre-application process that will facilitate maximum participation from all interested entities and individuals to provide them with a reasonable opportunity to present their views and recommendations, with respect to the need for and impact of the facilities, early in the planning stages of the proposed facilities as required under FPA Section 216(d).

Additionally, FERC has the authority to issue a permit to construct electric transmission facilities if a state has withheld approval for more than a year or has conditioned its approval in such a manner that it will not significantly reduce transmission congestion or is not economically feasible.[1] FERC envisions that, under certain circumstances, the Commission's review of the proposed facilities may take place after one year of the state's review. Under Section 50.6(e)(3) the Commission will not accept applications until one year after the state's review and then from applicants who can demonstrate that a state may withhold or condition approval of proposed facilities to such an extent that the facilities will not be constructed.[2] In cases where FERC's jurisdiction rests on FPA section 216(b)(1)(C),[3] the pre-filing process should not commence until one year after the relevant State applications have been filed. This will give states one full year to process an application without any intervening Federal proceedings, including both the pre-filing and application processes. Once that year is complete, an applicant may seek to commence FERC's pre-filing process. Thereafter, once the pre-filing process is complete, the applicant may submit its application for a construction permit.

Type of Respondents: Electric transmission facilities.

Estimate of Annual Burden:[4] The Commission estimates the total Public Reporting Burden for this information collection as:

[1] FPA section 216(b)(1)(C).

[2] However, the Commission will not issue a permit authorizing construction of the proposed facilities until, among other things, it finds that the state has, in fact, withheld approval for more than a year or had so conditioned its approval.

[3] In all other instances (i.e. where the state does not have jurisdiction to act or otherwise to consider interstate benefits, or the applicant does not qualify to apply for a permit with the State because it does not serve end use customers in the State), the pre-filing process may be commenced at any time.

[4] The Commission defines burden as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, reference 5 Code of Federal Regulations 1320.3.

FERC–729—ELECTRIC TRANSMISSION FACILITIES

Number of respondents (A)	Number of responses per respondent (B)	Total number of responses (A)×(B)=(C)	Average burden hours per response (D)	Estimated total annual burden (C)×(D)
1	1	1	9,600	9,600

The total estimated annual cost burden to respondents is $662,492.31 [9,600 hours ÷ 2,080 [5] hours per year = 4.61538 * $143,540 = $662,492.31].

Comments: Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: November 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27508 Filed 11–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–10–000]

Liberty Energy (Georgia) Corp.; Notice of Application

Take notice that on October 25, Liberty Energy (Georgia) Corp. (Liberty Georgia), 2845 Bristol Circle, Oakville, Ontario, Canada L6H 7H7, filed in Docket No. CP13–10–000, an application pursuant to section 7(f) of the Natural Gas Act (NGA) requesting the determination of a service area within which Liberty Georgia may, without further Commission authorization, enlarge or expand its natural gas distribution facilities. Liberty Georgia also requests: (i) A waiver of the Commission's accounting and reporting requirements and other regulatory requirements ordinarily applicable to natural gas companies under the NGA and the NGPA; (ii) pregranted abandonment of this service; and (iii) such further relief the Commission may deem appropriate, 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, (886) 208–3676 or TYY, (202) 502–8659.

Liberty Georgia, a newly created entity, states that it agreed on August 8, 2012, to purchase natural gas distribution assets owned by Atmos Energy Corporation (Atmos) in Georgia.[1] Liberty Georgia now seeks a section 7(f) service area determination in order to provide natural gas service to approximately 64,000 customers in Georgia. The purchased Georgia facilities will include approximately 1,313 miles of gas transmission and distribution mains in Barrow, Chattahoochee, Hall, Harris, Jackson, Muscogee, and Oconee Counties. The Georgia facilities also include the distribution systems serving Columbus, Georgia, and Gainesville, Georgia.

Liberty Georgia states that it would also acquire from Atmos (i) approximately 7,078 feet of 6-inch diameter pipeline (ii) 14,040 feet of 6-inch diameter pipeline, and (iii) approximately 14,150 feet of 10-inch pipeline that extend from an interconnection with Southern Natural Gas Company in Russell County, Alabama, to the Alabama-Georgia border at the northern bank of the Chattahoochee River (Alabama facilities), where they interconnect with Atmos' Georgia facilities that serve the distribution system on the U.S. Army base at Fort Benning, Georgia.

Any questions regarding this application should be directed to William F. Demarest, Jr., Husch Blackwell LLP, 750 17th St. NW., Suite 900, Washington, DC 20006, or at (202) 378–2310 (telephone) or email: *william.demarest@huschblackwell..com.*

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 14 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 commenters 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

[5] 2080 hours/year = 40 hours/week * 52 weeks/year.

[1] *See Atmos Energy Corp.,* 126 FERC ¶ 62,118 (2009).

environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Comment Date: 5:00 p.m. Eastern time on Tuesday, November 27, 2012.

Dated: November 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27506 Filed 11–9–12; 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: EC13–30–000.

Applicants: Canadian Hills Wind, LLC, Canadian Hills Holdings Company, LLC.

Description: Application for Authorization Under Section 203 of the FPA for Disposition of Jurisdictional Facilities and Request for Expedited Consideration and Confidential Treatment of Canadian Hills Wind, LLC, et al.

Filed Date: 11/2/12.

Accession Number: 20121102–5083.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: EC13–31–000.

Applicants: New York State Electric & Gas Corporation.

Description: Application for Authorization Under Section 203 of the FPA and Request for Waivers and Expedited Action of New York State Electric & Gas Corporation.

Filed Date: 11/1/12.

Accession Number: 20121101–5192.

Comments Due: 5 p.m. ET 11/23/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3084–004; *ER11–2954–003; ER10–1277–003; ER10–1186–003; ER11–3097–004; ER10–1211–003; ER10–1212–003; ER10–1188–003; ER11–4626–002; ER10–1329–004; ER10–1187–002.*

Applicants: The Detroit Edison Company, DTE Calvert City, LLC, DTE East China, LLC, DTE Energy Supply, Inc., DTE Energy Trading, Inc., DTE Pontiac North, LLC, DTE River Rouge No. 1, L.L.C., DTE Stoneman, LLC, Mt. Poso Cogeneration Company, LLC, St. Paul Cogeneration, LLC, Woodland Biomass Power Ltd.

Description: Notice of Change in Status of The Detroit Edison Company, et al.

Filed Date: 10/31/12.

Accession Number: 20121031–5417.

Comments Due: 5 p.m. ET 11/21/12.

Docket Numbers: ER11–4711–002.

Applicants: R&R Energy, Inc.

Description: R&R Compliance Filing 103012 to be effective 12/31/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5006.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER12–911–002.

Applicants: CPV Sentinel, LLC.

Description: Notice of Change in Facts of CPV Sentinel, LLC.

Filed Date: 10/31/12.

Accession Number: 20121031–5416.

Comments Due: 5 p.m. ET 11/21/12.

Docket Numbers: ER13–29–001.

Applicants: BITH Solar 1, LLC.

Description: Amendment of Pending Filing 1 to be effective 12/1/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5005.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–48–001.

Applicants: BITH Energy, Inc.

Description: Amendment of Pending Tariff Filing 1 to be effective 12/1/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5004.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–286–000.

Applicants: AEP Generating Company.

Description: Unit Power Agreements Amendment to be effective 12/31/2012.

Filed Date: 11/1/12.

Accession Number: 20121101–5114.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–287–000.

Applicants: AEP Texas Central Company.

Description: TCC–IPA Coleto Creek-South Texas EC GIA Cancellation to be effective 7/20/2012.

Filed Date: 11/1/12.

Accession Number: 20121101–5120.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–288–000.

Applicants: Entergy Arkansas, Inc.

Description: Attachment Y—Transmission Service Monitoring Agreement to be effective 12/1/2012.

Filed Date: 11/1/12.

Accession Number: 20121101–5144.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–289–000.

Applicants: Ri-Corp. Development, Inc.

Description: RDC Tariff to be effective 11/2/2012.

Filed Date: 11/1/12.

Accession Number: 20121101–5158.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–290–000.

Applicants: Michigan Power Limited Partnership.

Description: Revision to Market-Based Rate Tariff to be effective 11/2/2012.

Filed Date: 11/1/12.

Accession Number: 20121101–5161.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–291–000.

Applicants: EnergyMark, LLC.

Description: EnergyMark MBR Application to be effective 1/2/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5023.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–292–000.

Applicants: EBC Energy, LLC.

Description: EBC Energy, LLC submits tariff filing per 35.12: EBC Energy LLC, FERC Electric Tariff to be effective 12/19/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5032.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–293–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii: 2013 NESCOE Budget to be effective 1/1/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5033.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–294–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: SA 2486 Bison T–T to be effective 11/3/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5036.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–295–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2486 ITC Great Plains/NPPD/Midwest Interconnection Agreement to be effective 12/31/9998.

Filed Date: 11/1/12.

Accession Number: 20121101–5186.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–296–000.

Applicants: Air Energy TCI, Inc.

Description: Air Energy TCI, Inc. submits Petition for Waiver of Tariff Requirements for generator interconnection.

Filed Date: 11/1/12.

Accession Number: 20121101–5195.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–297–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits tariff filing per 35.13(a)(2)(iii: Amendment One to Exhibit B.SGR of APS Rate Schedule No. 217 to be effective 1/1/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5082.

Comments Due: 5 p.m. ET 11/23/12.

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: November 02, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27497 Filed 11–9–12; 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: EC13–32–000.

Applicants: Blue Sky East, LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers, Confidential Treatment, and Shortened Comment Period of Blue Sky East, LLC.

Filed Date: 11/2/12.

Accession Number: 20121102–5155.

Comments Due: 5 p.m. ET 11/23/12.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–6–000.

Applicants: North Sky River Energy, LLC.

Description: Notification of Exempt Wholesale Generator Status of North Sky River Energy, LLC.

Filed Date: 11/2/12.

Accession Number: 20121102–5138.

Comments Due: 5 p.m. ET 11/23/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2763–005; ER10–2732–005; ER10–2733–005; ER10–2734–005; ER10–2736–005; ER10–2737–005; ER10–2741–005; ER10–2749–005; ER10–2752–005; ER12–2492–001; ER12–2493–001; ER12–2494–001; ER12–2495–001; ER12–2496–001.

Applicants: Bangor Hydro Electric Company.

Description: Notice of Change in Status of Bangor Hydro Electric Company, *et al.*

Filed Date: 11/2/12.

Accession Number: 20121102–5126.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER12–2055–000.

Applicants: San Gorgonio Farms, Inc.

Description: Compliance Refund Report to be effective N/A.

Filed Date: 11/2/12.

Accession Number: 20121102–5186.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–298–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO Proposed Tariff Revisions re: Ancillary Services Mitigation to be effective 1/22/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5110.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–299–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3412; Queue No. X3–011 to be effective 10/12/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5112.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–300–000.

Applicants: Niagara Mohawk Power Corporation, New York Independent System Operator, Inc.

Description: Niagara Mohawk Power Corporation submits tariff filing per 35.13(a)(2)(iii: Second Amended Restated SGIA No. 1168 Among NYISO, NiMo, and Albany Energy to be effective 10/19/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5124.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–301–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: Mid-Kansas Electric Company Formula Rate Update to be effective 1/1/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5125.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–302–000.

Applicants: American Electric Power Service Corporation, PJM Interconnection, L.L.C.

Description: AEPSC files Second Revised Service Agreement 1338—ILDSA among AEPSC and ODEC to be effective 10/2/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5140.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–303–000.

Applicants: Atlantic Path 15, LLC.

Description: AP 15's Annual Update of TRBAA to be effective 1/1/2013.

Filed Date: 11/1/12.

Accession Number: 20121101–5198.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–304–000.

Applicants: Black Hills/Colorado Electric Utility Co.

Description: OATT Revised Sections 13 and 14 to be effective 11/3/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5150.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–305–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the RAA Schedule 10.1 incorporating new Cleveland LDA to be effective 1/4/2013.

Filed Date: 11/2/12.

Accession Number: 20121102–5152.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–306–000.

Applicants: San Gorgonio Farms, Inc.

Description: Updated Market-Based Tariff Revised Limitations and Exemptions Section to be effective 8/15/2012.

Filed Date: 11/2/12.

Accession Number: 20121102–5153.

Comments Due: 5 p.m. ET 11/23/12.

Docket Numbers: ER13–307–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 11–2–12 MDU Attachment O and GG Filing to be effective 1/1/2013.

Filed Date: 11/2/12.
Accession Number: 20121102–5160.
Comments Due: 5 p.m. ET 11/23/12.
Docket Numbers: ER13–308–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: SA 2456 Emmet-ITC GIA to be effective 11/3/2012.
Filed Date: 11/2/12.
Accession Number: 20121102–5184.
Comments Due: 5 p.m. ET 11/23/12.
Docket Numbers: ER13–309–000.
Applicants: Cheyenne Light, Fuel and Power Company.
Description: OATT Revised Sections 13 and 14 to be effective 11/3/2012.
Filed Date: 11/2/12.
Accession Number: 20121102–5196.
Comments Due: 5 p.m. ET 11/23/12.
Docket Numbers: ER13–310–000.
Applicants: MP2 Energy NJ LLC.
Description: Market Based Rate Application to be effective 11/5/2012.
Filed Date: 11/5/12.
Accession Number: 20121105–5003.
Comments Due: 5 p.m. ET 11/26/12.
Docket Numbers: ER13–311–000.
Applicants: MP2 Energy IL LLC.
Description: Market Based Rate Application to be effective 11/5/2012.
Filed Date: 11/5/12.
Accession Number: 20121105–5004.
Comments Due: 5 p.m. ET 11/26/12.
Docket Numbers: ER13–312–000.
Applicants: Ameren Illinois Company.
Description: Ameren Illinois Company's Request for Approval of Updated Depreciation Accrual Rates.
Filed Date: 11/2/12.
Accession Number: 20121102–5215.
Comments Due: 5 p.m. ET 11/23/12.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–7–000.
Applicants: PJM Settlement, Inc., PJM Interconnection, L.L.C.
Description: Application of PJM Settlement, Inc. and PJM Interconnection, L.L.C. Under Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Securities and Approving Guaranty.
Filed Date: 11/2/12.
Accession Number: 20121102–5216.
Comments Due: 5 p.m. ET 11/23/12.

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: November 5, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27498 Filed 11–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–16–000]

The Municipal Electric Utilities, Association of New York, Complainant v. Niagara Mohawk Power Corporation, New York Independent System Operator, Inc., Respondent; Notice of Complaint

Take notice that on November 2, 2012, pursuant to section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), the Municipal Electric Utilities Association of New York (MEUA) filed a formal complaint against Niagara Mohawk Power Corporation (NMPC) and the New York Independent System Operation, Inc. (NYISO) alleging that, NMPC's current Transmission Service Charge under the NYISO Open Access Transmission Tariff is unjust and unreasonable and proposing a just and reasonable alternative rate. MEUA named NYISO as a Respondent because NMPC's Transmission Service Charge is administered under the NYISO tariff.

MEUA certifies that copies of the complaint were served on the contacts for NMPC and NYISO as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on November 23, 2012.

Dated: November 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27507 Filed 11–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–292–000]

EBC 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 EBC 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 26, 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: November 6, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–27499 Filed 11–9–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–6–000]

Enbridge Pipelines (North Dakota) LLC; Notice of Petition for Declaratory Order

Take notice that on November 2, 2012, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2)(2012), Enbridge Pipelines (North Dakota) LLC, filed a petition seeking a declaratory order and approval of a related Offer of Settlement with respect to a major proposed expansion and extension of the Enbridge North Dakota pipeline system known as the Sandpiper Project, as more fully described in their petition.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 St. NE., Washington, DC 20426.

The filings in the above proceedings 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.

Comment Date: 5:00 p.m. Eastern time on Tuesday, November 27, 2012.

Dated: November 6, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–27505 Filed 11–9–12; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update listing of financial institutions in liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: November 5, 2012.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10464	Citizens First National Bank	Princeton	IL	11/2/2012
10465	Heritage Bank of Florida	Lutz	FL	11/2/2012

[FR Doc. 2012–27459 Filed 11–9–12; 8:45 am]
BILLING CODE 6714–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2012–N–17]

Examination Rating System

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is adopting a new examination rating system to be used when examining Fannie Mae and Freddie Mac (Enterprises), the Federal Home Loan Banks (Banks) (collectively, regulated entities), and the Banks' Office of Finance. The new rating system is based on a ''CAMELSO'' framework and requires an assessment of seven individual components dealing with Capital, Asset quality, Management, Earnings, Liquidity, Sensitivity to market risk, and Operational risk. The new system replaces those that had been developed by FHFA's predecessor agencies.

DATES: FHFA will use the new rating system for all examinations commencing after January 1, 2013.

FOR FURTHER INFORMATION CONTACT: Karen Walter, Senior Associate Director, Division of Supervision Policy and Support, (202) 649–3405, *Karen.Walter@fhfa.gov,* or Carol Connelly, Principal Examination Specialist, Division of Supervision Policy and Support, (202) 649–3232, *Carol.Connelly@fhfa.gov,* Federal Housing Finance Agency, 400 Seventh Street SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION:

I. Background

A. Notice and Request for Comments

In June 2012, FHFA published a notice and request for public comments (Notice) relating to a new rating system to be used when examining the Enterprises, Banks, and Office of Finance. *See* 77 FR 36536 (June 19, 2012). The 30-day comment period closed on July 19, 2012 without FHFA receiving any comment letters. Accordingly, FHFA is adopting the new examination rating system as proposed in the Notice, with the exception of the minor revisions noted below, which FHFA is making to clarify certain aspects of the new system.

B. Finance Agency's Statutory Authorities

Effective July 30, 2008, the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, 122 Stat. 2654 (2008), created FHFA as an independent agency of the Federal Government and transferred to it the supervisory and oversight responsibilities over the Enterprises and Banks that formerly had been vested with the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (Finance Board), respectively. HERA provided that the Enterprises and the Banks were to be subject to the supervision and regulation of FHFA, and granted the Director of FHFA general regulatory authority over those regulated entities. 12 U.S.C. 4511(b). As regulator, FHFA is charged with ensuring that the Banks and Enterprises operate in a safe and sound manner, comply with applicable laws, and carry out their statutory missions. 12 U.S.C. 4513(a). The Director is authorized to exercise whatever incidental powers are necessary or appropriate to fulfilling his duties and responsibilities in overseeing the Banks and Enterprises, and to issue any regulations, guidelines or orders as are necessary to carry out his duties. 12 U.S.C. 4513(a)(2), 4526(a). The Director is also required to conduct an annual on-site examination of each Bank and Enterprise to determine its financial condition and to ensure that it operates in a safe and sound manner, and is authorized to conduct other examinations whenever he deems it to be appropriate or necessary. 12 U.S.C. 4517(a), (b).

C. Existing Examination Rating Systems

As described in the Notice, FHFA examinations staff continues to use the examination rating systems that had been developed by its predecessor agencies. The FHFA's Division of Federal Home Loan Bank Regulation uses the Federal Home Loan Bank Rating System for assigning examination ratings to the Banks and the Office of Finance. That system had been developed by the Finance Board and was adopted after having been published for comment in the **Federal Register**. *See* 72 FR 547 (January 5, 2007). That rating system was a numeric system based on a four-point scale. The FHFA examinations staff also continues to use the rating system developed by OFHEO in connection with its examination of the Enterprises. The OFHEO rating system was based on a non-numeric four-point scale ranging from ''No or Minimal Concerns'' to ''Critical Concerns.'' Although those existing examination rating systems differ in certain respects, both effectively addressed governance, capital adequacy and earnings, credit risk, market risk, and operational risk, which reflects the similarity in the financial risks to which the Banks and Enterprises are exposed. Because of those similarities, FHFA determined that it could improve its examination process by developing a single rating system that could be used when examining the Enterprises, the Banks, and the Banks' Office of Finance.

D. Proposed Examination Rating System

As described in the Notice, FHFA relies on its annual on-site examinations, as well as on periodic visitations and off-site monitoring, to ensure that the Banks and the Enterprises operate in a safe and sound manner, comply with applicable laws, and carry out their housing finance missions. On-site examinations ensure that FHFA carries out its oversight responsibilities and constitute the cornerstone of the agency's safety and soundness supervision program. As such, it is important that the manner in which the examinations are conducted and the manner in which the examination findings are organized and presented address key areas of the entities' business that present risks to their financial condition, performance, and safe and sound operations. The new examination rating system further refines the means of FHFA's communicating examination results, so that it may better identify and address supervisory concerns that may arise.

II. New Examination Rating System

The new examination rating system is the same as described in the Notice, with the exception of the minor revisions noted below. The new system is risk-focused, which means that each regulated entity and the Office of Finance will be assigned a composite rating based on an evaluation of various aspects of its operations. Specifically, the composite rating of a Bank or an Enterprise will be based on an evaluation and rating of the following seven individual components: Capital, Asset quality; Management; Earnings; Liquidity; Sensitivity to market risk; and Operational risk, and will be referred to as the Entity's ''CAMELSO'' rating. That rating system is similar to the ''CAMELS'' rating system used by the federal banking regulators for depository institutions. For the Banks' joint office, the Office of Finance, the composite rating will be based primarily on an evaluation of two components,

Management and Operational risk. Because the Office of Finance principally issues and services joint debt instruments on behalf of the Banks, and does not maintain or fund an investment portfolio, the other components are not relevant to assessing its condition, performance, and risk management.

Under the new rating system, each Bank and Enterprise, as well as the Office of Finance, will be assigned a composite numerical rating from ''1'' to ''5.'' A ''1'' rating indicates the lowest degree of supervisory concern, while a ''5'' rating indicates the highest level of supervisory concern. The composite rating of each Bank, the Enterprises, and the Office of Finance will reflect the ratings of the underlying components, which also will be rated on a scale of ''1'' to ''5.'' As is the case under the current rating system, the composite rating is not an arithmetic average of the component ratings. Instead, the relative importance of each component will be determined on a case-by-case basis, within the parameters established by this rating system.

In the version of the examination rating system published with the Notice, each of the seven components on which the entities are to be evaluated included a list of ''evaluative factors'' relating to the particular component. In the version of the examination rating system being adopted with this Notice, FHFA has made modest revisions or additions to the evaluative factors or the components, which are described briefly below.

Under the ''Capital'' component, FHFA has revised the fourth bullet paragraph of evaluative factors, relating to off-balance sheet activities, to refer to the ''level and composition'' inherent in those activities. The prior version had referred to the risk exposure represented by those activities. Under the ''Asset Quality'' component, FHFA has added an explicit reference to ''advances'' within the component itself, as well as a new fifth bullet paragraph for the evaluative factors, relating to the level and trend of charge-offs. Under the ''Management'' component, FHFA has added a new eighth bullet paragraph addressing the adequacy of anti-money laundering processes and other processes to identify, manage or report financial fraud. Under the ''Earnings'' component, FHFA has revised the language of the first evaluative factor modestly and added a reference to earnings from ''core business activities.'' Under the ''Operational Risk'' component, FHFA has added two new evaluative factors (the third and fourth bullet paragraphs) regarding management's ability to identify and control operational risk and the effectiveness of controls over third party vendors. In all other respects, the content of this examination rating system is the same as the content of the system published for notice and comment.

With respect to the component ratings, both the original and final versions of the rating system make clear that the list of evaluative factors relating to each component is not an exhaustive listing of the factors that examiners will consider when rating an institution. Each of the revisions described above in the final version is intended to provide additional clarity about the types of factors that examiners will consider and does not materially alter the substance of what was addressed in the original version on which FHFA sought comments. Going forward, FHFA may make further revisions to the language of this examination rating system as may be necessary to promote clarity or better achieve its supervisory and examination objectives. FHFA does not intend to seek public comments prior to making any such changes. In the event that FHFA were to make significant substantive changes to the examination rating system, such as it has done by replacing the OFHEO and FHFB systems with the new CAMELSO system, it may seek public comment prior to making any changes of that magnitude.

A copy of the new examination rating system is attached to this notice. FHFA will apply the new systems to examinations of the Enterprises, Banks and the Office of Finance that commence after January 1, 2013.

III. Consideration of Differences

Section 1313 of the Safety and Soundness Act, as amended by HERA, requires the Director, prior to promulgating any regulation or taking any other formal or informal action of general applicability and future effect, including the issuance of advisory documents or examination guidance, to consider differences between the regulated entities with respect to the Banks' cooperative ownership structure; mission of providing liquidity to members; affordable housing and community development mission; capital structure; and joint and several liability. As noted previously, although the operations of the Banks and the Enterprises differ in a number of respects, they are all government sponsored enterprises with a public mission to supporting housing finance, and they all face similar risks with respect to capital adequacy, the quality their assets and management, earnings, liquidity, market risk and operational risk. The new examination rating system principally addresses the manner in which FHFA examiners are to document their assessments of the financial condition and performance of the Enterprises and the Banks in connection with their periodic examinations. Because the system does not direct the Enterprises or the Banks to do anything, it likely does not constitute ''examination guidance'' as that term is used in HERA. Nonetheless, in developing the new rating system, the Director has considered the differences between the Banks and the Enterprises as they relate to the above factors, and has determined that the common risks faced by the Banks and the Enterprises justify the use of a single examination rating system for all of the regulated entities.

Dated: November 5, 2012.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

FEDERAL HOUSING FINANCE AGENCY

Examination Rating System

I. Introduction and Overview

The FHFA Examination Rating System is a risk-focused rating system under which each regulated entity and the Office of Finance (OF) is assigned a composite rating based on an evaluation of various aspects of its operations. Specifically, the composite rating of a Federal Home Loan Bank or an Enterprise is based on an evaluation and rating of seven components: Capital, Asset quality; Management; Earnings; Liquidity; Sensitivity to market risk; and Operational risk (CAMELSO). The composite rating of the Office of Finance is based primarily on an evaluation of two components: Management and Operational risk.

Under the rating system, each Federal Home Loan Bank, Enterprise and the OF is assigned a composite rating from ''1'' to ''5.'' A ''1'' rating indicates the lowest degree of supervisory concern, while a ''5'' rating indicates the highest level of supervisory concern. The composite rating of each Federal Home Loan Bank and Enterprise and the OF reflects the ratings of the underlying components, which are also rated on a scale of ''1'' to ''5.'' The composite rating is not an arithmetic average of the component ratings. Instead, the relative importance of each component is determined on a case-by-case basis, within the parameters established by this rating system.

II. Composite Ratings

Composite ratings are based on a careful evaluation of: A Federal Home Loan Bank's or Enterprise's capital, asset quality, management, earnings, liquidity, sensitivity to market risk, and operational risk; and the OF's management and operational risk. A regulated entity will be assigned a composite rating of ''1'' to ''5'' as described below.

Composite 1—The regulated entity is sound in every respect and typically each component is rated ''1'' or ''2.'' Any weaknesses are minor and can be addressed in a routine manner by the board of directors and management. The regulated entity is well positioned to withstand business fluctuations and adverse changes in the economic environment. Risk management practices are effective given the regulated entity's size, complexity and risk profile, and the regulated entity is in substantial compliance with laws, regulations, and regulatory requirements.

Composite 2—The regulated entity is generally sound and most components are rated ''1'' or ''2'' and typically no component is rated more severely than a ''3.'' Weaknesses are moderate and the board and management have demonstrated the ability and willingness to take necessary corrective action. The regulated entity is able to withstand business fluctuations and adverse changes in the economic environment. Risk management practices are satisfactory given the regulated entity's size, complexity and risk profile, and the regulated entity is in substantial compliance with laws, regulations, and regulatory requirements.

Composite 3—The regulated entity exhibits moderate to severe weaknesses in one or more respects but most components are rated ''3'' or better and no component is rated more severely than a ''4.'' Board and management may have demonstrated a lack of willingness or ability to address identified weaknesses within appropriate timeframes. The regulated entity is generally less capable of withstanding business fluctuations and adverse changes in the economic environment than regulated entities rated a composite ''1'' or ''2.'' Risk management practices typically need improvement given the regulated entity's size, complexity and risk profile, and the regulated entity may be in non-compliance with certain laws, regulations, and/or regulatory requirements.

Composite 4—The regulated entity generally exhibits severe weaknesses in multiple respects that result in serious deficiencies and unsatisfactory performance given its risk profile. The weaknesses may range from serious to critically deficient, to unsafe or unsound practices that have not been satisfactorily addressed or resolved by the board of directors and management within approved timeframes. The regulated entity is susceptible to further deterioration in condition or performance from business fluctuations and adverse changes in the economic environment. Risk management practices are deficient given the regulated entity's size, complexity and risk profile, and the regulated entity may be in non-compliance with critical laws, regulations and regulatory requirements. The viability of the regulated entity may be threatened if the problems and weaknesses are not satisfactorily resolved within an appropriate timeframe.

Composite 5—The regulated entity exhibits a volume and severity of problems that are beyond the ability of the board of directors or management to correct. The regulated entity exhibits unsafe or unsound practices or conditions. Changes to the board of directors or management are needed and outside financial or other assistance may be needed in order for the regulated entity to be viable. Risk management practices are critically deficient given the regulated entity's size, complexity and risk profile, and the regulated entity may be in significant non-compliance with laws, regulations, and regulatory requirements.

III. Component Ratings

The composite rating is derived from the seven component ratings that are described below. Each of the component rating descriptions provides a list of evaluative factors that relate to that component. The listing of evaluative factors is not exhaustive, and is not in order of importance.

CAPITAL—when rating a regulated entity's capital, examiners determine whether the regulated entity has sufficient capital relative to the entity's risk profile. When making this determination, examiners assess:

- The extent to which the regulated entity meets (or fails to meet) applicable capital requirements (laws, regulations, orders, guidance);
- The overall financial condition of the regulated entity;
- The composition of the balance sheet, including the nature and amount of intangible assets, the composition of capital, market risk, and concentration risk;
- The level, composition and risk exposure inherent in off-balance sheet activities;
- The types and quantity of risk inherent in the regulated entity's activities and management's ability to effectively identify, measure, monitor and control each of these risks;
- The potentially adverse consequences these risks may have on the regulated entity's capital;
- The adequacy of the allowance for loan losses and other reserves, as well as the nature, trend and volume of problem assets;
- The quality and strength of earnings and the reasonableness of dividends;
- The regulated entity's prospects and plans for growth, as well as the regulated entity's past experience in managing growth;
- The ability of management to address emerging needs for additional capital; and
- The regulated entity's access to capital markets and other sources of capital.

Capital Ratings

1. A rating of 1 indicates: The level and composition of capital is strong relative to the regulated entity's risk

profile. The regulated entity meets or exceeds all regulatory and statutory capital requirements and is expected to continue to be well-capitalized considering potential risks to the regulated entity. Capital management practices are strong.

2. A rating of 2 indicates: The level and composition of capital is satisfactory relative to the regulated entity's risk profile. The regulated entity meets or exceeds all regulatory and statutory capital requirements and is expected to continue to be satisfactorily capitalized considering potential risks to the regulated entity. Capital management practices are satisfactory, although minor weaknesses may be identified.

3. A rating of 3 indicates: The level and/or composition of capital needs improvement and does not fully support the regulated entity's risk profile. Although the regulated entity may currently meet or exceed minimum regulatory and statutory capital requirements, capital should be augmented when considering potential risks to the regulated entity. Capital management practices need improvement.

4. A rating of 4 indicates: The level and/or composition of capital are not adequate relative to the regulated entity's risk profile. The regulated entity may not meet all minimum regulatory and statutory capital requirements, and the viability of the entity may be in question. Capital management practices exhibit deficiencies.

5. A rating of 5 indicates: The level and composition of capital are critically deficient and the viability of the regulated entity may be threatened. The regulated entity does not meet minimum regulatory and statutory capital requirements. Outside financial assistance may be needed in order for the regulated entity to be viable.

ASSET QUALITY—when rating a regulated entity's asset quality, examiners determine the quantity of existing and potential credit risk associated with the loan and investment portfolios, advances, real estate owned, and other assets, as well as off-balance sheet transactions, and management's ability to identify, measure, monitor and control credit risk. When making this determination, examiners assess:

- The adequacy of underwriting standards;
- The soundness of credit administration practices;
- The appropriateness of risk identification and rating practices;
- The level, distribution, severity of problem, adversely classified, nonaccrual, restructured, delinquent, and nonperforming assets for both on- and off-balance sheet transactions;
- The level and trend of charge-offs;
- The adequacy of the allowance for loan losses and other asset valuation reserves;
- The credit risk arising from or reduced by off-balance sheet transactions, such as unfunded commitments, credit derivatives, and lines of credit;
- The diversification and quality of the loan and investment portfolios;
- The extent of securities underwriting activities and exposure to counterparties in trading activities;
- The existence of asset concentrations;
- The level and pace of asset growth;
- The adequacy of loan and investment policies, procedures and practices;
- The ability of management to properly administer its assets, including the timely identification and collection of problem assets;
- The adequacy of internal controls and management information systems; and
- The volume and nature of credit documentation exceptions.

Asset Quality Ratings

1. A rating of 1 indicates: Asset quality and credit risk management practices are strong. Any identified weaknesses are minor in nature and risk exposure is minimal in relation to the regulated entity's capital protection and management's ability to identify, monitor and mitigate risks

2. A rating of 2 indicates: Asset quality and credit risk management practices are satisfactory. Identified weaknesses, such as the level and severity of adversely-rated or classified assets, are moderate and in-line with the regulated entity's capital protection and management's ability to identify, monitor and mitigate risks.

3. A rating of 3 indicates: Asset quality or credit risk management practices need improvement. Identified weaknesses, such as the level and severity of adversely rated or classified assets, are significant and not in-line with the regulated entity's capital protection or management's ability to identify, monitor and mitigate risks.

4. A rating of 4 indicates: Asset quality or credit risk management practices are deficient. Identified weaknesses, such as the level of problem assets are significant and inadequately controlled. The weaknesses subject the regulated entity to potential losses, which if left unchecked may threaten the regulated entity's viability.

5. A rating of 5 indicates: Asset quality or credit risk management practices are critically deficient and may represent an imminent threat to the regulated entity's viability.

MANAGEMENT—when rating a regulated entity's management, examiners determine the capability and willingness of the board of directors and management, in their respective roles, to identify, measure, monitor, and control the risks of the regulated entity's activities and to ensure that the regulated entity's safe, sound and efficient operations are in compliance with applicable laws and regulations. When making this determination, examiners assess:

- The level and quality of oversight and support of all entity activities by the board of directors and management;
- The quality and effectiveness of strategic planning;
- The ability of the board of directors and management, in their respective roles, to plan for, and respond to, risks that may arise from changing business conditions or the initiation of new activities or products;
- The adequacy of, and conformance with, appropriate internal policies and controls addressing the operations and risks of significant activities;
- The accuracy, timeliness and effectiveness of management information and risk monitoring systems appropriate for the regulated entity's size, complexity and risk profile;
- The ability and willingness to identify, measure, monitor, and control risks across the regulated entity;
- The adequacy of audits and internal controls to promote effective operations and reliable financial and regulatory reporting; safeguard assets; and ensure compliance with laws, regulations, regulatory requirements, and internal policies;
- The adequacy of anti-money laundering processes and other processes designed to identify, manage and/or report financial fraud;
- The regulated entity's compliance with laws and regulations, including Prudential Management and Operational Standards (PMOS), Office of Minority and Women Inclusion (OMWI) and relevant provisions of the Dodd-Frank Act;
- The regulated entity's responsiveness to findings made by regulatory authorities, the regulated entity's risk management function, internal/external audit functions or outside consultants;
- The depth of management and management succession;

- The extent that the board of directors and management is affected by, or susceptible to, dominant influence or concentration of authority;
- The reasonableness and comparability of compensation and compensation policies and avoidance of self-dealing;
- The ability of the regulated entity to achieve mission-related goals and requirements, including affordable housing and community investment requirements; and
- The overall performance of the regulated entity and its risk profile.

Management Ratings

1. A rating of 1 indicates: The performance by the board of directors and management, and risk management practices relative to the regulated entity's size, complexity and risk profile are strong. All significant risks are consistently and effectively identified, measured, monitored and controlled. The regulated entity is in substantial compliance with laws, regulations and regulatory requirements, including mission-related and affordable housing goals and requirements. The board of directors and management demonstrate the ability to promptly and successfully address existing and potential problems and risks.

2. A rating of 2 indicates: The performance by the board of directors and management, and risk management practices relative to the regulated entity's size, complexity and risk profile are satisfactory. Generally, significant risks and problems are effectively identified, measured, monitored and controlled. The regulated entity is in substantial compliance with laws, regulations and regulatory requirements, including mission-related and affordable housing goals and requirements. Minor weaknesses may exist, but they are not material to the safety and soundness of the regulated entity, and are being satisfactorily addressed.

3. A rating of 3 indicates: The performance by the board of directors and management, and/or risk management practices need improvement given the regulated entity's size, complexity and risk profile. Problems and significant risks may be inadequately identified, measured, monitored or controlled. The regulated entity may be in non-compliance with laws, regulations and regulatory requirements, including mission-related and affordable housing goals and requirements. The capabilities of the board of directors or management may be insufficient for the type, size or condition of the regulated entity.

4. A rating of 4 indicates: The performance by the board of directors and management and/or risk management practices are deficient given the regulated entity's size, complexity and risk profile. Operational or performance problems and significant risks are inadequately identified, measured, monitored or controlled, and require immediate action to preserve the soundness of the regulated entity. The regulated entity may be in significant non-compliance with laws, regulations and regulatory requirements, including mission-related and affordable housing goals and requirements.

5. A rating of 5 indicates: The performance by the board of directors and management and/or risk management practices are critically deficient. Problems and significant risks are inadequately identified, measured, monitored or controlled, and may threaten the viability of the regulated entity. The regulated entity is in significant non-compliance with laws, regulations and regulatory requirements, including mission-related and affordable housing goals and requirements. The board of directors and management fail to demonstrate the ability or willingness to correct problems and implement appropriate risk management practices.

EARNINGS—when rating a regulated entity's earnings, examiners determine the quantity, trend, sustainability, and quality of earnings. When making this determination, examiners assess:

- The level, trend and stability of earnings from core business activities;
- The ability to provide for adequate capital through retained earnings;
- The quality and source of earnings, including the level of reliance on extraordinary gains, nonrecurring events, or favorable tax effects;
- The level of expenses in relations to operations;
- The adequacy of the budgeting systems, forecasting processes, and management information systems in general;
- The adequacy of provisions to maintain the allowance for loan losses and other valuation allowance accounts; and
- The earnings exposure to market risk.

Earnings Ratings

1. A rating of 1 indicates: The quality, quantity, and sustainability of earnings are strong. The regulated entity's earnings are more than sufficient to support operations and maintain adequate capital and allowance levels after considering the regulated entity's overall condition, growth and other factors.

2. A rating of 2 indicates: The quality, quantity, and sustainability of earnings are satisfactory. The regulated entity's earnings are sufficient to support operations and maintain adequate capital and allowance levels after considering the regulated entity's overall condition, growth and other factors.

3. A rating of 3 indicates: The quality, quantity, or sustainability of earnings need improvement. The regulated entity's earnings may not fully support the regulated entity's operations or provide for adequate capital and/or allowance levels in relation to the regulated entity's overall condition, growth, and other factors.

4. A rating of 4 indicates: The quality, quantity, and/or sustainability of earnings are deficient. The regulated entity's earnings are insufficient to support operations and maintain adequate capital and allowance levels.

5. A rating of 5 indicates: The quality, quantity, and/or sustainability of earnings are critically deficient. The regulated entity's earnings are inadequate to cover expenses, and losses may threaten the regulated entity's viability through the erosion of capital.

LIQUIDITY—when rating a regulated entity's liquidity, examiners determine the current level and prospective sources of liquidity compared to funding needs, as well as the adequacy of funds management practices relative to the regulated entity's size, complexity and risk profile. When making this determination, examiners assess:

- The adequacy of liquidity sources to meet present and future needs and the ability of the regulated entity to meet liquidity needs without adversely affecting its operations or condition;
- The availability of assets readily convertible to cash without undue loss;
- The regulated entity's access to money markets and other secondary sources of funding;
- The level and diversification of funding sources, both on- and off-balance sheet;
- The degree of reliance on short-term, volatile sources of funding to fund longer term assets;
- The ability to securitize and sell certain pools of assets; and
- The capability and willingness of management to properly identify, measure, monitor and control the regulated entity's liquidity position, including the effectiveness of funds management strategies, liquidity policies, management information

systems and contingency liquidity plans.

Liquidity Ratings

1. A rating of 1 indicates: The level of liquidity and the regulated entity's management of its liquidity position are strong. Any identified weaknesses in its liquidity management practices are minor. The regulated entity has reliable access to sufficient sources of funds on favorable terms to meet current and anticipated liquidity needs. The regulated entity meets or exceeds regulatory guidance related to liquidity.

2. A rating of 2 indicates: The level of liquidity and the regulated entity's management of its liquidity position are satisfactory. The regulated entity may have moderate weaknesses in its liquidity management practices, but these are correctable in the normal course of business. The regulated entity has reliable access to sufficient sources of funds on acceptable terms to meet current and anticipated liquidity needs. The regulated entity meets or exceeds regulatory guidance related to liquidity.

3. A rating of 3 indicates: The level of liquidity or the regulated entity's management of its liquidity position needs improvement. The regulated entity may evidence moderate weaknesses in funds management practices, or weaknesses that are not correctable in the normal course of business. The regulated entity may lack ready access to funds on reasonable terms. The regulated entity may not meet all regulatory guidance related to liquidity.

4. A rating of 4 indicates: The level of liquidity or the regulated entity's management of its liquidity position is deficient. The regulated entity may not have or be able to obtain sufficient funds on reasonable terms. The regulated entity does not meet all regulatory guidance related to liquidity.

5. A rating of 5 indicates: The level of liquidity or the regulated entity's management of its liquidity position is critically deficient. The viability of the regulated entity may be threatened and the regulated entity may need to seek immediate external financial assistance to meet maturing obligations or other liquidity needs. The regulated entity does not meet regulatory guidance related to liquidity.

SENSITIVITY TO MARKET RISK—when rating a regulated entity's sensitivity to market risk, examiners determine the degree to which changes in interest rates, foreign exchange rates, commodity prices, or equity prices can adversely affect the regulated entity's earnings or economic capital. When making this determination, examiners assess:

- The sensitivity of the regulated entity's earnings, or the economic value of its capital to adverse changes in interest rates, foreign exchange rates, commodity prices or equity prices;
- The ability of management to identify, measure, monitor and control exposure to market risk given the regulated entity's size, complexity and risk profile;
- The nature and complexity of interest rate risk exposure arising from non-trading positions; and
- The nature and complexity of market risk exposure arising from trading, asset management activities and foreign operations.

Sensitivity to Market Risk Ratings

1. A rating of 1 indicates: Market risk sensitivity is well controlled and there is minimal potential that the regulated entity's earnings performance or capital position will be adversely affected by market risk sensitivity. Risk management practices are strong for the size, sophistication and market risk accepted by the regulated entity. Earnings and capital provide substantial support for the amount of market risk taken by the regulated entity.

2. A rating of 2 indicates: Market risk sensitivity is satisfactorily controlled and there is moderate potential that the regulated entity's earnings performance or capital position will be adversely affected by market risk sensitivity. Risk management practices are satisfactory for the size, sophistication and market risk accepted by the regulated entity. Earnings and capital provide adequate support for the amount of market risk taken by the regulated entity.

3. A rating of 3 indicates: Market risk sensitivity control needs improvement or there is significant potential that the regulated entity's earnings performance or capital position will be adversely affected by market risk sensitivity. Risk management practices need improvement given the size, sophistication and market risk accepted by the regulated entity. Earnings and capital may not adequately support the amount of market risk taken by the regulated entity.

4. A rating of 4 indicates: Market risk sensitivity control is deficient or there is a high potential that the regulated entity's earnings performance or capital position will be adversely affected by market risk sensitivity. Risk management practices are deficient for the size, sophistication and market risk accepted by the regulated entity. Earnings and capital provide inadequate support for the amount of market risk taken by the regulated entity.

5. A rating of 5 indicates: Market risk sensitivity control is critically deficient or the level of market risk taken by the regulated entity may be an imminent threat to the regulated entity's viability. Risk management practices are critically deficient for the size, sophistication and level of market risk accepted by the regulated entity.

OPERATIONAL RISK—when rating a regulated entity's operational risk, examiners determine the exposure to loss from inadequate or failed internal processes, people, and systems, including internal controls and information technology, or from external events, including all direct and indirect economic losses related to legal liability, reputational setbacks, and compliance and remediation costs to the extent such costs are consequences of operational events. When making this determination examiners assess:

- The efficiency and effectiveness of operations and technology;
- The effectiveness of the operational risk framework in identifying and assessing threats posed to operations;
- The ability of management to identify, measure, monitor and control operational risk;
- The effectiveness of controls over third-party vendors;
- The quality of operational risk management in the administration of the regulated entity's mission-related activities, including affordable housing and community investment activities;
- The organizational structure, including lines of authority and responsibility for adhering to prescribed policies;
- The accuracy of recording transactions;
- The effectiveness of internal controls over financial reporting (i.e., the level of compliance with Sarbanes-Oxley section 404);
- The controls surrounding limits of authorities, including: safeguarding access to and use of records and assets; segregation of duties;
- The effectiveness of the control environment in preventing and/or detecting errors and unauthorized activity;
- The accuracy, effectiveness and security of information systems, data and management reporting;
- The effectiveness of business continuity planning; and
- The effectiveness, accuracy and security of models.

Operational Risk Ratings

1. A rating of 1 indicates: Operational risk management is strong and the

number and severity of operational risk events are low. There is minimal potential that the regulated entity's earnings performance or capital position will be adversely affected by the level of operational risk.

2. A rating of 2 indicates: Operational risk management is satisfactory and the number and severity of operational risk events are moderate. There is moderate potential that the regulated entity's earnings performance or capital position will be adversely affected by the level of operational risk.

3. A rating of 3 indicates: Operational risk management needs improvement or there is significant potential that the regulated entity's earnings performance or capital position will be adversely affected by the level of operational risk. The number and severity of operational risk events are moderate to serious.

4. A rating of 4 indicates: Operational risk management is deficient or there is a high potential that the regulated entity's earnings performance or capital position will be adversely affected by the level of operational risk. The number and severity of operational risk events are serious to critical.

5. A rating of 5 indicates: Operational risk management is critically deficient or the level of operational risk taken by the regulated entity may be an imminent threat to the regulated entity's viability. The number and severity of operational risk events may threaten the regulated entity's viability.

[FR Doc. 2012–27558 Filed 11–9–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (''OMB'') to extend through November 30, 2015, the current Paperwork Reduction Act (''PRA'') clearance for the FTC's shared enforcement with the Consumer Financial Protection Bureau (''CFPB'') of the information collection requirements in subpart N of Regulation V. That clearance expires on November 30, 2012.

DATES: Comments must be filed by December 13, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Subpart N of Regulation V, PRA Comment, P125403,'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/SubpartNRegulationVPRA2* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Tiffany George, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326–3040, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] transferred rulemaking authority for several consumer financial protection laws to the CFPB. Accordingly, the Commission rescinded several rules under the Fair Credit Reporting Act, including the FTC's Free Annual File Disclosures Rule that appeared under 16 CFR Parts 610 and 698.

On December 21, 2011, the CFPB issued an interim final rule, Regulation V (Fair Credit Reporting), 12 CFR Part 1022, which incorporated within its subpart N (Duties of Consumer Reporting Agencies Regarding Disclosures to Consumers), with only minor changes (non-substantive, technical, formatting, and stylistic), the former Free Annual File Disclosures Rule, and in Appendix L to Part 1022, the associated model notice.[2] Subpart N of Regulation V continues the disclosure requirements that had existed under the Free Annual File Disclosures Rule. Because the FTC shares enforcement authority with the CFPB for subpart N, the two agencies have split between them the related estimate of PRA burden for firms under their co-enforcement jurisdiction.

Subpart N requires nationwide consumer reporting agencies and nationwide consumer specialty reporting agencies to provide to consumers, upon request, one free file disclosure within any 12-month period. Generally, it requires the nationwide consumer reporting agencies, as defined in Section 603(p) of the FCRA, 15 U.S.C. 1681a(p), to create and operate a centralized source that provides consumers with the ability to request their free annual file disclosures from each of the nationwide consumer reporting agencies through a centralized Internet Web site, toll-free telephone number, and postal address. Subpart N also requires the nationwide consumer reporting agencies to establish a standardized form for Internet and mail requests for annual file disclosures, and provides a model standardized form that may be used to comply with that requirement. It additionally requires nationwide specialty consumer reporting agencies, as defined in Section 603(w) of the FCRA, 15 U.S.C. 1681a(w), to establish a streamlined process for consumers to request annual file disclosures. This streamlined process must include a toll-free telephone number for consumers to make such requests.

On August 20, 2012, the FTC sought public comment on the information collection requirements associated with subpart N. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule.

Burden Statement: On August 20, 2012, the FTC sought public comment on the information collection requirements associated with subpart N (August 20, 2012 Notice [3]) and the FTC's associated PRA burden analysis. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, 44 U.S.C. 3501 *et seq.,* the FTC is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance for the Rule. As before, the Commission specifically seeks more recent estimates of the number of requests consumers are making for free annual file disclosures. In addition to data on the number of requests, data on how the number of requests has changed over time, and how these requests are being received—by Internet, phone, or by mail—would be most helpful toward refining the FTC's burden estimates.

The following summarizes the FTC net burden estimates [4] resulting from the analysis detailed in the August 20, 2012 Notice.

Net burden hours: 170,905.

Associated labor costs: $3,069,239.

[1] Public Law 111–203, 124 Stat. 1376 (2010). Title X comprises sections 1001–1100H (collectively, the ''Consumer Financial Protection Act of 2010'').

[2] 76 FR 79307 (Dec. 21, 2011).

[3] 77 FR 50106.

[4] Because the FTC shares enforcement authority with the CFPB for subpart N, the two agencies are splitting between them the related estimate of PRA burden for firms under their co-enforcement jurisdiction.

Non-labor/capital costs: $6,111,000.

Request for Comment: You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 13, 2012. Write ''Subpart N of Regulation V, PRA Comment, P125403'' 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 provided in Section 6(f) of the FTC Act 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16CFR 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).[5] 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, we encourage 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/SubpartNRegulationVPRA2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Subpart N of Regulation V, PRA Comment, P125403'' 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 *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 13, 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.*

Comments on the information collection requirements subject to review under the PRA should additionally be submitted to OMB. If sent by U.S. mail, they should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2012–27552 Filed 11–9–12; 8:45 am]

BILLING CODE 6750–01–P

[5] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, Office of Infectious Diseases (BSC, OID)

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:

Time and Date: 8:00 a.m.–2:45 p.m., December 5, 2012.

Place: CDC, Global Communications Center, 1600 Clifton Road NE., Building 19, Auditorium B3, Atlanta, Georgia 30333.

Status: The meeting is open to the public, limited only by the space available.

Purpose: The BSC, OID, provides advice and guidance to the Secretary, Department of Health and Human Services; the Director, CDC; the Director, OID; and the Directors of the National Center for Immunization and Respiratory Diseases, the National Center for Emerging and Zoonotic Infectious Diseases, and the National Center for HIV/AIDS, Viral Hepatitis, STD, and TB Prevention, CDC, in the following areas: strategies, goals, and priorities for programs; research within the national centers; and overall strategic direction and focus of OID and the national centers.

Matters To Be Discussed: The meeting will include reports from the BSC OID working groups, brief updates on activities of the infectious disease national centers, and a discussion on ways to strengthen the clinical and public health interface, with focus on addressing pertussis and implementing new recommendations for reducing hepatitis C virus morbidity and mortality.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION:

Robin Moseley, M.A.T., Designated Federal Officer, OID, CDC, 1600 Clifton Road NE., Mailstop D10, Atlanta, Georgia 30333, Telephone: (404) 639–4461.

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: November 5, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–27541 Filed 11–9–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Permanency Innovations Initiative Evaluation: Phase 2.

OMB No.: 0970–0408.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human

Services (HHS) intends to collect data for an evaluation of the Permanency Innovations Initiative (PII). This 5-year initiative, funded by the Children's Bureau (CB) within ACF, is intended to build the evidence base for innovative interventions that enhance well-being and improve permanency outcomes for particular groups of children and youth who are at risk for long-term foster care and who experience the most serious barriers to timely permanency.

The CB has funded six grantees to identify local barriers to permanent placement and implement innovative strategies that mitigate or eliminate those barriers and reduce the likelihood that children will remain in foster care for three years or longer. The first year of the initiative focused on clarifying grantees' target populations and intervention programs. In addition, evaluation plans were developed to support rigorous site-specific and cross-site studies to document the implementation and effectiveness of the grantees' projects and the initiative overall.

Data collection for the PII evaluation includes a number of components being launched at different points in time. Phase 1 included data collection for a cross-site implementation evaluation and site-specific evaluations of two PII grantees (Washoe County, Nevada, and the State of Kansas). Phase 1 data collection was approved August 2012 (OMB# 0970–0408).

The second phase includes site-specific evaluations of four PII grantees expected to implement interventions in the third year of the PII grant period. The four grantees are Arizona Department of Economic Security (ADES); California Department of Social Services' California Partnership for Permanency (CAPP); Illinois Department of Children and Family Services (DCFS); and the Los Angeles Gay and Lesbian Center's Recognize Intervene Support Empower (RISE). Later submission for a cost study is planned for late Spring 2013, with data collection to begin in late Fall 2013.

Data for the evaluations will be collected through: (1) Surveys of children, youth, foster parents, guardians, biological parents, and caseworkers; and (2) document reviews of case records.

Respondents: Children/youth and their parents or permanent or foster caregivers, caseworkers.

ANNUAL BURDEN ESTIMATES

Instrument	Total annual burden hours	Annual number of respondents	Number of responses per respondent	Average burden hours per response
ADES:				
Child Assent Form, Child Assent Script	115	383	1.0	0.3
Child/Youth Interview	383	383	2.0	0.5
Caseworker Prospective-Homes-Found Consent Information Sheet	7	72	1.0	0.1
Caseworker Interview Prospective-Homes-Found	22	72	1.0	0.3
Caseworker Decision-Making Consent Information Sheet	7	72	1.0	0.1
Caseworker Interview Decision-Making	36	72	1.0	0.5
ADES annual burden hours	570			
CAPP:				
Parent/Guardian Interview	179	597	1.0	0.3
Caseworker Data Extraction	149	298	1.0	0.5
CAPP annual burden hours	328			
DCFS:				
Biological Parent Consent	13	134	1.0	0.1
Foster Parent Consent	24	240	1.0	0.1
Youth Assent	24	240	1.0	0.1
Biological Parent Interview	80	134	2.0	0.3
Foster Parent Interview	384	240	2.0	0.8
Youth Interview	384	240	2.0	0.8
DCFS annual burden hours	909			
RISE:				
Staff Consent	400	2,000	2.0	0.1
Staff Survey	800	2,000	2.0	0.2
Youth Assent to Learn about the Study	8	27	1	0.3
Youth Assent to Participate in the Study	8	27	1	0.3
Child Attorney Consent	5	27	1	0.2
Youth Interview	135	27	5	1.0
Qualitative Youth Interview FAQ/Assent	1	7	1	0.2
Youth Qualitative Interview	7	7	1	1.0
Permanency Resource/Current Caregiver FAQ/Contact Consent	1	13	1	0.1
Permanency Resource/Current Caregiver Consent	1	13	1	0.1
Interview with Permanency Resource	59	13	5	0.9
Interview with Current Caregiver	33	13	5	0.5
Survey of CCT Facilitators Emotional Permanency Survey	1	1	5	0.2
RISE annual burden hours	1,459			
OVERALL ANNUAL BURDEN HOURS	3,266			

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. Email address: *OPREinfocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2012–27465 Filed 11–9–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Statement of Organization, Functions, and Delegations of Authority; Office of the Deputy Assistant Secretary for Administration

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority.

The Administration for Children and Families (ACF) has reorganized the Office of the Deputy Assistant Secretary for Administration (ODASA). This reorganization establishes the Office of Diversity Management and Equal Employment Opportunity (ODME). In addition, it realigns the acquisition oversight function to the Ethics Team in the Immediate Office of the Deputy Assistant Secretary for Administration.

FOR FURTHER INFORMATION CONTACT: Cheryl Jones, Acting Deputy Assistant Secretary for Administration, 370 L'Enfant Promenade SW., Washington, DC 20447, (202) 401–9238.

This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KP, Office of the Deputy Assistant Secretary for Administration, (ODASA), as last amended, 76 FR 68764–68766, November 7, 2011.

I. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, KP.00 Mission, delete in its entirety and replace with the following:

KP.00 MISSION. The Deputy Assistant Secretary for Administration serves as principal advisor to the Assistant Secretary for Children and Families on all aspects of personnel administration and management; information resource management; financial management activities; grants policy and overseeing the issuance of grants; acquisition advisory services; the ethics program; staff development and training activities; organizational development and organizational analysis; administrative services; facilities management; and State systems policy. The Deputy Assistant Secretary for Administration oversees the Diversity Management and Equal Employment Opportunity program and all administrative special initiative activities for ACF.

II. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, KP.10 Organization, delete in its entirety and replace with the following:

KP.10 ORGANIZATION. The Office of the Deputy Assistant Secretary for Administration is headed by the Deputy Assistant Secretary who reports to the Assistant Secretary for Children and Families. The Office is organized as follows:

Immediate Office of the Deputy Assistant Secretary for Administration (KPA)
Office of Information Services (KPB)
Office of Financial Services (KPC)
Office of Workforce Planning and Development (KPD)
Office of Grants Management (KPG)
Grants Management Regional Units (KPGDI–X)
Office of Diversity Management and Equal Employment Opportunity (KPH)

III. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, KP.20 Functions, paragraph A, delete in its entirety and replace with the following:

KP.20 FUNCTIONS. A. The Immediate Office of the Deputy Assistant Secretary for Administration (ODASA) directs and coordinates all administrative activities for the Administration for Children and Families (ACF). The Deputy Assistant Secretary for Administration serves as ACF's: Chief Financial Officer; Chief Grants Management Officer; Federal Manager's Financial Integrity Act (FMFIA) Management Control Officer; Principal Information Resource Management Official serving as Chief Information Officer; Deputy Ethics Counselor; Personnel Security Representative; and Reports Clearance Officer. The Deputy Assistant Secretary for Administration serves as the ACF liaison to the Office of the General Counsel, and as appropriate, initiates action in securing resolution of legal matters relating to management of the agency, and represents the Assistant Secretary on all administrative litigation matters.

The Deputy Assistant Secretary for Administration represents the Assistant Secretary in HHS and with other Federal agencies and task forces in defining objectives and priorities, and in coordinating activities associated with Federal reform initiatives. ODASA provides leadership of assigned ACF special initiatives arising from Departmental, Federal and non-Federal directives to improve service delivery to customers.

The Deputy Assistant Secretary for Administration provides day-to-day executive leadership and direction to the Immediate Office of the Deputy Assistant Secretary, Office of Information Services, Office of Financial Services, Office of Workforce Planning and Development, and the Office of Grants Management. The Immediate Office of the Deputy Assistant Secretary for Administration consists of the Deputy Director, Chief of Staff, and the Management Operations Team (formerly referred to as the Administrative Team), the Budget Team, Facilities Team, and Ethics Team.

The Management Operations Team coordinates human capital management needs within ODASA. The Team provides leadership, guidance, oversight and liaison functions for ODASA personnel related issues and activities as well as other administrative functions within ODASA. The Management Operations Team coordinates with the Office of Workforce Planning and Development to provide ODASA staff with a full array of personnel services, including position management, performance management, employee recognition, staffing, recruitment, employee and labor relations, employee worklife, payroll liaison, staff development, training services, and special hiring and placement programs. The Team develops and implements ACF travel policies and procedures consistent with Federal requirements. The Team provides technical assistance and oversight; coordinates ACF's use of the Travel Management System; manages employee participation in the Travel Charge Card program, and coordinates Travel Management Center services for ACF. It purchases and tracks common use supplies, stationery and publications. It plans and manages reprographic services.

The Budget Team manages the formulation and execution of ODASA's Federal administration budget and assigned ACF program and common expense budgets. The Budget Team maintains budgetary controls on ODASA accounts, reconciling accounting reports and invoices, and monitoring all spending. The Team develops, defends and executes the assigned funds for rent, repair and alterations, facilities activities, telecommunication, information technology, personnel services and training. The Team also controls ODASA's credit card for small purchases.

The Facilities Team is responsible for planning, managing, and directing ACF's facility, safety, security, and emergency management programs. The Team serves as the lead for ACF in coordination and liaison with Departmental, GSA and other Federal agencies on implementation of Federal facility and security directives. The Facilities Team serves as lead and coordinator for all tenant matters in ACF Headquarter locations. The Team coordinates facility activities for ACF's regional offices. The Team is responsible for planning and executing ACF's environmental health program, and ensuring that appropriate occupational health and safety plans are in place. The Team is responsible for issuing, managing and controlling badge and cardkey systems to control access to agency space for security purposes. The Team provides, prepares, coordinates, and disseminates information, policy and procedural guidance on administrative and materiel management issues on an agency-wide basis. It directs and/or coordinates management initiatives to improve ACF administrative and materiel management services with the goal of continually improving services while containing costs. The Team establishes and manages contracts and/or blanket purchase agreements for administrative support and materiel management services, including space design, building alteration and repair, reprographics, moving, labor, property management and inventory, systems furniture acquisitions and assembly, and fleet management. The Team provides management and oversight of ACF mail delivery services and activities, including Federal and contractor postal services nationwide, covering all classes of U.S. Postal Service mail, priority and express mail services, and courier services, etc. The Team plans, manages/operates employee transportation programs, including shuttle service and fleet management; employee and visitor parking. The Team directs all activities associated with the ACF Master Housing Plan, including coordination and development of the agency long-range space budget; planning, budgeting, identification, solicitation, acceptance and utilization of office and special purpose space, repairs, and alterations; serving as principal liaison with GSA and other Federal agencies, building managers and materiel engineers, architects and commercial representatives, for space acquisitions, negotiation of lease terms, dealing with sensitive issues such as handicapped barriers, and space shortages. It develops and maintains space floor plans and inventories, directory boards, and locator signs. The Team serves as principal liaison with private and/or Federal building managers for all administrative services and materiel management activities. The Team develops and implements policies and procedures for the ACF Personal Property Management program, including managing the ACF Personal Property Inventory, and other personal property activities.

The Ethics and Acquisition Team manages the agency-wide ethics program, and provides advice and technical assistance and counsel on the delivery of acquisition advisory services within the agency. The Team ensures that the agency and ACF employees are in compliance with the Executive Branch Standards of Ethical Conduct, the HHS Supplemental Standards of Ethical Conduct, the criminal conflict of interest statutes, and other ethics related laws and regulations. The Agency-wide ethics program includes the public financial disclosure reporting system, confidential financial disclosure reporting system, outside activity prior approval and annual report process, non-federal source cash or in-kind travel reimbursement, procurement integrity enforcement, standards of ethical conduct determinations, conflicts resolution, advisory committees ethics program, advice and counsel, education and training, and enforcement. The Ethics Officer reports directly to the DASA, who serves as the ACF Deputy Ethics Counselor.

The Team provides expert advice and counsel to ACF officials on acquisition issues, develops guidance and procedures, and ensures compliance with applicable regulations, rules, and policies. The Team serves as the liaison with the contracting offices, and provides analysis, evaluation, consultation, and advice to management on acquisition strategies. The Team leads the ACF implementation on cost effective strategies and in the development of the ACF annual acquisition plan. The Team works with ACF offices to strategically plan short-term and long-term objectives, and leads the agency workgroup on acquisition activities. The Team works with the ACF Training Officer and the Acquisition Career Manager to coordinate and communicate certification training for ACF's Contracting Officer's Representatives.

IV. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, KP.20 Functions, paragraph D, delete in its entirety and replace with the following:

D. The Office of Workforce Planning and Development (OWPD) advises the Deputy Assistant Secretary for Administration on human resource management, and organizational and employee development activities for ACF. OWPD provides leadership, direction and oversight for human resource management services provided to ACF with the Program Support Center (PSC). OWPD, in collaboration and coordination with the PSC, provides advice and assistance to ACF managers in their personnel management activities, including recruitment, selection, position management, performance management, designated performance and incentive awards and employee assistance programs and other services to ACF employees. OWPD provides management, direction and oversight of the following personnel administrative services: the exercise of appointing authority, position classification, awards authorization, performance management evaluation, personnel action processing and record keeping, merit promotion, special hiring, and placement programs. OWPD serves as liaison between ACF, the Department, and the Office of Personnel Management. It provides technical advice and assistance on personnel policy, regulations, and laws. OWPD formulates and interprets policies pertaining to existing personnel administration and management matters and formulates and interprets new human resource programs and strategies. The Office, in collaboration and coordination with the PSC, provides oversight and management advisory services on all ACF employee relations issues. The Office plans and coordinates ACF employee relations and labor relations activities, including the application and interpretation of the Federal Labor Management Relations Program collective bargaining agreements, disciplinary and adverse action regulations and appeals. The Office participates in the formulation and implementation of policies, practices and matters affecting bargaining unit employees' working conditions by assuring management's compliance with the Federal Labor Relations Program (5 U.S.C. Chapter 71). The Office maintains oversight, leadership and direction of the labor-management and employee relations services provided under contract with the PSC.

OWPD is responsible for formulation, planning, analysis and development of ACF human resource policies and programs, workforce planning, and liaison functions to the Department on ACF payroll matters. The Office formulates and oversees the implementation of ACF-wide policies, regulations and procedures concerning all aspects of the Senior Executive Service (SES), and SES-equivalent recruitment, staffing, position establishment, compensation, award, performance management and related personnel areas. The Office manages the ACF SES performance recognition systems and provides services for functions of the Executive Secretary to the Executive Resources Board and the Performance Review Board. OWPD coordinates Schedule C and executive personnel activity with the Office of the Secretary and is the focal point for data, reports and analyses relating to Schedule C, SES and Executive-level personnel. OWPD advises the Deputy Assistant Secretary for Administration on organizational analysis and development including: delegations of authority; planning for new organizational elements; and planning, organizing and performing studies, analyses and evaluations related to structural, functional and organizational issues, problems, and policies to ensure organizational effectiveness. The Office administers ACF's system for review, approval and documentation of delegations of authority. The Office provides technical assistance and guidance to ACF offices on intra-component organizational proposals and is responsible for development and/or

review of inter-component organizational proposals. The Office develops policies and procedures for implementing organizational development activities and provides leadership of assigned ACF special initiatives arising from Departmental, Federal and non-Federal directives to improve service delivery to customers and to enhance employee work environment. The Office manages and coordinates designated incentive awards programs. The Office develops training policies and plans for ACF. It provides leadership in directing and managing Agency-wide staff development and training activities for ACF. OWPD is responsible for the functional management of all information technology and software training, common needs training, and management training in the Agency, including policy development, guidance, technical assistance, and evaluation of all aspects of career employee, supervisory, management and executive training. The Office provides leadership in managing/overseeing and monitoring the ACF Training Resource Center and the Computer Training and Information Centers. The Office develops and manages the consolidated training budget for the Agency.

V. Under Chapter KP, Office of the Deputy Assistant Secretary for Administration, KP. 20 Functions, add the following:

The Office of Diversity Management and Equal Employment Opportunity (ODME) serves as the principal advisor, through the Deputy Assistant Secretary for Administration, to the Assistant Secretary on all aspects of the Agency's Diversity Management and Equal Employment Opportunity programs.

The Office serves as the liaison between ACF and the HHS. ODME directs and manages the ACF Equal Employment Opportunity programs in accordance with Equal Employment Opportunity Commission (EEOC) regulations and HHS guidelines. The immediate oversight is provided by a staff under the direction of the ACF EEO Officer. ODME develops and evaluates programs and procedures designed to identify and eliminate discrimination in employment, training, incentive awards, promotion and career opportunities. They are responsible for implementing and evaluating a cost-effective, timely and impartial system for processing individual complaints of discrimination under the Title VII of the Civil Rights Act of 1964, as amended. The Staff provides information, guidance, advice and technical assistance to ACF supervisors and managers on affirmative employment planning and other means of achieving parity and promoting work force diversity. The Staff is responsible for ensuring that ACF-conducted programs create an environment that is free of discrimination, where all employees may work without fear of reprisal or discriminatory harassment; where qualified employees and applicants with disabilities receive reasonable accommodations; and where all employees are recognized for their individual performance and contributions to ACF, without regard to race, national origin, color, age, religion, sex (including pregnancy and gender identity), sexual orientation, disability (physical or mental), status as a parent, genetic information, or other non-merit factor.

The staff is responsible for assessing current and future needs required to meet organizational goals and objectives and ensuring the diversity of ACF workforce. ODME works proactively to enhance the employment of women, minorities, veterans, and people with disabilities. This is achieved through policy development, oversight, complaints prevention, outreach, and education and training programs. The Staff implements the applicable provisions of the Americans with Disabilities Act of 1990.

Dated: November 1, 2012.

George H. Sheldon,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2012–27524 Filed 11–9–12; 8:45 am]

BILLING CODE 4184–40–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1093]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Additive Petitions and Investigational Food Additive Exemptions; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish a 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. This notice solicits comments on food additive petitions regarding animal food.

DATES: Submit electronic or written comments on the collection of information by January 14, 2013.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Drive, PI50–400B, Rockville, MD 20850, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Additive Petitions and Investigational Food Additive Exemptions, 21 CFR 570.17 and 571 (OMB Control Number 0910–0546)—Extension

Section 409(a) of the Federal Food, Drug and Cosmetic Act (FD&C Act) (21 U.S.C. 348(a)) provides that a food additive shall be deemed to be unsafe unless its use is permitted by a regulation which prescribes the condition(s) under which it may safely be used, or unless it is exempted by regulation for investigational use. Section 409(b) of the FD&C Act specifies

the information that must be submitted by a petitioner in order to establish the safety of a food additive and to secure the issuance of a regulation permitting its use.

To implement the provisions of section 409 of the FD&C Act, procedural regulations have been issued under 21 CFR part 571. These procedural regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broader terms by the FD&C Act. The regulations add no substantive requirements to those indicated in the FD&C Act, but attempt to explain these requirements and provide a standard format for submission to speed processing of the petition. Labeling requirements for food additives intended for animal consumption are also set forth in various regulations contained in parts 501, 573, and 579. The labeling regulations are considered by FDA to be cross-referenced to § 571.1, which is the subject of this same OMB clearance for food additive petitions.

With regard to the investigational use of food additives, section 409(j) of the FD&C Act provides that any food additive or any food bearing or containing such an additive, may be exempted from the requirements of this section if intended solely for investigational use by qualified experts. Investigational use of a food additive is typically to address the safety and/or intended physical or technical effect of the additive.

To implement the provisions of section 409(j), regulations have been issued under 21 CFR 570.17. These regulations are designed to specify more thoroughly the information that must be submitted to meet the requirement set down in broad terms by the FD&C Act. Labeling requirements for investigational food additives are also set forth in various regulations contained in part 501. The labeling regulations are considered by FDA to be cross referenced to § 570.17, which is the subject of this same OMB clearance for investigational food additive files.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1] FOOD ADDITIVE PETITIONS

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
571.1(c) Moderate Category	1	1	1	3,000	3,000
571.1(c) Complex Category	1	1	1	10,000	10,000
571.6 Amendment of Petition	2	2	4	1,300	5,200
Total Hours	4	4	6	14,300	18,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

§ 571.1(c) Moderate Category: For a food additive petition without complex chemistry, manufacturing, efficacy, or safety issues, the estimated time requirement per petition is approximately 3,000 hours. An average of 1 petition of this type is received on an annual basis, resulting in a burden of 3,000 hours.

§ 571.1(c) Complex Category: For a food additive petition with complex chemistry, manufacturing, efficacy, and/or safety issues, the estimated time requirement per petition is approximately 10,000 hours. An average of 1 petition of this type is received on an annual basis, resulting in a burden of 10,000 hours.

§ 571.6: For a food additive petition amendment, the estimated time requirement per petition is approximately 1,300 hours. An average of 4 petitions of this type is received on an annual basis, resulting in a burden of 5,200 hours.

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1] INVESTIGATION FOOD ADDITIVE FILES

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
570.17 Moderate Category	9	1	9	1,500	13,500
570.17 Complex Category	4	1	4	5,000	20,000
Total Hours	13	2	13	6,500	33,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

§ 570.17 Moderate Category: For an investigational food additive file without complex chemistry, manufacturing, efficacy, or safety issues, the estimated time requirement per file is approximately 1,500 hours. An average of 9 files of this type are received on an annual basis, resulting in a burden of 13,500 hours.

§ 570.17 Complex Category: For an investigational food additive file with complex chemistry, manufacturing, efficacy, and/or safety issues, the estimated time requirement per file is approximately 5,000 hours. An average of 4 files of this type are received on an annual basis, resulting in a burden of 20,000 hours.

Dated: November 6, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–27485 Filed 11–9–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public

comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

HRSA especially requests comments on: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Request Title: The National Health Service Corps (NHSC) Site Retention Assessment Questionnaire (OMB No. 0915–xxxx)—New

Abstract: The National Health Service Corps (NHSC) provides health professionals with loan repayment and scholarships in return for their service to underserved areas. The NHSC's mission is to improve access to primary care, which is supported by clinicians who remain in their sites well beyond their contracted periods of service. However, many sites are unaware of their influence and impact on clinician retention levels. The purpose of this project is to gather survey information from administrative officials at NHSC-approved sites that will guide NHSC initiatives and assist sites in improving their retention outcomes. The survey will ask site administrators to rate how difficult it is to retain clinicians, their general attitudes about the feasibility of good retention and awareness of its principles, their practices' current approaches to promoting retention, ratings on various aspects of their practices' organizational culture and administrative style, and their sites' interest in and preferred ways of learning how to bolster retention. Survey data will be gathered anonymously and presented in aggregate, to promote administrators' participation and full disclosure.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and, to transmit or otherwise disclose the information. The total annual burden hours estimated for this Information Collection Request are summarized in the table below.

The annual estimate of burden is as follows:

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
NHSC Site Retention Assessment Questionnaire	7,000	1	7,000	0.507	3,549
Total	7,000	1	7,000	0.507	3,549

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Deadline: Comments on this Information Collection Request must be received within 60 days of this notice.

Dated: November 7, 2012.

Bahar Niakan,

Director, Division of Policy and Information Coordination.

[FR Doc. 2012–27563 Filed 11–9–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 30-Day Proposed Information Collection: Indian Health Service (IHS) Sharing What Works—Best Practice, Promising Practice, and Local Effort (BPPPLE) Form

AGENCY: Indian Health Service, HHS.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which requires 30 days for public comment on proposed information collection projects, the Indian Health Service (IHS) is publishing for comment a summary of a proposed information collection to be submitted to the Office of Management and Budget (OMB) for review. This proposed information collection project was previously published in the **Federal Register** (77 FR 52748) on August 30, 2012, and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 0917–0034, ''Indian Health Service (IHS) Sharing What Works—Best Practice, Promising Practice, and Local Effort (BPPPLE) Form.'' *Type of Information Collection Request:* Extension without revision of the currently approved information collection, 0917–0034, ''IHS Sharing What Works—Best Practice, Promising Practice, and Local Effort (BPPPLE) Form,'' which was previously approved under the title ''Director's 3 Initiative Best Practice, Promising Practice, and Local Efforts Form.'' Although the name of the form has changed, the contents of the form remain the same. *Forms:* 0917–0034, ''IHS Sharing What Works—Best Practice, Promising Practice, and Local Effort (BPPPLE) Form.'' *Need and Use of Information Collection:* The IHS goal is to raise the health status of the American Indian and Alaska Native (AI/

AN) people to the highest possible level by providing comprehensive health care and preventive health services. To support the IHS mission and to provide the product/service to IHS, Tribal, and Urban (I/T/U) programs, the Office of Preventive and Clinical Services' program divisions (i.e., Behavioral Health, Health Promotion/Disease Prevention, Nursing, and Dental) have developed a centralized program database of best practices, promising Practices and local efforts and resources. This database was previously referred as OSCAR, but the name will be changed to BPPPLE to reflect the revised name of the form. The purpose of this collection is to develop a database of BPPPLE and resources to be published on the IHS.gov Web site which will be a resource for program evaluation and for modeling examples of various health care projects occurring in AI/AN communities.

All information submitted is on a voluntary basis; no legal requirement exists for collection of this information. The information collected will enable the Indian Health systems to: (a) Identify evidence based approaches to prevention programs among the I/T/Us when no system is currently in place, and (b) Allow the program managers to review BPPPLE occurring among the I/T/Us when considering program planning for their communities.

Affected Public: Individuals. *Type of Respondents:* I/T/U programs' staff. The table below provides: Types of data collection instruments, Number of respondents, Responses per respondent, Average burden hour per response, and Total annual burden hour(s).

ESTIMATED BURDEN HOURS

Data collection instrument(s)	Number of respondents	Responses per respondent	Average burden hour per response	Total annual burden hours
IHS Sharing What Works—BPPPLE Form (OMB Form No. 0917–0034)	100	1	20/60	33.3
Total	100	.....	.....	33.3

There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimates are logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct your comments to OMB: Send your comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection, or to obtain a copy of the data collection instruments and/or instruction(s) contact: Tamara Clay, Reports Clearance Officer, 801 Thompson Avenue, TMP, Suite 450, Rockville, MD 20852, call non-toll free (301) 443–4750, send via facsimile to (301) 443–2316, or send your email requests, comments, and return address to: *Tamara.Clay@ihs.gov*.

Comment Due Date: December 13, 2012. Your comments regarding this information collection are best assured of having full effect if received within 30 days of the date of this publication.

Dated: November 6, 2012.

Yvette Roubideaux,

Director, Indian Health Service.

[FR Doc. 2012–27561 Filed 11–9–12; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0212]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of Federal Advisory Committee Meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet on November 28 and 29, 2012 in Tampa, Florida, to discuss matters relating to maritime collisions, ramming, groundings, Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems. The meeting will be open to the public.

DATES: NAVSAC will meet Wednesday, November 28, 2012, from 8 a.m. to 5 p.m., and Thursday, November 29, 2012, from 8 a.m. to 5 p.m. Please note that the meeting may close early if the committee has completed its business. Pre-registration and written comments are due November 19, 2012.

ADDRESSES: The meeting will be held at the Embassy Suites Tampa Downtown, 513 South Florida Avenue, Tampa, Florida 22602. *http://embassysuites3.hilton.com/en/hotels/florida/embassy-suites-tampa-downtown-convention-center-TPAESES/index.html.*

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

To facilitate public participation, we are inviting public comment on the issues to be considered by the committee as listed in the ''Agenda'' section below.

You may submit written comments no later than November 19, 2012, and must be identified by USCG–2012–0212 using one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments (preferred method to avoid delays in processing).
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE. Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided. You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Docket: For access to the docket to read documents or comments related to this notice, go to *http://www.regulations.gov*.

A public comment period will be held during the meeting on November 28, 2012, from 3 to 4 p.m. and November 29, 2012, from 12 to 1 p.m. Public presentations may also be given. Speakers are requested to limit their comments to 10 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker.

FOR FURTHER INFORMATION CONTACT: If you have questions about this meeting, please contact Mr. Mike Sollosi, the NAVSAC Alternate Designated Federal Officer (ADFO), at telephone 202–372–1545 or email *mike.m.sollosi@uscg.mil*, or Mr. Burt Lahn, at telephone 202–372–1526 or email *burt.a.lahn@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: Notice of this meeting is given under the *Federal Advisory Committee Act* (FACA), 5 U.S.C. App. (Pub. L. 92–463).

The NAVSAC is an advisory committee authorized in 33 U.S.C. 2073 and chartered under the provisions of the FACA. NAVSAC provides advice and recommendations to the Secretary, through the Commandant of the U.S. Coast Guard, on matters relating to prevention of maritime collisions, rammings, and groundings, Inland and International Rules of the Road, navigation regulations and equipment, routing measures, marine information, diving safety, and aids to navigation systems.

Agenda: The NAVSAC will meet to review, discuss and formulate recommendations on the following topics: Wednesday, November 28, 2012

(1) Update from the Coast Guard on all past resolutions and recommendations made by the Council—

The Coast Guard will provide an update on the status of the Coast Guard's implementation of resolutions and recommendations made by the Council.

(2) Autonomously Operated Vessels. The Council will receive an update on the status of these vessels including their production and use. The Council will be updated regarding a possible course of action pertaining to future Inland and International Rules of the Road changes.

(3) Protection for vessels engaged in servicing submarine cables.

(4) Differential Global Positioning System (DGPS) requirements. The Council will receive an update on the current system the CG will invite their comments or input regarding the extent of current users.

(5) Off-shore wind farms/renewable energy. The Council will receive an update of the status of offshore wind energy development.

(6) Request the Coast Guard to establish Council working groups to discuss the preceding topics as appropriate.

Public comments or questions will be taken during the meeting as the Council discusses each issue and prior to the Council formulating recommendations on each issue. There will also be a public comment period at the end of the meeting.

Thursday, November 29 2012

(1) Working Group Discussions continue from November 28, 2012.

(2) Working Group Reports presented to the Council.

(3) New Business.

a. Identification of new NAVSAC tasks by the Coast Guard.

b. Committee discussion of new tasks.

A public comment period will be held after the discussion of new tasks. Speakers' comments are limited to 10 minutes each. Public comments or questions will be taken at the discretion of the DFO during the discussion and recommendations, and new business portion of the meeting.

c. Schedule Next Meeting Date—Summer 2013.

Dated: November 7, 2012.

Dana A. Goward,

Director, Marine Transportation Systems, U.S. Coast Guard.

[FR Doc. 2012–27557 Filed 11–9–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Availability of the Final Programmatic Environmental Assessment and Finding of No Significant Impact for the Deployment and Operation of Low Energy X-Ray Inspection Systems at U.S. Customs and Border Protection Operational Areas

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of availability.

SUMMARY: U.S. Customs and Border Protection (CBP) announces that a final Programmatic Environmental Assessment (PEA) and a Finding of No Significant Impact (FONSI) for Low Energy X-Ray Inspection Systems (LEXRIS) at CBP operational areas have been prepared and are available for public review. The final PEA documents a review of the potential environmental impacts from the deployment and use of LEXRIS at CBP operational areas throughout the country. Based on the final PEA, a determination was made that the proposed action will not significantly affect the quality of the human environment and a FONSI was issued. As a result, a Programmatic Environmental Impact Statement (PEIS) is not required.

DATES: The Final PEA and FONSI are available for review through December 13, 2012.

ADDRESSES: Copies of the final PEA AND FONSI may be obtained by accessing the following Internet addresses: *http://ecso.swf.usace.army.mil/Pages/Publicreview.cfm* or *www.dhs.gov/nepa,* or by sending a request to David Duncan of CBP by telephone (202–344–1527), by fax (202–344–1418), by email to *david.c.duncan@dhs.gov* or by writing to: CBP, Attn: David Duncan, 1300 Pennsylvania Avenue NW., Suite 1575, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Antoinette DiVittorio, Environmental and Energy Division, U.S. Customs and Border Protection, telephone (202) 344–3131.

SUPPLEMENTARY INFORMATION:

LEXRIS

LEXRIS is a low energy x-ray inspection system. The purpose of deploying and operating LEXRIS is to non-intrusively scan vehicles for the presence of contraband, including weapons of mass destruction,

explosives, and illicit drugs. The use of LEXRIS at, for example U.S. ports of entry, directly supports CBP's mission of securing the U.S. borders and homeland from terrorists and other threats while simultaneously facilitating legitimate trade and travel by assisting CBP personnel in preventing contraband, including illegal drugs and terrorist weapons, from entering the United States.

Two different LEXRIS systems are available. One system is mobile, mounted on a truck or van type platform and will be used at CBP operational areas. The system can be driven alongside a parked vehicle in a controlled area and will scan the vehicle as it drives by. Before the vehicle is scanned, the driver and passenger(s) will exit the vehicle and be escorted outside the controlled area. The other system is a stationary, portal configuration that will be installed along an existing traffic lane. Vehicles will be scanned as they are driven through the portal. Occupants of the vehicle will have the option of remaining in the vehicle while the driver drives it through the portal or exiting the vehicle and having CBP personnel drive it through the portal. Examples of CBP operational areas include, but are not limited to, ports of entry, CBP checkpoints, and locations of events designated as national special security events.

LEXRIS is needed to fill a unique capability to detect objects that are not effectively visualized by other non-intrusive inspection technologies currently used by CBP. LEXRIS gives a clear image of objects in the vehicle, including objects that may be hidden in fenders, tires, trunks, gas tanks, and under hoods. LEXRIS provides CBP personnel with information about what may be encountered during a manual search and, in some cases, will eliminate the need for CBP personnel to manually enter vehicles to search for contraband. As a result, LEXRIS will increase the safety of CBP personnel.

The NEPA Process

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.)* requires an agency to evaluate the environmental implications of any proposed major action that could significantly affect the quality of the human environment. Generally, to meet the NEPA requirements, an agency prepares an Environmental Assessment (EA) to determine whether a more thorough analysis of the environmental implications is necessary. If such an analysis is necessary, the agency will produce an Environmental Impact Statement (EIS). If additional analysis is not necessary, the agency will issue a Finding of No Significant Impact (FONSI). A Programmatic Environmental Assessment (PEA) is an EA that evaluates a major action on a broad, programmatic basis. Environmental evaluations at specific project locations are conducted later.

LEXRIS PEA

On January 18, 2012, CBP published a notice in the **Federal Register** (77 FR 2562) entitled: ''Notice of Availability of the Draft Programmatic Environmental Assessment for the Deployment and Operation of Low Energy X-Ray Inspection Systems at U.S. Customs and Border Protection Operational Areas.'' This notice announced that a draft PEA concerning LEXRIS had been prepared and made available to the public in accordance with NEPA, the Council on Environmental Quality Regulations for Implementing the NEPA (40 CFR parts 1500–1508), and Department of Homeland Security Directive 023–01, *Environmental Planning Program* (April 19, 2006). The draft PEA addressed the potential effects on resources present at CBP operational areas, including: Climate, soils, water quality, air quality, vegetation, wildlife, noise, infrastructure, aesthetics, and radiological health and safety. The notice informed the public on how to obtain a copy of the draft PEA and requested comments from the public on the draft PEA. The draft was made available for a 30 day public comment period, beginning on the date of the publication of the notice. The comment period ended on February 17, 2012. Two comments were received.

CBP has now prepared the final PEA addressing the potential effects on resources for the deployment and operation of LEXRIS at CBP operational areas. The comments received on the draft PEA have been reviewed and are addressed in the final PEA. On the basis of the final PEA, CBP determined that the deployment and operation of LEXRIS will have no significant impact on human health or the environment and that preparation of a PEIS is not necessary. A FONSI was issued on April 10, 2012. This document announces that the final PEA and the FONSI for LEXRIS can be reviewed by the public. The environmental implications for individual CBP operational areas will be considered as LEXRIS is deployed.

Dated: October 25, 2012.

Karl H. Calvo,

Executive Director, Facilities Management and Engineering, Office of Administration, U.S. Customs and Border Protection.

[FR Doc. 2012–27555 Filed 11–9–12; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2012–N211; FXRS12650400000S3–123–FF04R02000]

Cahaba River National Wildlife Refuge, Alabama

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), intend to prepare a comprehensive conservation plan (CCP) and associated National Environmental Policy Act (NEPA) documents for Cahaba River National Wildlife Refuge (NWR) in Bibb County, Alabama. We provide this notice in compliance with our CCP policy to advise other Federal and State agencies, Native-American tribes, and the public of our intentions, and to obtain suggestions and information on the scope of issues to consider in the planning process.

DATES: To ensure consideration, we must receive your written comments by December 13, 2012.

ADDRESSES: You may send comments, questions, and requests for information to: Ms. Sarah Clardy, Refuge Manager, Cahaba River NWR, P.O. Box 5087, Anniston, AL 36205; or *cahabariverccp@fws.gov* (email).

FOR FURTHER INFORMATION CONTACT: Mr. Oliver van den Ende, Natural Resource Planner, Wheeler National Wildlife Refuge, 2700 Refuge Headquarters Road, Decatur, AL 35603; 256–353–7243, Ext. 28 (telephone); 256–340–9728 (fax); *oliver_vandenende@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we initiate our process for developing a CCP for Cahaba River NWR in Alabama. This notice complies with our CCP policy to: (1) Advise other Federal and State agencies, Native-American tribes, and the public of our intention to conduct detailed planning on this refuge; and (2) obtain suggestions and information on the scope of issues to consider in the

environmental document and during development of the CCP.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee) (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 (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 hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

Each unit of the Refuge System was established for specific purposes. We use these purposes as the foundation for developing and prioritizing the management goals and objectives for each refuge within the Refuge System mission, and to determine how the public can use each refuge. The planning process is a way for us and the public to evaluate management goals and objectives for the best possible conservation approach to this important wildlife habitat, while providing for wildlife-dependent recreation opportunities that are compatible with the refuge's establishing purposes and the mission of the Refuge System.

Our CCP process provides participation opportunities for Tribal, State, and local governments; agencies; organizations; and the public. We encourage input in the form of issues, concerns, ideas, and suggestions for the future management of Cahaba River NWR.

We will conduct the environmental review of this project in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*); NEPA regulations (40 CFR 1500–1508); other appropriate Federal laws and regulations; and our policies and procedures for compliance with those laws and regulations.

Cahaba River NWR was established in 2002 under the authority of the Cahaba River National Wildlife Refuge Establishment Act, Public Law 106–331, dated October 19, 2000. This legislation directed the Secretary of the Interior to acquire up to 3,500 acres of lands and waters to establish the refuge. In 2004, the Regional Director of the Service (Southeast Region) authorized the expansion of the acquisition boundary of the refuge to include an additional 340 acres of property at the confluence of the Cahaba and Little Cahaba Rivers. In 2006, Pub. Law 109–363 was signed by the President, authorizing further expansion of the acquisition boundary by 3,600 acres. In 2008, the Regional Director authorized a 360-acre expansion of the acquisition boundary. The refuge currently contains 3,608 acres in Bibb County.

The refuge was established to: (1) Conserve, enhance, and restore the native aquatic and terrestrial community characteristics of the Cahaba River (including associated fish, wildlife, and plant species); (2) conserve, enhance, and restore habitat to maintain and assist in the recovery of plants and animals that are listed under the Endangered Species Act of 1973 (16 U.S.C. 1331 *et seq.*); (3) provide opportunities for compatible wildlife-dependent recreation; and (4) facilitate partnerships among the Service, local communities, conservation organizations, and other non-Federal entities to encourage participation in the conservation of the refuge's resources.

Public Availability and 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.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd *et seq.*).

Dated: September 27, 2012.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2012–27526 Filed 11–9–12; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ910000.L13400000 .DT0000.LXSS058A0000]

Notice of Availability of the Final Environmental Impact Statement for the Restoration Design Energy Project and Proposed Resource Management Plan Amendments, Arizona; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects acreages and information referenced in the **SUPPLEMENTARY INFORMATION** section of a notice that published in the **Federal Register** on Friday, October 26, 2012 (77 FR 65401). The correct acreages were presented and analyzed in the final Environmental Impact Statement.

On page 65402, column 1, line 59 of the notice, which reads, ''approximately 298,400 acres of,'' is hereby corrected to read, ''approximately 266,100 acres of.''

On page 65402, column 2, line 7 of the notice, which reads, ''approximately 213,500 acres of BLM-,'' is hereby corrected to read, ''approximately 185,700 acres of BLM-.''

On page 65402, column 2, line 11 of the notice, which reads, ''by identifying approximately 106,800,'' is hereby corrected to read, ''by identifying approximately 82,500.''

On page 65402, column 2, line 17 of the notice, which reads, ''for 298,400 acres of potential REDAs to,'' is hereby corrected to read, ''for 266,100 acres of potential REDAs to.''

On page 65402, column 2, line 23 of the notice, which reads, ''adjustments by identifying about 25,500,'' is hereby corrected to read, ''adjustments by identifying about 21,700.''

On page 65402, column 2, line 32, which reads, ''Alternative 6 identifies about 222,800,'' is hereby corrected to read, ''Alternative 6 identifies about 192,100.''

On page 65402, column 2, line 59 of the notice, which reads, ''Alternative 6, with 222,800 acres of,'' is hereby corrected to read, ''Alternative 6, with 192,100 acres of.''

On page 65403, column 1, line 17 of the notice, which reads, ''defining the REDAs and general,'' is hereby corrected to read, ''defining the REDAs and the SEZ and general.''

Raymond Suazo,

State Director.

[FR Doc. 2012–27513 Filed 11–9–12; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD06000 L51010000.FX0000.LVRWB12B4920 CACA 49491]

Notice of Availability of the Desert Harvest Solar Project Final Environmental Impact Statement, Riverside County, CA and the Proposed California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed California Desert Conservation Area (CDCA) Plan Amendment and Final Environmental Impact Statement (EIS) for the Desert Harvest Solar Project and by this notice is announcing its availability.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed CDCA Plan Amendment. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its notice in the **Federal Register**.

ADDRESSES: Copies of the Desert Harvest Solar Project Proposed CDCA Plan Amendment and Final EIS have been sent to affected Federal, State, and local government agencies and to other stakeholders, including tribal governments and interested parties. Copies of the Proposed CDCA Plan Amendment and Final EIS are available for public inspection at the BLM California Desert District Office, 22835 Calle San Juan de Los Lagos, Moreno Valley, CA 92553 and at the BLM Palm Springs South Coast Field Office at 1201 Bird Center Drive, Palm Springs, CA 92262. Interested persons may also review the Proposed CDCA Plan Amendment/Final EIS on the Internet at *http://www.blm.gov/ca/st/en/fo/palmsprings/Solar_Projects/Desert_Harvest_Solar_Project.html*. However, all protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003.

FOR FURTHER INFORMATION CONTACT: Frank McMenimen, Project Manager, telephone 760–833–7150; address BLM Palm Springs South Coast Field Office at 1201 Bird Center Drive, Palm Springs, CA 92262; email *fmcmenimen@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The applicant, EDF Renewable Resources (formally enXco), has requested a right-of-way authorization to construct, operate, maintain, and decommission a solar photovoltaic electricity generating facility with a proposed output of 150 megawatts and a project footprint of approximately 1,208 acres. The proposed project would be located on BLM-administered lands in Riverside County 6 miles north of the rural community of Desert Center, California. The overall site layout and generalized land uses include a substation, an administration building, operations and maintenance facilities, a transmission line, and temporary construction lay down areas. The project's 230-kilovolt (kV) generation interconnection transmission (gen-tie) line could either be via the First Solar Desert Sunlight 230-kV gen-tie (as a shared facility), or could be a separate facility located on private and BLM-administered lands and would connect to a planned 230- to 500-kV substation (referred to as the Red Bluff Substation). The Red Bluff Substation would connect the project to the Southern California Edison regional transmission grid. If approved, construction would begin in late 2013 and would take 9–12 months to complete.

On September 15, 2011, the BLM published a Notice of Intent (NOI) to prepare an EIS in the **Federal Register** (76 FR 57073). Publication of the NOI began a 30-day scoping period which ended on October 17, 2011.

Public Scoping Meetings were held on October 3 and 6, 2011. Scoping comments were accepted until October 21, 2011. The BLM considered these comments in developing the Draft EIS.

On April 13, 2012, the BLM published a Notice of Availability for the Draft EIS and CDCA Plan Amendment in the **Federal Register**. The 90-day public comment period for the Draft EIS ended on July 17, 2012. During the public review period, the BLM hosted two public meetings on May 14, 2012, to solicit input, in Desert Center, CA and Joshua Tree, CA. Comments on the Draft CDCA Plan Amendment/Draft EIS received from the public and internal BLM review were considered and incorporated as appropriate into the Proposed CDCA Plan Amendment and Final EIS. Public comments resulted in the addition of clarifying text, but did not significantly change the analysis or analyzed alternatives.

The Final EIS considers four no action/no development alternatives, four solar facility development alternatives, and four transmission line alternatives.

These alternatives are:

No Action/No Development alternatives:

- Alternative 1: No Action (No Plan Amendment)
- Alternative 2: No Project Alternative (with Plan Amendent to Find the Site Suitable for Solar)
- Alternative 3: No Project Alternative (with Plan Amendment to Find the Site Unsuitable for Solar)
- Alternative A: No Gen-Tie Generation Plant Development

Alternatives:

- Alternative 4: Proposed Solar Project
- Alternative 5: Solar Project Excluding Wildlife Habitat Management Area (WHMA)
- Alternative 6: Reduced Footprint Solar Project
- Alternative 7: High-Profile Reduced Footprint Solar Project

Transmission Line Alternatives:

- Alternative B: Proposed Gen-Tie (Shared Towers with Desert Sunlight Project)
- Alternative C: Separate Transmission Towers within the Same Right-of-Way as the Desert Sunlight Project
- Alternative D: Cross-Valley Alignment
- Alternative E: New Cross-Valley Alignment.

The BLM will select one transmission line alternative and one generation plant alternative. The BLM has identified Alternative 7 as the preferred alternative for the generation plan and Alternative B as the preferred alternative for the transmission line. Instructions for filing a protest with the BLM Director regarding the Desert Harvest Proposed CDCA Plan Amendment may be found in the ''Dear Reader'' Letter of the Final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, which you can find in the **ADDRESSES** section above.

Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–245–0028, and emails to *Brenda_Hudgens-Williams@blm.gov*.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2; 43 CFR 1610.5.

Thomas Pogacnik,

Deputy State Director, California.

[FR Doc. 2012–27627 Filed 11–8–12; 4:15 pm]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO320000 L13100000 PP0000 LXSIOSHL0000]

Notice of Availability of the Proposed Land Use Plan Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the Bureau of Land Management in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared the Proposed Resource Management Plan (RMP) Amendments for Allocation of Oil Shale and Tar Sands Resources on Lands Administered by the BLM in Colorado, Utah, and Wyoming and Final Programmatic Environmental Impact Statement (EIS) and by this notice is announcing their availability. Under the Proposed Plan, approximately 676,967 acres would be open for application for future leasing and development of oil shale, and approximately 129,567 acres would be open for potential tar sands leasing and development.

DATES: BLM planning regulations state that any person who meets the conditions as described in the regulations may protest the BLM's Proposed RMP/Final EIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes its Notice of Availability (NOA) in the **Federal Register**.

ADDRESSES: Copies of the Proposed RMP/Final EIS have been sent to affected Federal, State, and local government agencies and to other stakeholders, including tribal governments. Copies of the Proposed RMP/Final EIS are available for public inspection at the BLM office locations listed in the **SUPPLEMENTARY INFORMATION** section of this notice.

Interested persons may also review the Proposed RMP/Final EIS at the following Web site: *http://ostseis.anl.gov.* All protests must be in writing and mailed to one of the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Williams, P.O. Box 71383, Washington, DC 20024–1383.

Overnight Mail: BLM Director (210), Attention: Brenda Williams, 20 M Street SE., Room 2134LM, Washington, DC 20003.

Publication of the NOA for the Proposed RMP/Final EIS does not trigger a formal comment period. The BLM, however, may choose to review any comments submitted following publication of the NOA and use them to inform the agency's Record of Decision (ROD). Those individuals wishing to submit comments are asked to do so through the Oil Shale and Tar Sands Programmatic EIS project Web site (*http://ostseis.anl.gov*). Individuals should note that the BLM will consider comments only to the extent practicable and will not respond to comments individually.

FOR FURTHER INFORMATION, CONTACT: Sherri Thompson, BLM Oil Shale and Tar Sands Resources Programmatic EIS Project Manager, by telephone: 303–239–3758; mail: BLM Colorado Office, 2850 Youngfield Street, Lakewood, Colorado 80215; or email: *sthompso@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Copies of the Proposed RMP/Final EIS are available for public inspection at the following BLM office locations:

Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215.

Northwest District Office, 2815 H Road, Grand Junction, Colorado 81506.

Colorado River Valley Field Office, 2300 River Frontage Road, Silt, Colorado 81652.

White River Field Office, 220 East Market Street, Meeker, Colorado 81641.

Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101.

Green River District Office, 170 South 500 East, Vernal Utah 84078.

Price Field Office, 125 South 600 West, Price, Utah 84501.

Color Country District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84721.

Richfield Field Office, 150 East 900 North, Richfield, Utah 84701.

Canyon Country District Office, 82 East Dogwood, Moab, Utah 84532.

Monticello Field Office, 365 North Main, Monticello, Utah 84535.

Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

High Desert District Office, 280 Highway 191 North, Rock Springs, Wyoming 82901.

Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101.

Rawlins Field Office, 1300 North Third, Rawlins, Wyoming 82301.

In September 2008, pursuant to Section 369 of the Energy Policy Act of 2005, FLPMA, and NEPA, the BLM issued a Proposed Plan Amendments/Final Oil Shale and Tar Sands (OSTS) Programmatic EIS analyzing the environmental and socioeconomic impacts of amending 12 land use plans to designate public lands administered by the BLM as available for commercial leasing for oil shale or tar sands development. The planning area lies within the Green River Formation in Colorado, Utah, and Wyoming. The November 17, 2008, ROD that followed this Programmatic EIS adopted the proposed land use amendments reflecting the allocation decisions analyzed in the 2008 OSTS Programmatic EIS. These land allocation

decisions, which are currently in effect, were challenged in a lawsuit brought by a coalition of environmental organizations in January 2009. As part of a settlement agreement entered into by the United States to resolve the lawsuit and in light of new information that has emerged since the 2008 OSTS Programmatic EIS was prepared, the BLM decided to take a fresh look at the land allocations analyzed in the 2008 OSTS Programmatic EIS. In this Proposed RMP/Final EIS (2012), the BLM proposes to amend 10 land use plans in Colorado, Utah, and Wyoming to describe those areas that will be open and those that will be closed to application for commercial leasing, exploration, and development of oil shale and tar sands resources.

The BLM published its Notice of Intent to prepare a Programmatic EIS in the **Federal Register** on April 14, 2011 (76 FR 21003). The BLM conducted public scoping meetings in April and May of 2011, in Salt Lake City, Vernal, and Price, Utah; Rock Springs and Cheyenne, Wyoming; and Rifle and Denver, Colorado. Approximately 28,800 people participated in the scoping process by attending public meetings and/or submitting comments. The BLM published a scoping report in October 2011, summarizing and categorizing issues, concerns, and comments, and considered them in developing the alternatives in this 2012 Programmatic EIS.

The study area analyzed in the Programmatic EIS for the oil shale resources includes the most geologically prospective resources of the Green River Formation located in the Green River, Piceance, Uinta, and Washakie Basins, encompassing approximately 3,540,000 acres on the basis of the grade and thickness of the oil shale deposits.

For the tar sands resources, the study area analyzed in the Programmatic EIS includes those locations designated as Special Tar Sand Areas (STSAs) by Congress in the Combined Hydrocarbon Leasing Act of 1981 (Pub. L. 97–78). The tar sands study area covers about 1,026,000 acres.

The oil shale and tar sands resources within the study areas defined in the Programmatic EIS are located within the jurisdiction of 12 separate BLM administrative units. These units are Glenwood Springs, Grand Junction, and White River Field Offices in Colorado; the Moab, Monticello, Price, Richfield, and Vernal Field Offices, and the Grand Staircase Escalante National Monument in Utah; and the Kemmerer, Rawlins, and Rock Springs Field Offices in Wyoming.

Within the above-listed administrative units and the defined boundaries of the most geologically prospective resources of the Green River formation and the designated STSAs, public lands managed by the BLM where the Federal government owns full fee title or just the subsurface mineral estate (split estate lands) are included in the scope of the Programmatic EIS analysis. Tribal lands on which both the surface estate and subsurface mineral estate are owned by the tribe are not included in the scope of analysis.

The Environmental Protection Agency published a NOA of the Draft RMP Amendments/Programmatic EIS in the **Federal Register** on February 3, 2012 (77 FR 5513), for a 90-day public review and comment period. The comment period closed on May 2, 2012. Open house meetings were held during March 2012 to provide additional information on the Draft Programmatic EIS. Comments on the Draft Programmatic EIS received from the public and cooperating agencies were considered and incorporated, as appropriate, into the proposed plan amendments. Of the more than 161,000 comment letters received, about 600 contained substantive comments and approximately 160,400 appeared to be similar or identical to one another (i.e., form letters). Issues identified in the comments include air quality, climate change, water quality and quantity, socio-economic concerns, wildlife concerns, and cultural resources concerns, as well as concerns related to the agency's compliance with FLPMA, NEPA and the Energy Policy Act of 2005.

Comments on the Draft RMP Amendment/Draft Programmatic EIS received from the public, cooperating agencies, other Federal agencies, as well as internal BLM review were considered and information incorporated as appropriate into the Proposed RMP Amendments/Final EIS. As a result of public comments and upon further review, corrections/revisions were made to the Alternatives, and changes were made from what was presented as the Preferred Alternative in the Draft Programmatic EIS. These changes have resulted in a Proposed Plan Amendment (composed of Alternative 2(b) from the Draft Programmatic EIS, as well as certain elements of the other Alternatives) that references new acreage figures. The 2012 Proposed RMP/Final EIS addresses the allocation of BLM-administered lands as closed or open to the potential leasing and development of oil shale and tar sands resources, but will not affect other management decisions contained in the RMPs governing the areas to be included in the study area. Under the Proposed Plan, approximately 676,967 acres would be open for application for future leasing and development of oil shale and approximately 129,567 acres would be open for potential tar sands leasing and development.

Instructions for filing a protest with the Director of the BLM regarding the Proposed RMP/Final EIS may be found in the ''Dear Reader'' letter of the Proposed RMP/Final EIS and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above. Emailed and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period.

Under these conditions, the BLM will consider the emailed or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct emails to *Brenda_Hudgens-Williams@blm.gov* and faxed protests to the attention of the BLM protest coordinator at 202–245–0028.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10; and 43 CFR 1610.2 and 1610.5.

Michael D. Nedd,

Assistant Director, Minerals and Realty Management.

[FR Doc. 2012–27405 Filed 11–9–12; 8:45 am]

BILLING CODE 4210–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L10200000.XZ0000]

Notice of Public Meeting Cancellation: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource Advisory Council is cancelled.

DATES: The meeting was originally scheduled for Wednesday and Thursday, Nov. 14–15, 2012, at the BLM King Range Project Office, 768 Shelter Cove Rd., Whitethorn, Calif. A new meeting date and location will be announced later.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or Joseph J. Fontana, public affairs officer, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: October 30, 2012.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2012–27523 Filed 11–9–12; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–11529; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 13, 2012. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 28, 2012. 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: October 17, 2012.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Routt County

Kimsey—Bolten Ranch Rural Historic Landscape, 41090 Cty. Rd. 80, Hayden, 12000972

GUAM

Guam County

Malesso Japanese Rice Mill, Jesus Barcinas Rd., Merizo, 12000973

INDIANA

Porter County

Meyer, Dr. John and Gerda, House, 360 W. Fairwater Ave., Beverly Shores, 12000974

LOUISIANA

Rapides Parish

Alexandria Veterans Administration Hospital Historic District (Boundary Increase), (United States Second Generation Veterans Hospitals MPS) 2495 Shreveport Hwy., Pineville, 12000975

MARYLAND

Dorchester County

Pine Street Neighborhood Historic District, High, Pine, & Washington Sts., Cambridge, 12000976

MASSACHUSETTS

Middlesex County

Bedford Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS) 200 Springs Rd., Bedford, 12000977

Suffolk County

Sherman Apartments Historic District, 544–546 Washington, 4–6, 12–14, 18 Lyndhurst Sts., Boston, 12000978

MISSOURI

St. Louis Independent City

St. Francis de Sales Historic District, Bounded by Nebraska, Jefferson, & Victor Aves., Gravois Rd., & Pestalozzi St., St. Louis (Independent City), 12000979

MONTANA

Missoula County

Ressler, Guy, Homestead House, Near Burnt Fork Cr., Huson, 12000980

NEW YORK

Erie County

Baker Memorial Methodist Episcopal Church, 345 Main St., East Aurora, 12000981

Herkimer County

Perry, Stuart and William Swezey Houses, 7541 & 7551 Main St., Newport, 12000982

Schuyler County

Montour Falls Union Grammar School, 208 W. Broadway, Montour Falls, 12000983

PENNSYLVANIA

Allegheny County

Schenley Farms Historic District (Boundary Increase), 4400 Centre Ave., Pittsburgh, 12000984

VIRGINIA

Albemarle County

Crozet Historic District, Roughly Railroad, St. George, & Crozet Aves., Crozet, 12000985

Halifax County

Collins Ferry Historic District, McKeever Trail, & Bull Creek Rd., Nathalie, 12000986

Thornton, Dr. Richard, House, Golden Leaf Rd., & Tobacco Rd., Nathalie, 12000987

Petersburg Independent City

Petersburg Old Town Historic District (Boundary Increase II), 212, 317, 415 E. Bank, 427, 504, 505, 515 Bollingbrook, 203 Henry, 317 N. Madison, & 401, 409 5th Sts., Petersburg (Independent City), 12000988

Richmond Independent City

Fifth and Main Downtown Historic District (Boundary Increase), 0 blk. of N. 3rd, N. 4th, S. 6th, & 300, 400 blks. E. Main Sts., Richmond (Independent City), 12000989

[FR Doc. 2012–27482 Filed 11–9–12; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Draft Environmental Impact Statement and Notice of Scoping Meeting for the Proposed 20-Year Extension of the 2005 Mendota Pool Exchange Agreements, California

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent and scoping meeting.

SUMMARY: The Department of the Interior, Bureau of Reclamation proposes to prepare an Environmental Impact Statement (EIS) for the proposed 20-year extension (March 1, 2015 through February 28, 2034) of the existing 2005 Mendota Pool 10-year Exchange Agreements. The Mendota Pool 10-year Exchange Agreements that are currently in place span the years 2005 to 2014, and an extension of the agreements is necessary for Mendota Pool Group farmers to continue this exchange after 2014. The proposed extension would allow Mendota Pool Group farmers in the Mendota Pool area to continue to pump up to 26,250 acre-feet per year of groundwater of suitable quality into the Mendota Pool for exchange of up to 25,000 acre-feet per year Central Valley Project water delivered to the San Luis Canal for use by Mendota Pool Group farmers in the San Luis Canal service area of San Luis Water District and Westlands Water District when the existing agreements expire.

DATES: Written comments on the scope of the EIS should be mailed to Ms. Rain Healer at the address below by December 14, 2012.

A public scoping meeting will be held on November 27, 4:00–7:00 p.m., in Fresno, California.

ADDRESSES: Written comments on the scope of the EIS should be sent to Ms. Rain Healer, Bureau of Reclamation, 1243 N Street, SCC–431, Fresno, California 93720, or via email to *rhealer@usbr.gov.*

The public scoping meeting will be held at the Bureau of Reclamation's South-Central California Area Office, 1243 N Street, Fresno, California.

FOR FURTHER INFORMATION CONTACT: Ms. Rain Healer, Natural Resources Specialist, Bureau of Reclamation at the above address, via email at *rhealer@usbr.gov* or at 559–487–5196.

SUPPLEMENTARY INFORMATION: The Mendota Pool Group (MPG) is comprised of an unincorporated association of farmers that own approximately 50,000 acres of historically irrigated farmland in Westlands Water District and San Luis Water District. The MPG members have wells located near the Mendota Pool and in Farmers Water District. In 2004, Reclamation and the MPG completed a Final EIS for the 10-year program, and a Record of Decision (ROD) was issued March 30, 2005. The 2004 Final EIS evaluated impacts to groundwater levels, land subsidence, groundwater quality, surface water quality, sediment quality, biological resources, Central Valley Project operations, archeological and cultural resources, land use and traffic, air quality, noise, environmental justice, and socioeconomics. The primary adverse effect of the action was to increase the cumulative rate of groundwater degradation in wells west of the Mendota Pool, primarily MPG wells. Mitigation actions that addressed potential impacts of the exchange program were included in the EIS and incorporated into the exchange agreement. These mitigation actions include a baseline pumping program, design constraints, a monitoring program, and adaptive management, all of which would be continued or expanded upon with the proposed 20-year extension.

The objective of the proposed 20-year extension is to enable the MPG to maintain production on historically irrigated lands by obtaining sufficient good quality water at cost-effective prices to offset cutbacks in Central Valley Project deliveries. The action is not intended to increase the amount of water for farming activities but would continue to replace water allocated for other Central Valley Project purposes. This program would enable participants to:

- Replace water no longer available due to restrictions on water exports from the Delta.
- Deliver water to farms for an average cost that approximates the cost of contract water and does not exceed the costs of supplemental water on the open market.
- Maintain production on lands with long-term water supply contracts that have regularly produced agricultural commodities.
- Avoid or minimize, through incorporation of design constraints and management practices, impacts to environmental resources such as surface water, groundwater levels, land subsidence, groundwater quality and biological resources including sensitive species.

There are no known Indian Trust Asset or environmental justice issues associated with the proposed extension.

Special Assistance for Public Meetings

If special assistance is required to participate in the scoping meeting, please contact Ms. Rain Healer at 559–487–5196, or via email at *rhealer@usbr.gov.* A telephone device for the hearing impaired (TTY) is available at 800–735–2929.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: September 24, 2012.

Anastasia T. Leigh,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 2012–27556 Filed 11–9–12; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

Notice of Proposed Renewal of Information Collection: Application To Withdraw Tribal Funds From Trust Status

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Special Trustee for American Indians, Department of the Interior, is announcing its intention to request renewal approval for the collection of information for Application to Withdraw Tribal Funds from Trust Status, OMB Control Number 1035–0003 . This collection request has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection request, but may respond after 30 days; therefore, public comments should be submitted to OMB by December 13, 2012, in order to be assured of consideration.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1035–0003), by telefax at (202) 395–5806 or via email to *OIRA_submission@omb.eop.gov.* Also, please send a copy of your

comments to Frank Perniciaro, Management Analyst, Office of the Special Trustee, Office of External Affairs, 4400 Masthead St. NE., Room 323, Albuquerque, NM 87109, or send an email to *frank_perniciaro@ost.doi.gov.* Additionally, you may telefax your comments to him at (505) 796–3167. Individuals providing comments should reference OMB control number 1035–0003, Application to Withdraw Tribal Funds from Trust Status.

FOR FURTHER INFORMATION CONTACT: To request more information on this information collection or to obtain a copy of the collection instrument, please write or call Frank Perniciaro, (505) 816–1173, Office of the Special Trustee, Office of External Affairs, 4400 Masthead St. NE., Room 323, Albuquerque, NM 87109. You may also send your request by emailing him at *frank_perniciaro@ost.doi.gov.* To see a copy of the entire ICR submitted to OMB, go to: *http://www.reginfo.gov* and select Information Collection Review, Currently Under Review.

SUPPLEMENTARY INFORMATION:

I. Abstract

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement the Paperwork Reduction Act of 1995 (Pub. L. 104–131), require that interested members of the public and affected parties have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d). This notice identifies an information collection activity that the Office of the Special Trustee for American Indians has submitted to OMB for renewal.

Public Law 103–412, The American Indian Trust Fund Management Reform Act of 1994 (Act), allows Indian tribes on a voluntary basis to take their funds out of trust status within the Department of the Interior (and the Federal Government) in order to manage and invest such funds on their own. 25 CFR Part 1200, subpart B, Sec. 1200.13, ''How does a tribe apply to withdraw funds?'' describes the requirements for application for withdrawal. The Act covers all tribal trust funds including judgment funds as well as some settlements funds, but excludes funds held in Individual Indian Money accounts. Both the Act and the regulations state that upon withdrawal of the funds, the Department of the Interior (and the Federal Government) have no further liability for such funds. Accompanying their application for withdrawal of trust funds, tribes are required to submit a Management Plan for managing the funds being withdrawn, to protect the funds once they are out of trust status.

This information collection allows the Office of the Special Trustee for American Indians to collect the tribes' applications for withdrawal of funds held in trust by the Department of the Interior. If this information were not collected, the Office of the Special Trustee for American Indians would not be able to comply with the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103–412), and tribes would not be able to withdraw funds held for them in trust by the Department of the Interior.

II. Data

(1) *Title:* Application to Withdraw Tribal Funds from Trust Status, 25 CFR 1200.

OMB Control Number: 1035–0003.

Current Expiration Data: November 30, 2012.

Type of Review: Information Collection Renewal.

Affected Entities: Tribal Governments.

Estimated annual number of respondents: One respondent per year.

Frequency of response: Once per tribe per trust fund withdrawal application.

(2) *Annual reporting and record keeping burden:*

Total annualized reporting per respondent: 1.

Total annualized reporting: 750 hours.

(3) *Description of the need and use of the information:* The statutorily-required information is needed to approve tribal applications to withdraw funds from accounts held in trust for tribes by the United States Government, for self-management.

(4) As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the information collection was published on June 7, 2012 (77 FR 33767). No comments were received. This notice provides the public with an additional 30 days in which to comment on the proposed information collection activity.

III. Request for Comments

The Department of the Interior invites comments on:

(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 the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information techniques.

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

All written comments, with names and addresses, will be available for public inspection. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law. If you wish to view any comments received, you may do so by scheduling an appointment with the Office of the Special Trustee for American Indians by calling Frank Perniciaro at (505) 816–1173. A valid picture identification is required for entry into the Office of the Special Trustee for American Indians, 4400 Masthead Street NE., Albuquerque, NM 87109.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: October 16, 2012.

James P. Barham,

Director, Office of External Affairs, Office of the Special Trustee for American Indians.

[FR Doc. 2012–27521 Filed 11–9–12; 8:45 am]

BILLING CODE 4310–2W–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–921 (Second Review)]

Folding Gift Boxes From China; Revised Scheduling of the Expedited Five-Year Review Concerning the Antidumping Duty Order on Folding Gift Boxes From China

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* November 5, 2012.

FOR FURTHER INFORMATION CONTACT: Angela M. W. Newell (202–708–5409), 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: On August 7, 2012, the Commission postponed the release of its final staff report and date for final comments for this expedited review (77 FR 48168, August 13, 2012). On October 26, 2012 (77 FR 65361), the Department of Commerce published its preliminary results in the second five-year review of the antidumping duty order on Folding Gift Boxes from China. Accordingly, the Commission will release the final staff report on November 6, 2012 and final comments are due November 14, 2012.

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.

By order of the Commission.

Issued: November 6, 2012.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–27515 Filed 11–9–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0023]

Agency Information Collection Activities; Extension of a Currently Approved Collection: Semi-Annual Progress Report for the Sexual Assault Services Program—Grants to Culturally Specific Programs

ACTION: 60-day notice.

The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. Comments are encouraged and will be accepted for ''sixty days'' until January 14, 2013. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to email them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please Cathy Poston, Office on Violence Against Women, at 202–514–5430 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Sexual Assault Services Program—Grants to Culturally Specific Programs (SASP-Culturally Specific Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0023. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 11 grantees of the SASP Culturally Specific Program. This program supports projects that create, maintain and expand sustainable sexual assault services provided by culturally specific organizations, which are uniquely situated to respond to the needs of sexual assault victims within culturally specific populations.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 11 respondents (SASP-Culturally Specific Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A SASP-Culturally Specific Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 22 hours, that is 11 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 145 N Street NE., Room 3w–1407–B, Washington, DC 20530.

Dated: November 6, 2012.

Jerri Murray,

Department Clearance Officer for PRA, United States Department of Justice.

[FR Doc. 2012–27451 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Responsibility, Compensation and Liability Act

On November 6, 2012 the Department of Justice lodged a proposed Consent Decree for Removal Action and Recovery of Response Costs (''Consent Decree'') with the United States District Court for the Southern District of Illinois in the lawsuit entitled *United States* v. *Phillips 66 Pipeline LLC,* Civil Action No. 12–1159–MJR–PMF.

The proposed Consent Decree is related to the property known as the Rogers Cartage Site (the ''Site''), which is owned by Phillips 66 Pipeline LLC (''Defendant'') and located at 3300 Mississippi Avenue, in Cahokia, St. Clair County, Illinois. The United States, on behalf of the United States Environmental Protection Agency (''EPA''), has brought claims against the Defendant under Sections 106 and 107 of the Comprehensive Environmental Responsibility, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607, in a Complaint filed in the same lawsuit. The United States alleges that the Defendant is responsible for the implementation of a response action at the Site not inconsistent with the National Contingency Plan (NCP), 40 CFR part 300, which is necessary to abate imminent and substantial risks posed by the presence of hazardous substances at the Site, including polychlorinated biphenyls (PCBs). The United States also seeks recovery of response costs that it has incurred in responding to the release or threatened release of hazardous substances at and from the Site, and a declaratory judgment on liability for response costs that will be binding on any subsequent action or actions to recover further response costs pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2).

Under the proposed Consent Decree, the Defendant would implement a response action that was selected by EPA. The response action would consist of the excavation of all soil at the Site that contains concentrations of PCBs exceeding the applicable standards at 40 CFR 761.61(a)(4), and off-site disposal of contaminated soil in accordance with 40 CFR 300.440. The response action would be performed in accordance with EPA's Action Memorandum dated October 11, 2011 and a Statement of Work, which are attached to the proposed Consent Decree. In addition, within 30 days of the entry of the proposed Consent Decree, the Defendant would reimburse EPA $65,224.12, which is approximately 70% of all past costs incurred by the United States in connection with the Site. The Defendant would also reimburse EPA for all future response costs not inconsistent with the NCP.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Phillips 66 Pipeline LLC,* D.J. Ref. No. 90–11–3–10471. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $21.75 (25 cents per page reproduction cost) payable to the United States Treasury if you wish to receive the complete proposed Consent Decree with all appendices. For a paper copy of the proposed Consent Decree without the appendices and signature pages, the cost is $14.50.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–27502 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–54]

Wayne D. Longmore, M.D.; Decision and Order

On September 6, 2012, Administrative Law Judge Gail A. Randall issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify his registration be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration Number BL9651250, issued to Wayne D. Longmore, M.D., be, and it hereby is, revoked. I further order that any pending application of Wayne D. Longmore, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective December 13, 2012.

Dated: October 26, 2012.

Michele M. Leonhart,

Administrator.

Brian Bayly, Esq., for the Government.
Debra J. Young, Esq., for the Respondent.

Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge

I. Facts

Administrative Law Judge Gail A. Randall. The Deputy Assistant Administrator, Drug Enforcement Administration (''DEA'' or ''Government''), issued an Order to Show Cause (''Order'') dated May 31, 2012, proposing to revoke the DEA Certificate of Registration, No. BL9651250, of Wayne D. Longmore, M.D. (''Respondent''), as a practitioner, pursuant to 21 U.S.C. 824(a)(4) (2006), and deny any pending applications for renewal or modification of such registration pursuant to 21 U.S.C. 823(f) (2006), because the continued registration of the Respondent would be inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f), and because the Respondent lacks the authority to practice medicine or handle controlled substances in the state of New York pursuant to 21 U.S.C. 823(f)

and 824(a)(3) (2006). The Respondent's registration will expire by its own terms on March 31, 2015.

Specifically, the Order alleged that the New York State Department of Health, State Board for Professional Medical Conduct, (''New York Board'') issued an Interim Order, effective April 3, 2012, in which Respondent agreed to the suspension of his medical license while the New York Board and DEA conducted investigations of his prescribing practices. [Order at 1]. The Order further alleged that the Respondent is without authority to handle controlled substances in the state of New York, the state in where the Respondent is registered with the DEA, and thus the DEA must revoke Respondent's DEA registration based on his lack of authority to handle controlled substances in the state of New York. [*Id.*]. Lastly, the Order alleged that between October 20, 2011, and January 27, 2012, three undercover operatives, posing as patients, made a total of ten visits to Respondent's office and at each visit Respondent prescribed hydrocodone to them with no or insufficient medical history, with no relevant physical examinations, without diagnosing any medical conditions warranting such medications, and without monitoring the patients to determine if the patients were diverting the prescribed controlled substances. [Order at 2].

On July 17, 2012, the Respondent, through counsel, filed a request for a hearing in the above-captioned matter. That same day, the Court issued an Order for Prehearing Statements.

On July 20, 2012, the Government filed its Government's Motions for Summary Judgment and to Stay the Proceedings (''Government's Motion''). Therein, the Government requested that the Court summarily revoke Respondent's DEA registration because the Respondent's New York state medical license is under a temporary suspension order. [Government's Motion at 1]. Alternatively, the Government requested that the Court terminate Respondent's DEA registration because Respondent abandoned his DEA registered location and thus, is not in compliance with 21 U.S.C. 822(e) (2006). [*Id.*].

The Government stated that Respondent was no longer authorized to handle controlled substances in New York, the state where the Respondent is registered with the DEA. [*Id.* at 2]. The Government attached to its motion, a Stipulation and Application for an Interim Order of Conditions pursuant to N.Y. Public Health Law § 230 (''Interim Order''), dated March 27, 2012, in which the Respondent agreed to the New York State Board's issuance of an Interim Order of Conditions which precluded the Respondent from practicing medicine in New York. [Government's Motion at Attachment 2]. Additionally, the Government attached the Interim Order from the New York Board, precluding Respondent from practicing medicine in New York, which became effective on April 2, 2012. [*Id.* at Attachment 3]. The Government argues, therefore, that in accordance with Agency precedent, the DEA is barred by statute from continuing the Respondent's registration because his state medical license was suspended. [*Id.* at 2]. In addition, the Government argues that the Respondent's registration terminates as a matter of law under 21 U.S.C. 822(e) because the Respondent is no longer practicing at his DEA registered location. [Government's Motion at 3–4].

On July 24, 2012, the Court issued an Order for Respondent's Response to the Government's Motion for Summary Judgment.

On July 24, 2012, Respondent filed a letter addressed to the Court (''Respondent's Request''). Therein, Respondent requested that ''this matter be stayed entirely pending resolution of the criminal charges.'' [Respondent's Request at 1].

On July 25, 2012, the Court issued an Order Denying Respondent's Request to Stay Proceedings and further ordered Respondent to file a response, if he so chooses, to the Government's Motion for Summary Judgment.

On July 30, 2012, the Respondent filed Respondent's Response to the Government's Motion for Summary Judgment (''Response''). Therein, the Respondent argues that the revocation or termination of Dr. Longmore's DEA registration is ''premature'' because the outcome of the pending criminal matter against Dr. Longmore has not yet been resolved. [Response at 1]. Additionally, Respondent argues that Dr. Longmore has not committed any acts that would render his continued DEA registration to be inconsistent with the public interest. [Response at 2]. Lastly, the Respondent argues that the closing of Dr. Longmore's medical practice, as a result of his consent order with the New York Board, should not form the basis for termination of his DEA registration. [*Id.* at 3].

For the reasons set forth below, I will grant the Government's Motion and recommend that the Administrator revoke the Respondent's DEA Certificate of Registration. But, I note that, pursuant to 21 C.F.R. § 1301.13(a) (2012), the Respondent may apply for a new DEA Certificate of Registration at any time.

II. Discussion

A. Respondent Currently Lacks Authority To Handle Controlled Substances in New York

The DEA will not maintain a controlled substances registration if the registrant is without state authority to handle controlled substances in the state in which the registrant practices. The Controlled Substances Act (''CSA'') provides that obtaining a DEA registration is conditional on holding a state license to handle controlled substances. *See* 21 U.S.C. 802(21) (2006) (defining ''practitioner'' as ''a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''); 21 U.S.C. 823(f) (2006) (''the Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices''). The DEA, therefore, has consistently held that the CSA requires the DEA to revoke the registration of a practitioner who no longer possesses a state license to handle controlled substances. *See* 21 U.S.C. 824(a)(3) (2006) (stating ''a registration may be suspended or revoked by the Attorney General upon a finding that the registrant has had his State license or registration suspended, revoked or denied by competent State authority''); *Beverley P. Edwards, M.D.,* 75 FR 49,991 (DEA 2010); *Joseph Baumstarck, M.D.,* 74 FR 17,525 (DEA 2009).

In this case, the Respondent does not dispute that he currently lacks state authority to handle controlled substances. However, the Respondent argues that his temporary discontinuance of practicing medicine in New York, under the Interim Order, is not sufficient to require the revocation of his DEA registration. Respondent argues that his DEA registration should not be revoked because he voluntarily relinquished his right to practice medicine in New York while a criminal investigation is pending against him. [Response at 1–2]. However, the Interim Order effectively suspends the Respondent's license to practice medicine in New York until 30 days after the final disposition of the open criminal investigation against the Respondent. Regardless of the merit of Respondent's pending criminal case, he currently lacks the necessary state authority to practice medicine and to

handle controlled substances in New York. Consequently, his DEA registration must be revoked.

Next, Respondent argues that his continued DEA registration would not be inconsistent with the public interest and therefore, his DEA registration should not be revoked. [Response at 2–3]. Respondent argues that the factors to be considered in determining whether an application for registration should be denied or revoked under 21 U.S.C. 824(a)(4) weigh in favor of maintaining the Respondent's DEA registration because he has not issued any prescriptions that are inconsistent with the public interest. [*Id.*].

While the Respondent may have raised genuine disputes of fact, concerning the allegations in the Government's Order to Show Cause, those disputes are immaterial in light of the Respondent's current lack of state registration. Indeed, the CSA and Agency precedent make clear that as a prerequisite to registration the Respondent must have state authority to handle controlled substances, and that without such authority all other issues before this forum are moot. *See* 21 U.S.C. 802(21); 21 U.S.C. 823(f); *Joseph Baumstarck, M.D.,* 74 FR at 17,527 (DEA 2009). Thus, because there is no dispute that the Respondent lacks state authority to handle controlled substances, the Respondent's registration must be revoked.

B. There Is Insufficient Evidence That Respondent Has Permanently Ceased the Practice of Medicine

A registrant's DEA registration terminates as a matter of law when the registrant ceases to practice at his registered location. *See* 21 U.S.C. 822(e) (2006) (''A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances of list I chemicals''); 21 CFR 1301.52(a) (2012) (''[T]he registration of any person, and any modifications of that registration, shall terminate, without any further action by the Administration, if and when such person dies, ceases legal existence, discontinues business or professional practice, or surrenders a registration''). In addition, a registrant must either request that his DEA registered address be changed or the registrant must notify the DEA that he is no longer practicing at the place of business where he is registered. *See* 21 CFR 1301.51 (2010) (''Any registrant may apply to modify his/her registration to authorize the handling of additional controlled substances or to change his/her name or address, by submitting a letter of request to the Registration Unit, Drug Enforcement Administration''); 21 CFR 1301.52(c) (2011) (''Any registrant desiring to discontinue business activities altogether or with respect to controlled substances (without transferring such business activities to another person) shall return for cancellation his/her certificate of registration, and any unexecuted order forms in his/her possession, to the Registration Unit, Drug Enforcement Administration'').

The Respondent does not dispute that he no longer is working at his DEA registered location. However, the Respondent argues that the closure of his medical practice at 104 Mill Road Woodstock, N.Y. is the result of the consensual Interim Order issued by the New York Board and cannot form the basis for a termination of his DEA registration. [Response at 3].

In this case, there is insufficient evidence to support a finding that the Respondent has permanently ceased the practice of medicine and therefore, the Court declines to address the issue of whether or not the Respondent's DEA registration terminates by operation of law. *See John B. Freitas, D.O.,* 74 FR 17,524, 17,525 (DEA 2009) (finding that a registrant's registration had not terminated because the registrant had not permanently ceased the practice of medicine or returned his registration for cancellation); *William R. Lockridge, M.D.,* 71 FR 77,791, 77,797 (DEA 2006) (interpreting 21 CFR 1301.52(a) to require a registrant to permanently cease the practice of medicine). Therefore, because there is insufficient evidence to determine whether the Respondent intends to permanently cease the practice of medicine, the Court declines to address whether the Respondent's DEA registration has terminated as a matter of law.

C. Respondent Is Entitled To Reapply for Registration With the DEA

Any person who is required to register with the DEA may apply for registration at any time. 21 CFR 1301.13(a) (2012) (''Any person who is required and who is not registered may apply for registration at any time. No person required to be registered shall engage in any activity for which registration is required until the application for registration is granted and a Certificate of Registration is issued by the Administrator to such person'').

Respondent requests that he be able to reapply for a Certificate of Registration with the DEA, when, and if, his medical license becomes active. [Response at 3].

The Respondent is permitted to reapply for a Certificate of Registration with the DEA at any time in the future. 21 CFR 1301.13(a). However, the Respondent will not be permitted to engage in activity for which a registration is required until his application is granted by the DEA. *Id.*

III. Conclusion, Order, and Recommendation

Consequently, there is no genuine dispute of material fact regarding the Respondent's lack of state authority to handle controlled substances. Thus, summary judgment for the Government is appropriate. It is well settled that when there is no question of material fact involved, there is no need for a plenary, administrative hearing. *See Michael G. Dolin, M.D.,* 65 Fed. Reg. 5,661 (DEA 2000). Here, there is no genuine dispute that the Respondent currently lacks state authority to practice medicine and to handle controlled substances in New York.

Accordingly, I hereby grant the Government's Motion for Summary Judgment.

I also forward this case to the Deputy Administrator for final disposition. I recommend that the Respondent's DEA Certificate of Registration, Number BL9651250, be revoked.[1]

September 6, 2012.

Gail A. Randall,

Administrative Law Judge.

[FR Doc. 2012–27546 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–48]

Larry Elbert Perry, M.D.; Decision and Order

On July 2, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificate of Registration be revoked and that any pending application to renew or modify his registration be denied.

[1] The sole basis of my recommendation is the loss of Respondent's state licensure. I make no findings or conclusions concerning the other allegations asserted in the Order to Show Cause.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration Number BP2742357, issued to Larry Elbert Perry, M.D., be, and it hereby is, revoked. I further order that any pending application of Larry Elbert Perry, M.D., to renew or modify his registration, be, and it hereby is, denied. This Order is effective December 13, 2012.

Dated: October 26, 2012.

Michele M. Leonhart,

Administrator.

Theresa Krause, Esq., for the Government
Frank J. Scanlon, Esq., for the Respondent

ORDER GRANTING THE GOVERNMENT'S UNOPPOSED MOTION FOR SUMMARY DISPOSITION, DENYING THE GOVERNMENT'S MOTION TO STAY AND RECOMMENDED DECISION

Chief Administrative Law Judge John J. Mulrooney II. On May 4, 2012, the Deputy Assistant Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause (OSC), proposing to revoke the DEA Certificate of Registration (COR), Number BP2742357, of Larry Elbert Perry, M.D. (Respondent), pursuant to 21 U.S.C. § 824(a)(3) and (4) (2006), and to deny any pending applications for renewal or modification of such registration, pursuant to 21 U.S.C. § 823(f). In the OSC, the Government alleges that revocation is necessary because the Respondent does ''not have authority to practice medicine or handle controlled substances in the State of Kentucky,'' the State of the Respondent's registration. OSC, at 1–2.

On June 6, 2012, the DEA Office of Administrative Law Judges (OALJ) received from the Respondent, through counsel, a timely filed request for hearing (Hearing Request) that contained a request for continuance, and which conceded that the Respondent lacks authority to handle controlled substances in the State of Kentucky. The Respondent's Hearing Request contended that the loss of his Kentucky authority was based, in large part, on a disciplinary action by the Tennessee Board of Medicine, and that an extension should be granted for ''a reasonable period of time to allow [the Respondent] to regain his licenses in Tennessee and Kentucky.'' The same day, by order of this tribunal, the Respondent's motion for a continuance was denied. Order Denying the Respondent's Request for Continuance and Directing the Filing of Government Evidence in Support of its Lack of State Authority Allegation and Briefing Schedule (''Briefing Schedule Order''), at 1. In addition to denying the request for a continuance, the Briefing Schedule Order directed the Government ''to provide evidence to support the allegation that the Respondent lacks state authority to handle controlled substances [on or before] June 15, 2012.'' *Id.* at 2. In this regard, the Schedule Order set a June 15, 2012, deadline for the Government to file a motion for summary disposition regarding the Respondent's alleged lack of state authority and a June 25, 2012, deadline for any response to such motion. *Id.* at 2.

On June 7, 2012, the Government filed a Motion for Stay of Proceedings and Summary Disposition (''MSD''), seeking: (1) summary disposition; (2) a recommendation that ''the Respondent's DEA COR as a practitioner be revoked, based on the Respondent's lack of a state licensure;'' (3) the transmission of the instant matter to the Administrator for Final Agency Action; and (4) ''a stay of these administrative proceedings pending the results of this Government motion.'' MSD, at 5. A copy of a November 19, 2009, Emergency Order of Suspension (Suspension Order) issued by the Commonwealth of Kentucky Board of Medical Licensure, and a copy of a September 26, 2011, Agreed Order of Surrender, which memorialized the Respondent's surrender of his state license to practice medicine, were both attached to the MSD. The Respondent did not file a response to the Government's motion within the time allowed.[1] Accordingly, the motion will be deemed unopposed.

Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 Fed. Reg. 32887 (1983), *aff'd sub nom. Kirk v. Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth. v. EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB v. Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States v. Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. *See Jesus R. Juarez, M.D.,* 62 Fed. Reg. 14945 (1997); *Dominick A. Ricci, M.D.,* 58 Fed. Reg. 51104 (1993), Here, both parties agree that the Respondent is without authorization to practice medicine or handle controlled substances in Kentucky, the jurisdiction where the Respondent holds the DEA COR that is the subject of this litigation.

In order to revoke a registrant's DEA registration, the Government has the burden of proving that the requirements for revocation are satisfied. 21 C.F.R. § 1301.44(e). Once the Government has made its *prima facie* case for revocation of the registrant's DEA COR, the burden of production shifts to the Respondent to show that, given the totality of the facts and circumstances in the record, revoking the registrant's registration would be inappropriate. *Morall v. DEA,* 412 F.3d 165, 174 (D.C. Cir. 2005); *Humphreys v. DEA,* 96 F.3d 658, 661 (3d Cir. 1996); *Shatz v. U.S. Dept. of Justice,* 873 F.2d 1089, 1091 (8th Cir. 1989); *Thomas E. Johnston,* 45 Fed. Reg. 72311 (1980).

The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in ''the jurisdiction in which he practices.'' *See* 21 U.S.C. § 802(21) (''[t]he term 'practitioner' means a physician . . . licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . to distribute, dispense, [or] administer . . . a controlled substance in the course of professional practice''); *see also id.* § 823(f) (''The Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.''). Therefore, because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'' *Roy Chi Lung,* 74 Fed. Reg. 20346, 20347 (2009); *Scott Sandarg, D.M.D.,* 74 Fed. Reg. 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 Fed. Reg. 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 Fed. Reg. 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 Fed. Reg. 11661 (2004); *Dominick A. Ricci, M.D.,* 58 Fed. Reg. 51104 (1993); *Abraham A. Chaplan, M.D.,* 57 Fed. Reg. 55280 (1992); *Bobby Watts, M.D.,* 53 Fed. Reg. 11919 (1988); *see also Harrell E. Robinson,* 74 Fed. Reg. 61370, 61375 (2009).

As explained above, summary disposition of an administrative case is warranted where, as here, ''there is no factual dispute of substance.'' *See Veg-*

[1] Indeed, a week has passed since the response due date with no word from the Respondent or his counsel.

Mix, Inc., 832 F.2d 601, 607 (DC Cir. 1987) (''an agency may ordinarily dispense with a hearing when no genuine dispute exists'').[2] At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in the State of Kentucky. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would provide sufficient grounds to allow the Respondent to continue to hold his COR. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted. *See Gregory F. Saric, M.D.,* 76 Fed. Reg. 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, I hereby

GRANT the Government's Motion for Summary Disposition;

DENY the Government's Motion for Stay of Proceedings as moot; and further RECOMMEND that the Respondent's DEA registration be REVOKED forthwith and any pending applications for renewal be DENIED.

July 2, 2012.

John J. Mulrooney II,

Chief Administrative Law Judge.

[FR Doc. 2012–27522 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 12–56]

Fernando Valle, M.D.; Decision and Order

On August 10, 2012, Chief Administrative Law Judge John J. Mulrooney, Jr., issued the attached Recommended Decision. Neither party filed exceptions to the Recommended Decision.

Having reviewed the entire record, I have decided to adopt the ALJ's findings of fact, conclusions of law, and recommended order. Accordingly, I will order that Respondent's DEA Certificates of Registration be revoked and that any pending applications to renew or modify his registrations be denied.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) and 824(a), as well as 28 CFR 0.100(b), I order that DEA Certificate of Registration Numbers FV1935595, FV2000711, and FV2000735, issued to Fernando Valle, M.D., be, and they hereby are, revoked. I further order that any pending applications of Fernando Valle, M.D., to renew or modify his registrations, be, and they hereby are, denied. This Order is effective immediately.[1]

Dated: October 26, 2012.

Michele M. Leonhart,

Administrator.

Michelle Gillice, Esq., for the Government.

Dale Sisco, Esq., for the Respondent.

Order Granting the Government's Motion for Summary Disposition and Recommended Decision

Chief Administrative Law Judge John J. Mulrooney, II. On June 25, 2012, the Administrator of the Drug Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) immediately suspending and proposing to revoke the DEA Certificate of Registration (COR), Number FV1935595, of the Respondent pursuant to 21 U.S.C. 824(a), and to deny any pending applications for registration, renewal or modification pursuant to 21 U.S.C. 823(f) and 824(a) because the Respondent's continued registration would ''be inconsistent with the public interest, as that term is defined in 21 U.S.C. 823(f).'' As grounds for these proposed actions, the OSC/ISO alleges that the Respondent ''prescribed * * * controlled substances to * * * undercover law enforcement officers not for a legitimate medical purpose in the usual course of professional practice in violation of applicable Federal, State and local law.'' OSCI/ISO, at 1. The OSC/ISO was served on the Respondent on June 27, 2012. Gov't Not. of Service. On July 26, 2012, the Respondent, through counsel, filed a timely request for hearing.

On July 27, 2012, the Government filed a Motion for Summary Disposition and Motion to Stay Proceedings (''MSD''), in which it represented that ''[o]n June 26, 2012, the State of Florida [the state in which Respondent holds his COR] Department of Health executed an emergency order suspending Respondent's medical license M41752, effective immediately.'' [1] MSD, at 1. Based on the foregoing, the Government sought the following relief: (1) Summary disposition; (2) a recommendation that the ''Respondent's DEA registration be revoked and any pending application for renewal or modification of such registration be denied;'' (3) the transmission of the instant matter to the Administrator for Final Agency Action; and (4) a stay of these administrative proceedings pending the results of the Government's motion for summary disposition. MSD, at 3.

By a July 27, 2012, Order, this tribunal granted the Government's motion to stay, and directed the Respondent to file a response to the Government's motion for summary disposition on or before August 6, 2012. Order Regarding Government's Motion for Summary Disposition, at 2.

On August 3, 2012, the Respondent filed his response to the MSD. Respondent's Response to Government's Motion for Summary Disposition (''Response''). In the Response, the Respondent contends that revocation based on the Emergency Order ''will effectively result in a denial of Due Process to Respondent without notice or opportunity for hearing and based only on the minimal standards of probable cause.'' Response, at 2–3. The Respondent further submits that:

> Summary Disposition is inappropriate prior to resolution of the numerous questions of material fact, as well as procedural issues, associated with the emergency suspension of his Florida Medical License and immediate suspension of his DEA registrations. With regard to his DEA registrations, these include, but are not limited to, whether the immediate suspension of the Respondent's registration was based on a valid inspection and investigation; whether the continued registration of the Respondent constitutes an imminent danger to the public health and safety; and whether other grounds exist for the Government to limit the suspension of the Respondent's registration.

Response, at 3.

On August 6, 2012, the Government filed a Reply to Respondent's Response

[2] Even assuming *arguendo* the possibility that the Respondent's state controlled substances privileges could be reinstated, summary disposition would still be warranted because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 Fed. Reg. at 33207 (citations omitted), and even where there is a judicial challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 Fed. Reg. 5661, 5662 (2000).

[1] Based on the findings of the Florida Department of Health's Order of Emergency Suspension of License, I conclude that the public interest requires this Order be effective immediately. 21 CFR 1316.67.

[1] The order of suspension (''Emergency Order'') is attached to the MSD as ''Exhibit A.'' The emergency suspension appears to be based on the same allegations set forth in the OSC/ISO.

to Motion for Summary Disposition and Motion to Stay Proceedings (''Reply''). In its reply, the Government contends that the ''Respondent does not dispute that his medical license is suspended and that he lacks authority to handle controlled substances in the State of Florida, the jurisdiction where he is licensed to practice medicine. Absent authority by the State of Florida, Respondent simply is not authorized to possess a DEA registration in that state.'' Reply, at 1.

In its MSD and its Reply, the Government correctly contends that state authority is a necessary condition precedent for the acquisition or maintenance of a DEA registration, and the suspension of the Respondent's state practitioner's license precludes the continued maintenance of his DEA COR, thus requiring revocation. MSD at 1–2; Reply at 1–2. The Controlled Substances Act (CSA) requires that, in order to maintain a DEA registration, a practitioner must be authorized to handle controlled substances in ''the jurisdiction in which he practices.'' *See* 21 U.S.C. § 802(21) (''[t]he term 'practitioner' means a physician * * * licensed, registered, or otherwise permitted, by * * * the jurisdiction in which he practices * * * to distribute, dispense, [or] administer * * * a controlled substance in the course of professional practice''); *see also id.* § 823(f) (''The Attorney General shall register practitioners * * * if the applicant is authorized to dispense * * * controlled substances under the laws of the State in which he practices.''). DEA has long held that possession of authority under state law to dispense controlled substances is an essential condition for obtaining and maintaining a DEA registration. *Serenity Café,* 77 FR 35027, 35028 (2012); *David W. Wang,* 72 FR 54297, 54298 (2007); *Sheran Arden Yeates,* 71 FR 39130, 39131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993); *Bobby Watts, M.D.,* 53 FR 11919 (1988). Notwithstanding the foregoing, the Respondent contends that the Emergency Order may not form the basis of revocation insofar as the order was issued prior to a hearing. Response, at 3.

Because ''possessing authority under state law to handle controlled substances is an essential condition for holding a DEA registration,'' this Agency has consistently held that ''the CSA requires the revocation of a registration issued to a practitioner who lacks [such authority].'' *Roy Chi Lung,* 74 FR 20346, 20347 (2009); *see also Scott Sandarg, D.M.D.,* 74 FR 17528, 174529 (2009); *John B. Freitas, D.O.,* 74 FR 17524, 17525 (2009); *Roger A. Rodriguez, M.D.,* 70 FR 33206, 33207 (2005); *Stephen J. Graham, M.D.,* 69 FR 11661 (2004); *Abraham A. Chaplan, M.D.,* 57 FR 55280 (1992); *see also Harrell E. Robinson,* 74 FR 61370, 61375 (2009). Notably, ''revocation is warranted *even where a practitioner's state authority has been summarily suspended and the State has yet to provide the practitioner with a hearing to challenge the State's action at which he may ultimately prevail.'' Kamal Tiwari, M.D.,* 76 FR 71604, 71606 (2011) (emphasis added); *see also Bourne Pharmacy, Inc.,* 72 FR 18273, 18274 (2007); *Anne Lazar Thorn,* 62 FR 12847 (1997).

The Respondent's assertions that the State of Florida and DEA acted in temporally close fashion has no bearing on the correct resolution of the issue raised by the Government's MSD. Neither does it matter that the Respondent intends to contest the emergency order at a state administrative hearing. *Tiwari, M.D.,* 76 FR at 71606. It is uncontested that the Respondent does not presently enjoy the privileges of handling controlled substances in the State of Florida, the state where his COR is registered. In *Anne Lazar Thorn, M.D.,* 62 FR 12847 (1997), the Agency affirmed the Administrative Law Judge's summary disposition recommended decision and specifically rejected the view that a COR could coexist in the face of an absence of state authority to handle controlled substances. In that case, the Agency held that:

> *the controlling question is* not whether a practitioner's license to practice medicine in the state is suspended or revoked; rather, it is *whether the Respondent is currently authorized to handle controlled substances in the state.* In the instant case, it is undisputed that Respondent is not currently authorized to handle controlled substances in the [state where his COR has its listed address]. Therefore * * * Respondent is not currently entitled to a DEA [COR].

Id. at 12848 (emphasis supplied). Similarly, in *Calvin Ramsey, M.D.,* 76 FR 20034, 20036 (2011), the Agency stated its position with such unambiguous precision that little room is realistically left for debate on the matter:

> DEA has repeatedly held that the CSA requires the revocation of a registration issued to a practitioner whose state license has been suspended or revoked. *David W. Wang,* 72 [FR] 54297, 54298 (2007); *Sheran Arden Yeates,* 71 [FR] 39130, 39131 (2006); *Dominck A. Ricci,* 58 [FR] 51104, 51105 (1993); *Bobby Watts,* 53 [FR] 11919, 11920 (1988). This is so even where a state board has suspended (as opposed to revoked) a practitioner's authority with the possibility that the authority may be restored at some point in the future.
>
> [*Roger A. Rodriguez,* 70 FR 33206, 33207 (2005)].

Although the Respondent avers his intention to vigorously contest the grounds for Florida's emergency order,[2] that intention does not affect the correct resolution of the present question. The Agency has held that even without evaluating the specific bases for state administrative action against a medical license, a ''[s]tate's action in suspending [a registrant's] medical license is by itself, an independent ground to revoke [a] registration.'' *James L. Hooper, M.D.,* 76 FR 71371, 71372 (2011).

The seminal issue presented by the MSD, whether a hearing is appropriate under the uncontroverted circumstances present here, must be answered in the negative. Congress does not intend for administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.,* 48 FR 32887 (1983), *aff'd sub nom. Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *see also Puerto Rico Aqueduct & Sewer Auth.* v. *EPA,* 35 F.3d 600, 605 (1st Cir. 1994); *NLRB* v. *Int'l Assoc. of Bridge, Structural & Ornamental Ironworkers, AFL–CIO,* 549 F.2d 634 (9th Cir. 1977); *United States* v. *Consol. Mines & Smelting Co.,* 455 F.2d 432, 453 (9th Cir. 1971). Thus, it is well-settled that, where no genuine question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial administrative proceeding is not required. *See Jesus R. Juarez, M.D.,* 62 FR 14945 (1997); *Dominick A. Ricci, M.D.,* 58 FR 51104 (1993).

At this juncture, no genuine dispute exists over the fact that the Respondent lacks state authority to handle controlled substances in the State of Florida. Because the Respondent lacks such state authority, both the plain language of applicable federal statutory provisions and Agency interpretive precedent dictate that the Respondent is not entitled to maintain his DEA registration. Simply put, there is no contested factual matter adducible at a hearing that would provide DEA with the authority to allow the Respondent to continue to hold his COR. I therefore conclude that further delay in ruling on the Government's motion for summary disposition is not warranted.[3] *See Veg-*

[2] Response at 3.

[3] Even assuming *arguendo* the possibility that the Respondent's state controlled substances privileges could be reinstated, summary disposition would still be warranted because ''revocation is also appropriate when a state license has been suspended, but with the possibility of future reinstatement,'' *Rodriguez,* 70 FR at 33207 (citations omitted), and even where there is a judicial

Mix, Inc., 832 F.2d 601, 607 (D.C. Cir. 1987) (''an agency may ordinarily dispense with a hearing when no genuine dispute exists''); *see also Gregory F. Saric, M.D.,* 76 FR 16821 (2011) (stay denied in the face of Respondent's petition based on pending state administrative action wherein he was seeking reinstatement of state privileges).

Accordingly, I hereby *grant* the Government's Motion for Summary Disposition; and *recommend* that the Respondent's DEA registration be *revoked* forthwith and any pending applications for renewal be *denied.*

Dated: August 10, 2012.

/s/ JOHN J. MULROONEY, II,

Chief Administrative Law Judge.

[FR Doc. 2012–27554 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application; Watson Pharma, Inc.

Pursuant to Title 21 Code of Federal Regulations 1301.34(a), this is notice that on August 28, 2012, Watson Pharma, Inc., 2455 Wardlow Road, Corona, California 92880–2882, made application to the Drug Enforcement Administration (DEA) for registration as an importer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methylphenidate (1724)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II

The company plans to import the listed controlled substances for analytical testing and clinical trials.

The import of the above listed basic classes of controlled substances will be granted only for analytical testing and clinical trials. This authorization does not extend to the import of a finished FDA approved or non-approved dosage form for commercial distribution in the United States.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances listed in schedules I or II, which fall under the authority of section 1002(a)(2)(B) of the Act 21 U.S.C. 952(a)(2)(B) may, in the circumstances set forth in 21 U.S.C. 958(i), file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43 and in such form as prescribed by 21 CFR 1316.47.

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 13, 2012.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, 40 FR 43745–46, all applicants for registration to import a basic class of any controlled substance in schedules I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: November 5, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–27570 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances, Notice of Registration, SA INTL GMBH C/O., Sigma Aldrich Co., LLC.

By Notice dated August 17, 2012, and published in the **Federal Register** on August 20, 2012, 77 FR 50162, SA INTL GMBH C/O., Sigma Aldrich Co., LLC., 3500 Dekalb Street, St. Louis, Missouri 63118, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2-Thienyl)cyclohexyl]piperidine (7470).	I
N-Benzylpiperazine (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium, powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

No comments or objections have been received. DEA has considered the

challenge to the state medical board action actively pending in the state courts. *Michael G. Dolin, M.D.,* 65 FR 5661, 5662 (2000).

factors in 21 U.S.C. 823(a) and 952(a), and determined that the registration of SA INTL GMBH C/O., Sigma Aldrich Co. LLC., to import the basic classes of controlled substances is consistent with the public interest, and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated SA INTL GMBH C/O., Sigma Aldrich Co. LLC., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 5, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–27571 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Cedarburg Pharmaceuticals, Inc.

Pursuant to § 1301.33(a), of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 21, 2012, Cedarburg Pharmaceuticals, Inc., 870 Badger Circle, Grafton, Wisconsin 53024, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4-Anilino-N-phenethyl-4-piperidine (8333).	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers. Regarding the drug code (8333), the company plans to use this controlled substance to manufacture another controlled substance.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 14, 2013.

Dated: November 5, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–27572 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application; Johnson Matthey Inc.

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 10, 2012, Johnson Matthey Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066–1742, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Tetrahydrocannabinols (7370)	I
Dihydromorphine (9145)	I
Difenoxin (9168)	I
Propiram (9649)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 14, 2013.

Dated: November 5, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–27565 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Wildlife Laboratories, Inc.

By Notice dated April 17, 2012, and published in the **Federal Register** on July 31, 2012, 77 FR 45378, Wildlife Laboratories, Inc., 1230 W. Ash Street, Suite D, Windsor, Colorado 80550, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Carfentanil (9743), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the above listed controlled substance for sale to veterinary pharmacies, zoos, and for other animal and wildlife applications.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a), and determined that the registration of Wildlife Laboratories, Inc., to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Wildlife Laboratories, Inc., to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR

1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: November 5, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–27568 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration; Nektar Therapeutics

By Notice dated July 17, 2012, and published in the **Federal Register** on July 26, 2012, 77 FR 43862, Nektar Therapeutics, 1112 Church Street, Huntsville, Alabama 35801, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Fentanyl (9801), a basic class of controlled substance listed in schedule II.

The company plans to manufacture the listed controlled substance in support of product development.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Nektar Therapeutics to manufacture the listed basic class of controlled substance is consistent with the public interest at this time. DEA has investigated Nektar Therapeutics to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems; verification of the company's compliance with state and local laws; and review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic class of controlled substance listed.

Dated: November 5, 2012.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2012–27567 Filed 11–9–12; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–095]

NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Monday, November 26, 2012, 9:00 a.m.–5:15 p.m., Local Time.

ADDRESS: NASA Headquarters. 300 E Street SW., Conference Room 8E40, Washington DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546. Phone: 202–358–2183.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes briefings on the following topics:

- FY 2012 Financial Statement Audit
- FY 2013 Financial Management Initiatives
- Administrative Savings
- NASA Budget
- Government Accounting Office High Risk List
- Financial System Initiative

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to NASA Security before access to NASA Headquarters. Foreign Nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no later than November 21, 2012: full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Charlene Williams at fax: (202) 358–4336. U.S. Citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Charlene Williams.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–27487 Filed 11–9–12; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, November 15, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED: 1. NCUA's 2013 Operating Budget.

2. NCUA/NCUSIF Overhead Transfer Rate.

3. Federal Credit Unions' Operating Fee Scale.

4. Board Briefing on the Estimated 2013 Premium Ranges for the NCUSIF and the Corporate Stabilization Fund.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2012–27648 Filed 11–8–12; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: November 30, 2012, 8:30 a.m.–5:00 p.m.; December 1, 2012, 8:30 a.m.–1:00 p.m.

Place: National Science Foundation, Room 1235, Stafford I Building, 4201 Wilson Blvd., Arlington, VA, 22230.

Type of Meeting: Open.

Contact Person: Dr. Jim Ulvestad, Division Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–7165.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues

within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: November 7, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–27495 Filed 11–9–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0270]

Content Specifications and Shielding Evaluations for Type B Transportation Packages

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory issue summary; request for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing for public comment Draft Regulatory Issue Summary (RIS) 2012–XX, ''Content Specifications and Shielding Evaluations for Type B Transportation Packages.'' This RIS clarifies the NRC's use of staff guidance in NUREG–1609, ''Standard Review Plan for Transport Packages for Radioactive Material,'' for the review of content specifications and shielding evaluations included in the Certificates of Compliance (CoC) and safety analysis reports (SARs) for Type B transportation packages.

DATES: Submit comments by December 28, 2012. Comments received after this date will be considered, if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0270. You may submit comments by the following methods (unless the document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0270. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Wilson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–492–3278; email: *Veronica.Wilson@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0270 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by any of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0270.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft RIS is available in ADAMS under Accession No. ML120190451. NUREG–1609 is available on the NRC's public Web site at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1609/final/index.html.*
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0270 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Background

The NRC issues RISs to provide guidance to applicants on the scope and detail of information that should be provided in certificate actions to facilitate staff review.

The NRC staff has developed draft RIS 2012–XX, ''Content Specification and Shielding Evaluations for Type B Transportation Packages,'' to clarify use of NRC staff guidance in NUREG–1609, for the review of content specifications and shielding evaluations included in the CoCs and SARs for Type B transportation packages.

Proposed Action

By this action, the NRC is requesting public comments on the draft RIS. This draft RIS clarifies the NRC's use of staff guidance in NUREG–1609, ''Standard Review Plan for Transport Packages for Radioactive Material.'' The NRC staff will make a final determination regarding issuance of the RIS after it considers any public comments received in response to this request.

Dated at Rockville, Maryland, this 31st day of October, 2012.

For the Nuclear Regulatory Commission.

Mark Lombard,

Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2012–27187 Filed 11–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0274]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 18, 2012 to October 31, 2012. The last biweekly notice was published on October 30, 2012 (77 FR 65720).

ADDRESSES: You may access information and comment submissions related to this document, which the NRC possesses and are publicly available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0274. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0274. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0274 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and is publicly available, by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0274.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select *''ADAMS Public Documents''* and then select *''Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Documents may be viewed in ADAMS by performing a search on the document date and docket number.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2012–0274 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in section 50.92 of Title 10 of the *Code of Federal Regulations* (10 CFR), this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license or combined license. Requests for a

hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment.

All documents filed in the NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with the NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The

E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the following three factors in 10 CFR 2.309(c)(1): (i) The information upon which the filing is based was not previously available; (ii) the information upon which the filing is based is materially different from information previously available; and (iii) the filing has been submitted in a timely fashion based on the availability of the subsequent information.

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the NRC's PDR, located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC's Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: October 2, 2012.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) to support operations with 24-month fuel cycles in accordance with the guidance of NRC Generic Letter 91–04, ''Changes in Technical Specification Surveillance Intervals to Accommodate a 24 Month Fuel Cycle,'' dated April 2, 1991. In addition, consistent with this guidance, the amendment would change testing frequencies from 18 to 24 months in TS 5.5.7, ''Ventilation Filter Testing Program (VFTP).''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS changes involve a change in the surveillance testing intervals to facilitate a change in the operating cycle length. The proposed TS changes do not physically impact the plant. The proposed TS changes do not degrade the performance of, or increase the challenges to, any safety systems assumed to function in the accident analysis. The proposed TS changes do not impact the usefulness of the SRs in evaluating the operability of required systems and components, or the way in which the surveillances are performed. In addition, the frequency of surveillance testing is not considered an initiator of any analyzed accident, nor does a revision to the frequency introduce any accident initiators.

Therefore, the proposed change does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of a previously evaluated accident are not significantly increased. The proposed change does not affect the performance of any equipment credited to mitigate the radiological consequences of an accident. Evaluation of the proposed TS changes demonstrated that the availability of credited equipment is not significantly affected because of other more frequent testing that is performed, the availability of redundant systems and equipment, and the high reliability of the equipment. Historical review of surveillance test results and associated maintenance records did not find evidence of failures that would invalidate the above conclusions.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS changes involve a change in the surveillance testing intervals to facilitate a change in the operating cycle length. The proposed TS changes do not introduce any failure mechanisms of a

different type than those previously evaluated, since there are no physical changes being made to the facility.

No new or different equipment is being installed. No installed equipment is being operated in a different manner. As a result, no new failure modes are being introduced. The way surveillance tests are performed remains unchanged. A historical review of surveillance test results and associated maintenance records indicated there was no evidence of any failures that would invalidate the above conclusions.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed TS changes involve a change in the surveillance testing intervals to facilitate a change in the operating cycle length. The impact of these changes on system availability is not significant, based on other more frequent testing that is performed, the existence of redundant systems and equipment, and overall system reliability. Evaluations have shown there is no evidence of time dependent failures that would impact the availability of the systems. The proposed changes do not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed changes do not result in any hardware changes or in any changes to the analytical limits assumed in accident analyses. Existing operating margin between plant conditions and actual plant setpoints is not significantly reduced due to these changes. The proposed changes do not significantly impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Joseph A. Aluise, Associate General Counsel—Nuclear, Entergy Services, Inc., 639 Loyola Avenue, New Orleans, Louisiana 70113.

NRC Branch Chief: Michael T. Markley.

Exelon Generation Company, LLC (EGC), Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2 (Braidwood), Will County, Illinois Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2 (Byron), Ogle County, Illinois

Date of amendment request: July 23, 2012.

Description of amendment request: The proposed amendment would modify Braidwood and Byron Technical Specifications (TS) to delete the limiting condition for operation (LCO) note associated with TS 3.5.3, ''[Emergency Core Cooling System] ECCS—Shutdown,'' to reflect current plant configuration and ensure Residual Heat Removal (RHR) system operability meets the TS 3.5.3 LCO requirement.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to delete the TS 3.5.3 LCO Note will ensure that one train of RHR remains aligned for ECCS mode of operation as required to mitigate an accident described in the Updated Final Safety Analysis Report (UFSAR). The proposed changes to not affect the design, operational characteristics, and function of the ECCS and RHR systems to mitigate a design basis accident (DBA). Furthermore, the interfaces between the RHR system and other plants systems' operating functions, or the reliability of the RHR system are not impacted by the proposed changes. Since the ECCS and RHR systems are not accident initiators, the proposed changes do not impact the initiators or assumptions of analyzed accidents, nor do they impact the mitigation of accidents or transient events. Therefore, the ECCS and RHR systems will be capable of performing their accident mitigation functions, and the proposed deletion of the TS 3.5.3 LCO Note does not involve a significant increase in the probability of an accident.

The proposed changes will ensure that one train of RHR be available for ECCS mode of operation during MODE 4 to ensure that the RHR system, as a subsystem of ECCS, is operable for ensuring sufficient ECCS flow is available to the core for mitigating the consequences of a loss of coolant accident (LOCA). Thus, the proposed deletion of the TS 3.5.3 LCO Note does not involve a significant increase in the consequences of an accident.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed deletion of the TS 3.5.3 LCO Note does not change the design function or operation of the RHR system components, or maintenance activities. The proposed changes do not change or introduce any new or different type of equipment, modes of system operation, failure mechanisms, malfunctions, or accident initiators. The proposed changes will ensure that one train of ECCS is operable to mitigate the consequences of a LOCA as previously assumed in the UFSAR.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This proposed changes delete the TS 3.5.3 LCO Note will ensure that TS 3.5.3 LCO requirements is met to ensure that sufficient ECCS flow is available to the core following a DBA, such as a LOCA, as described in the UFSAR. The proposed changes will review the existing non-conservative TS to reflect current plant configuration that the Reactor Coolant System (RCS) temperature must be reduced to less than or equal to 200 °F [degrees Fahrenheit] in order to eliminate the potential for flashing of hot water within the isolated RHR system hot leg suction piping during transfer to the ECCS recirculation sump. The proposed changes will ensure the RHR system operability to meet TS 3.5.3 LCO requirement and do not affect the ability of the RHR system to provide long-term capability for core cooling following a LOCA.

Therefore, the proposed changes do not result in a significant reduction in the margin of safety.

Based on the above, EGC concludes that the proposed amendments do not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of no significant hazards consideration is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Nuclear, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Michael I. Dudek.

FirstEnergy Nuclear Operating Company (FENOC), et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit 1 (PNPP), Lake County, Ohio

Date of amendment request: July 3, 2012.

Description of amendment request: The proposed amendment would modify PNPP's Technical Specifications (TS) 3.8.1, ''AC [alternating current] Sources—Operating.'' Specifically, the proposed amendment will modify nine surveillance requirements (SRs) by excluding Division 2 from the current mode restrictions, thus allowing performance of the subject SRs in any mode of plant operation. The proposed amendment also deletes expired TS 3.8.1 provisions regarding use of a delayed access circuit.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This amendment request proposed to remove MODE restrictions on certain Division 3 AC sources surveillance tests, allowing testing in any MODE of operation. The Division 3 AC sources, including the diesel generator (DG) and its associated emergency loads are accident mitigating features, not accident initiators. This proposed amendment does not change the design function of the Division 3 AC sources, including the DG of any of its required loads, and does not change the way the systems and plant are operated or maintained. This proposed amendment does not impact any plant systems that are accident initiators and does not adversely impact any accident mitigating systems.

The proposed amendment does not affect the operability requirements for the AC sources, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of Division 2 AC sources to perform their required design functions of providing emergency power to high pressure core spray (HPCS) system equipment, consistent with the plant safety analyses. Limiting testing to only one AC source at a time also ensures that design basis requirements are met. Should a fault occur while testing the Division 3 AC sources, there would be no significant impact on any accident consequences since Division 1 and 2 AC sources and their respective emergency loads would be available to provide the safety functions necessary to shut down the unit and maintain it in a safe shutdown condition.

Removing the MODE restrictions associated with certain Division 3 surveillance requirements, this allowing testing to occur in any MODE of operation, will not significantly increase the probability of an accident previously evaluated because the Division 3 DG and its emergency loads are accident mitigation features, not accident initiators.

Removing the MODE restrictions associated with certain Division 3 surveillance requirements, this allowing testing to occur in any MODE of operation, will not change the dose analyses associated with the [Updated Safety Analysis Report] USAR Chapter 15 accidents because accident mitigation functions and requirements remain unchanged.

This amendment request also proposes to remove temporary TS 3.8.1 provisions related to the use of the delayed access circuit. Effective October 17, 2011, the temporary provisions support plant startup and normal operation until the Unit 1 startup transformer was returned to service. The provisions expired on December, 12, 2011, after the Unit 1 startup transformer was returned to service. Removing the provisions will not increase the probability of an accident previously evaluated since the provisions are no longer required or applicable. Removing the provisions will not change any of the dose analyses associated with the USAR Chapter 15 accidents because accident mitigation functions and requirements remain unchanged as a result of the removal. Removing the expired provisions does not affect or alter any other aspect of this amendment request.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

This amendment request proposes to remove the MODE restrictions associated with certain Division 3 AC sources surveillance requirements. The proposed amendment does not change the design function of the Division 3 AC sources or any required loads, and does not change the way the systems and plant are operated or maintained. This proposed amendment does not impact any plan systems that are accident initiators and does not adversely impact any accident mitigating systems. Performance of these surveillance tests in any operating MODE will continue to verify operability of the Division 3 AC sources.

This amendment request also proposes to remove temporary TS 3.8.1 provisions related to the use of the delayed access circuit. Effective October 17, 2011, the temporary provisions support plant startup and normal operation until the Unit 1 startup transformer was returned to service. The provisions expired on December, 12, 2011, after the Unit 1 startup transformer was returned to service. Removing the provisions will not increase the probability of an accident previously evaluated since the provisions are no longer required or applicable. Removing the expired provisions does not affect or alter any other aspect of this amendment request.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This amendment request proposes to remove the MODE restrictions associated with certain Division 2 diesel generator surveillance requirements. Margin of safety is related to the ability of the fission product barriers (fuel cladding, reactor coolant system, and primary containment) to perform their design functions during and following postulated accidents. This proposed amendment does not involve or affect fuel cladding, reactor coolant system, or the primary containment. Performing Division 3 surveillance testing online increases the Division 3 DG and HPCS system availability during refueling outages and allows the testing to be conducted when both Division 1 and 2 systems are required to be OPERABLE, not significantly difference than when performed other Division 3 surveillance tests that do not have similar MODE restrictions.

This amendment request also proposes to remove temporary TS 3.8.1 provisions related to the use of the delayed access circuit. Effective October 17, 2011, the temporary provisions support plant startup and normal operation until the Unit 1 startup transformer was returned to service. The provisions expired on December, 12, 2011, after the Unit 1 startup transformer was returned to service. Removing the provisions will not increase the probability of an accident previously evaluated since the provisions are no longer required or applicable. Removing the expired provisions does not affect or alter any other aspect of this amendment request. When they were effective, the provisions did not involve fuel cladding, reactor coolant system, or the primary containment. Removing the provisions does not involve or affect fuel cladding, reactor coolant system, or the primary containment. The proposed amendment does not involve a physical change to the plant, methods of plant operation, or maintenance of equipment important to safety.

Therefore, the proposed amendment does not result in any reduction in a margin of safety.

Based on the above, FENOC concludes that the proposed amendment does not involve a significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of ''no significant hazards consideration'' is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Attorney, FirstEnergy Corporation, Mail Stop. A–GO–15, 76 South Main Street, Akron, OH 44308.

NRC Acting Branch Chief: Michael I. Dudek.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Date of amendment request: July 12, 2012, as supplemented by letter dated October 23, 2012.

Brief description of amendment request: The amendments would revise Technical Specification (TS) 5.7.1, entitled ''High Radiation Areas with Dose Rates not Exceeding 1.0 rem [roentgen equivalent man]/hour at 30 Centimeters from the Radiation Source or from any Surface Penetrated by the Radiation,'' and 5.7.2, entitled ''High Radiation Areas with Dose Rates Greater than 1.0 rem/hour at 30 Centimeters

from the Radiation Source or from any Surface Penetrated by the Radiation, but less than 500 rads/hour at 1 Meter from the Radiation Source or from any Surface Penetrated by the Radiation,'' to allow entry into high radiation areas by personnel continuously escorted by individuals qualified in radiation protection procedures as long as the escorted personnel receive a pre-job briefing prior to entry into such areas . In addition, the amendment would incorporate an unrelated editorial change to TS Table 3.3.3–1, ''Post Accident Monitoring Instrumentation.'' The title for the TS Table 3.3.1–1 column ''CONDITION REFERENCED FROM REQUIRED ACTION E.1,'' will be corrected to read, ''CONDITION REFERENCED FROM REQUIRED ACTION D.1,'' to be consistent with Required Actions for Condition D of TS 3.3.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to the Technical Specifications has no impact on accident initiation or mitigation. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to the Technical Specifications has no impact on accident initiation or mitigation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change to the Technical Specifications has no impact on accident initiation or mitigation. The proposed change will allow for the positive radiation protection control of activities in High Radiation Areas. This is consistent with the requirements of [10 CFR 20.1601(a)] and [10 CFR 20.1601(c)].

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Michael T. Markley.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit 1, Washington County, Nebraska

Date of amendment request: March 9, 2012.

Description of amendment request: The proposed amendment would relocate Technical Specification (TS) Limiting Condition of Operation (LCO) 2.17, Miscellaneous Radioactive Material Sources, and the associated surveillance requirement (SR) 3.13, Radioactive Material Sources Surveillance, from the TSs. NUREG–1432, Revision 3, ''Standard Technical Specifications, Combustion Engineering Plants,'' June 2004 (ADAMS Accession No. ML041830597), does not contain a TS or SR for radioactive sources surveillance. The operability and surveillance requirements for leak checking of miscellaneous radioactive material sources will be incorporated into the Fort Calhoun Station Updated Safety Analysis Report and associated plant procedures.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Miscellaneous radioactive sources are not part of any transient or accident analysis.

The proposed changes conform to the Nuclear Regulatory Commission's (NRC's) regulatory guidance regarding the content of plant TS as identified in 10 CFR 50.36 and NRC publication NUREG–1432.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change relocates the requirements for leak checking miscellaneous radioactive material sources to a licensee controlled document subject to the controls of 10 CFR 50.59. This change does not alter the physical design, safety limits, or safety analysis assumptions associated with the operation of the plant. Hence, the proposed change does not introduce any new accident initiators, nor does it reduce or adversely affect the capabilities of any plant structure or system in the performance of their safety function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change relocates the requirements for leak checking miscellaneous radioactive material sources to a licensee controlled document subject to the controls of 10 CFR 50.59. This change does not alter any safety margins.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David A. Repka, Esq., Winston & Strawn, 1700 K Street NW., Washington, DC 20006–3817.

NRC Branch Chief: Michael T. Markley.

South Carolina Electric and Gas Docket Nos.: 52–027 and 52–028, Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, Fairfield County, South Carolina

Date of amendment request: September 26, 2012.

Description of amendment request: The proposed change would amend Combined License Nos.: NPF–93 and NPF–94 for Virgil C. Summer Nuclear Station (VCSNS) Units 2 and 3, respectively, by improving the translation of Tier 2 Information into Tier 1 Table 3.3–1 Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Building, and Annex Building for technical consistency, clarity, and completeness. This change is identified as an administrative change. There will be no design changes based on the improved translation of Tier 2 information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Plant-specific DCD Tier 1 (and corresponding COL Appendix C) Table 3.3–1 proposed changes are for technical consistency, clarity and completeness, and do not involve a design or plant-specific DCD Tier 2 change. The changes do not affect the prevention and mitigation of any abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. The probabilistic risk assessment (plant-specific DCD Chapter 19) is not affected. No safety-related or nonsafety-related structure, system, component (SSC) or function is affected. The Tier 1 changes do not affect any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the plant-specific DCD or UFSAR are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the plant-specific DCD or UFSAR are not affected.

Therefore, the proposed activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Plant-specific DCD Tier 1 (and corresponding COL Appendix C) Tier 1 Table 3.3–1 proposed changes are for technical consistency, clarity and completeness, and do not involve a design or plant-specific DCD Tier 2 change. No fire, design or safety analysis is affected. No system or design function or equipment qualification will be affected by the changes. The changes do not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment. This activity will not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in significant fuel cladding failures.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant-specific DCD Tier 1 (and corresponding COL Appendix C) Tier 1 Table 3.3–1 proposed changes are for technical consistency, clarity and completeness, and do not involve a design or plant-specific DCD Tier 2 change. No fire, design or safety analysis is affected. No system or design function or equipment qualification will be affected by the changes. The Table 3.3–1 building wall, roof and floor changes are only descriptive. The requested changes will not affect any safety-related equipment, design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is involved by the requested changes, thus, no margin of safety is reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Kathryn M. Sutton, Morgan, Lewis & Bockius LLC, 1111 Pennsylvania Avenue NW, Washington, DC 20004–2514.

NRC Branch Chief: Mark E. Tonacci.

Southern Nuclear Operating Company Docket Nos.: 52–025 and 52–026, Vogtle Electric Generating Station (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: September 21, 2012.

Description of amendment request: The proposed change would amend Combined License Nos.: NPF–91 and NPF–92 for VEGP Units 3 and 4, respectively, by improving the translation of Tier 2 Information into Tier 1 Table 3.3–1 Definition of Wall Thicknesses for Nuclear Island Buildings, Turbine Building, and Annex Building for technical consistency, clarity, and completeness. This change is identified as an administrative change. There will be no design changes based on the improved translation of Tier 2 information.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Plant-specific DCD Tier 1 (and corresponding COL Appendix C) Table 3.3–1 proposed changes are for technical consistency, clarity and completeness, and do not involve a design or plant-specific DCD Tier 2 change. The changes do not affect the prevention and mitigation of any abnormal events, e.g., accidents, anticipated operational occurrences, earthquakes, floods and turbine missiles, or their safety or design analyses. The probabilistic risk assessment (plant-specific DCD Chapter 19) is not affected. No safety-related or nonsafety-related structure, system, component (SSC) or function is affected. The Tier 1 changes do not affect any SSC accident initiator or initiating sequence of events, and thus, the probabilities of the accidents evaluated in the plant-specific DCD or UFSAR are not affected. Because the changes do not involve any safety-related SSC or function used to mitigate an accident, the consequences of the accidents evaluated in the plant-specific DCD or UFSAR are not affected.

Therefore, the proposed activity does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Plant-specific DCD Tier 1 (and corresponding COL Appendix C) Tier 1 Table 3.3–1 proposed changes are for technical consistency, clarity and completeness, and do not involve a design or plant-specific DCD Tier 2 change. No fire, design or safety analysis is affected. No system or design function or equipment qualification will be affected by the changes. The changes do not result in a new failure mode, malfunction or sequence of events that could affect safety or safety-related equipment.

This activity will not allow for a new fission product release path, result in a new fission product barrier failure mode, or create a new sequence of events that would result in significant fuel cladding failures.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Plant-specific DCD Tier 1 (and corresponding COL Appendix C) Tier 1 Table 3.3–1 proposed changes are for technical consistency, clarity and completeness, and do not involve a design or plant-specific DCD Tier 2 change. No fire, design or safety analysis is affected. No system or design function or equipment qualification will be affected by the changes. The Table 3.3–1 building wall, roof and floor changes are only descriptive. The requested changes will not affect any safety-related equipment, design code, function, design analysis, safety analysis input or result, or design/safety margin. No safety analysis or design basis acceptance limit/criterion is involved by the requested changes, thus, no margin of safety is reduced.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. M. Stanford Blanton, Balch & Bingham LLP, 1710 Sixth Avenue North, Birmingham, AL 35203–2015.

NRC Branch Chief: Mark E. Tonacci.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of amendment request: July 19, 2012.

Description of amendment request: The proposed amendment would modify the Updated Final Safety Analysis Report (UFSAR) hydrologic analysis and results, including the design based flood (DBF) elevations required to be considered in the flood protection of safety-related systems, structures, or components (SSC) during external flooding events, and verify the adequacy of the warning time for both rainfall and seismically induced dam failure floods. The proposed changes include updated input information and methodology, which includes the use of the U.S. Army Corps of Engineers' Hydrologic Modeling System and River Analysis System software and temporary flood barriers to prevent overtopping of earthen embankments. As a result of these proposed changes, DBF elevations at the WBN Unit 1 site are revised. These changes are determined to impact existing flooding protection requirements for several WBN Unit 1 SSCs, which include the Thermal Barrier Booster (TBB) pump motors and Essential Raw Cooling Water (ERCW) equipment required for flood mode operation located in the Intake Pumping Station (IPS). To restore margin for the TBB pump motors, a temporary flood protection barrier has been designed to be installed around them prior to a Stage I flood warning; for the ERCW equipment, a compensatory measure of staged sandbags to be constructed into a berm at the IPS at any time prior to or during a Stage I flood warning has been implemented. Permanent plant modifications are planned to restore or gain additional margin.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequence of an accident previously evaluated?

Response: No.

Although the proposed changes require some physical changes to plant systems, structures, or components to add flood protection features to restore or gain additional margin between the revised DBF elevations and limiting safety-related systems, structures, and components; they do not (1) prevent the safety function of any safety-related system, structure, or component during an external flood; (2) alter, degrade, or prevent action described or assumed in any accident described in the WBN Unit 1 UFSAR from being performed since the safety-related systems, structures, or components remain adequately protected from the effects of external floods, considering the temporary compensatory measures in place and upon completion of planned permanent plant modifications; (3) alter any assumptions previously made in evaluating radiological consequences; or (4) affect the integrity of any fission product barrier.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not introduce any new accident causal mechanisms, nor do they impact any plant systems that are potential accident initiators.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not alter the permanent plant design, including instrument set points, that is the basis of the assumptions contained in the safety analyses. However, permanent plant modifications are planned to restore or gain additional margin between the revised DBF elevations and limiting safety-related systems, structures, and components. Although the results of the updated hydrologic analysis increase the DBF elevations required to be considered in the flood protection of safety-related systems, structures, or components during external flooding events, the proposed changes do not prevent any safety-related systems, structures, or components from performing their required functions during an external flood considering the temporary compensatory measures in place and upon completion of planned permanent plant modifications. Consistent with existing regulatory guidance including regulatory recommendations and discussions regarding calibration of hydrology models using historical flood data and consideration of sensitivity analyses, the hydrologic analysis is considered to be a reasonable best estimate that has accounted for uncertainties using the best data available.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Acting Branch Chief: Jessie F. Quichocho.

Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the NRC's Public Document Room (PDR), located at One White Flint North, Room O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR's Reference

staff at 1–800–397–4209, 301–415–4737 or by email to *pdr.resource@nrc.gov.*

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: October 13, 2011, as supplemented by letters dated November 25, 2011, January 18, 2012, April 3, 2012, May 22, 2012 and July 17, 2012.

Brief description of amendment: The amendment revised Technical Specification (TS) 3/4.7.4, Table 3.7–3, ''Ultimate Heat Sink Minimum Fan Requirements per Train,'' to account for replacement steam generators and an inappropriate analysis methodology.

Date of issuance: October 31, 2012.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 237.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in **Federal Register**: April 17, 2012 (77 FR 22813). The supplemental letters dated November 25, 2011, January 18, 2012, April 3, 2012, May 22, 2012, and July 17, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2012.

No significant hazards consideration comments received: No.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Nuclear Power Plant, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 28, 2012.

Brief description of amendments: The amendments revised Technical Specification (TS) 5.5.9, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator (SG) Program,'' and TS 5.6.9, ''Unit 1 Model D76 and Unit 2 Model D5 Steam Generator Tube Inspection Report,'' to permanently exclude portions of the Comanche Peak Nuclear Power Plant (CPNPP), Unit 2, Model D5 SG tube below the top of the SG tubesheet from periodic SG tube inspections and to provide permanent reporting requirements specific to CPNPP, Unit 2. The proposed alternate repair criteria would replace similar, interim criteria for CPNPP, Unit 2, that was applicable during Refueling Outage 12 (spring of 2011) and the subsequent (current) operating cycle approved by NRC by letter dated April 6, 2011.

Date of issuance: October 18, 2012.

Effective date: As of the date of issuance and shall be implemented prior to MODE 4 entry during startup from Unit 2 Refueling Outage 13.

Amendment Nos.: Unit 1–158; Unit 2–158.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: June 12, 2012 (77 FR 35074).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 18, 2012.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendment: February 17, 2011, as supplemented by letters dated April 21, 2011, February 27, 2012, and July 2, 2012.

Brief description of amendment: The amendments revised Technical Specification (TS) 3.7.1, ''Main Steam Safety Valves (MSSVs),'' Table 3.7.1–1, ''Maximum Allowable Power Range Neutron Flux High Setpoint with Inoperable MSSVs,'' to remove a one-time note specific to DCPP, Unit 2 for Cycle 15, which is no longer applicable or needed. The licensee also proposed to revise the TS Bases, applicable to DCPP, Units 1 and 2, to reflect a new analysis methodology for establishing the reduced power range neutron flux high setpoint for one inoperable MSSV as listed in TS Table 3.7.1–1. By letter dated April 21, 2011, the licensee clarified that the proposed revision to the TS Bases is a revision to the FSARU Sections 15.2.7.3, ''Results,'' and 15.2.16, ''References.''

Date of issuance: October 31, 2012.

Effective date: As of its date of issuance and shall be implemented within 90 days from the date of issuance. Implementation of the amendments shall also include revision of the Final Safety Analysis Report Update as described in the licensee's letter dated April 21, 2011.

Amendment Nos.: Unit 1—212; Unit 2—214.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register**: May 17, 2011 (76 FR 28475). The supplemental letters dated April 21, 2011, February 27, 2012, and July 2, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 31, 2012.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: August 1, 2012.

Brief description of amendment: The amendment revises the Vogtle Units 3 and 4 plant-specific design control document Tier 2* information by revising the details associated with the nuclear island basemat concrete and reinforcement bar.

Date of issuance: October 18, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 3–1, and Unit 4–1.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in **Federal Register**: August 21, 2012 (77 FR 50538).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 17, 2012.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc. Docket Nos. 52–025 and 52–026, Vogtle Electric Generating Plant (VEGP) Units 3 and 4, Burke County, Georgia

Date of amendment request: April 6, 2012 and revised on April 12 and May 7, 2012.

Brief description of amendment: The amendment revises the Vogtle Units 3 and 4 plant-specific design control document Tier 2* information by revising the upper tolerance on the Nuclear Island (NI) critical sections basemat thickness as identified in the plant specific design control document.

Date of issuance: October 25, 2012.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: Unit 3–2, and Unit 4–2.

Facility Combined Licenses No. NPF–91 and NPF–92: Amendment revised the Facility Combined Licenses.

Date of initial notice in **Federal Register**: June 12, 2012 (77 FR 35076).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 2012.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: May 23, 2012, supplemented by letter dated August 23, 2012 (TS–SQN–12–01).

Brief description of amendment: The amendments revised Technical Specification (TS) 3/4.8.1 to include a surveillance requirement to demonstrate the required offsite circuits OPERABLE at least once per 18 months by manually and automatically transferring the power supply to a 6.9 KiloVolt unit board from the normal supply to the alternate supply. This change is necessary as a result of the planned modifications to the plant design and operating configuration that will allow use of the unit station service transformers as a power supply to an offsite circuit.

Date of issuance: October 31, 2012.

Effective date: As of the date of issuance and shall be implemented prior to startup from Unit 2 fall 2012 refueling outage.

Amendment Nos.: Unit 1–332 and Unit 2–325.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the License and TSs.

Date of initial notice in **Federal Register**: July 24, 2012 (76 FR 43379). The supplement letter dated August 23, 2012, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 31, 2012.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 1st day of November 2012.

For the Nuclear Regulatory Commission.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–27384 Filed 11–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS); Meeting of the ACRS Subcommittee on Digital I&C; Notice of Meeting

The ACRS Subcommittee on Digital I&C will hold a meeting on November 16, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, November 16, 2012—8:30 a.m. until 5:00 p.m.

The Subcommittee will review and discuss the Design Specific Review Standard (DSRS) for Instrumentation and Control of the Babcock & Wilcox (B&W) mPower reactor. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christina Antonescu (Telephone 301–415–6792 or Email: *Christina.Antonescu@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dated: November 6, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–27534 Filed 11–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Reliability and PRA; Notice of Meeting

The ACRS Subcommittee on Reliability and PRA will hold a meeting on December 4, 2012, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 4, 2012—1:00 p.m. Until 5:00 p.m.

The Subcommittee will be briefed on the progress of the Level 3 Probabilistic Risk Assessment (PRA) development plan. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated

Federal Official (DFO), John Lai (Telephone 301–415–5197 or Email: *John.Lai@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 18, 2012, (77 FR 64146–64147).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please enter through the One White Flint North building, 11555 Rockville Pike, Rockville, MD. After registering with security, please contact Mr. Theron Brown (Telephone 240–888–9835) to be escorted to the meeting room.

Dates: November 6, 2012.

Antonio Dias,

Technical Advisor, Advisory Committee on Reactor Safeguards.

[FR Doc. 2012–27520 Filed 11–9–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0002]

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of November 5, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of November 5, 2012

Thursday, November 8, 2012

9:00 a.m. Affirmation Session (Public Meeting) (Tentative).

Southern California Edison Co. (San Onofre Nuclear Generating Station), Docket Nos. 50–361 and 50–362–CAL, Petition to Intervene, Request for Hearing, and Stay Application (June 18, 2012) (Tentative).

This meeting will be webcast live at the Web address—*www.nrc.gov*.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

The Affirmation session, *Southern California Edison Co.* (San Onofre Nuclear Generating Station), Docket Nos. 50–361 and 50–362–CAL, Petition to Intervene, Request for Hearing, and Stay Application (June 18, 2012), previously scheduled on October 30, 2012, was postponed, and has been rescheduled on November 8, 2012.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: November 7, 2012.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2012–27624 Filed 11–8–12; 11:15 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30258; File No. 812–13731]

Fidelity Aberdeen Street Trust, *et al.;* Notice of Application

November 6, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application to amend a prior order under (a) section 6(c) of the Investment Company Act of 1940 (''Act'') granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements (''Prior Order'').[1]

Summary of the Application: The Prior Order permitted certain registered open-end management investment companies to participate in a joint lending and borrowing facility. Applicants seek to amend the Prior Order to modify the Rate Conditions (as defined below) and to request an exemption from section 17(a)(2) of the Act.

Applicants: Fidelity Aberdeen Street Trust; Fidelity Advisor Series I; Fidelity Advisor Series II; Fidelity Advisor Series IV; Fidelity Advisor Series VII; Fidelity Advisor Series VIII; Fidelity Beacon Street Trust; Fidelity Boylston Street Trust; Fidelity California Municipal Trust; Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Central Investment Portfolios LLC; Fidelity Central Investment Portfolios II LLC; Fidelity Charles Street Trust; Fidelity Colchester Street Trust; Fidelity Commonwealth Trust; Fidelity Commonwealth Trust II; Fidelity Concord Street Trust; Fidelity

[1] Colchester Street Trust, *et al.,* Investment Company Act Release Nos. 24563 (Jul. 24, 2000) (notice) and 24602 (Aug. 21, 2000) (''Prior Order''), *amending,* Colchester Street Trust, *et al.,* Investment Company Act Release Nos. 23787 (Apr. 15, 1999) (notice) and 23831 (May 11, 1999) (order), *superseding,* Daily Money Fund, *et al.,* Investment Company Act Release Nos. 17257 (Dec. 8, 1989) (notice) and 17303 (Jan. 11, 1990) (order).

Contrafund; Fidelity Court Street Trust; Fidelity Court Street Trust II; Fidelity Covington Trust; Fidelity Destiny Portfolios; Fidelity Devonshire Trust; Fidelity Financial Trust; Fidelity Garrison Street Trust; Fidelity Hanover Street Trust; Fidelity Hastings Street Trust; Fidelity Hereford Street Trust; Fidelity Income Fund; Fidelity Investment Trust; Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust; Fidelity Money Market Trust; Fidelity Mt. Vernon Street Trust; Fidelity Municipal Trust; Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Newbury Street Trust; Fidelity Oxford Street Trust; Fidelity Phillips Street Trust; Fidelity Puritan Trust; Fidelity Revere Street Trust; Fidelity Salem Street Trust; Fidelity School Street Trust; Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Variable Insurance Products Fund; Variable Insurance Products Fund II; Variable Insurance Products Fund III; Variable Insurance Products Fund IV; Variable Insurance Products Fund V; (each, a ''Trust'' and collectively, the ''Trusts''), and each series of the Trusts; Fidelity Management & Research Company (''FMR Co.''); Strategic Advisers, Inc. (''SAI'' and together with FMR Co. and any person controlling, controlled by, or under common control with FMR Co., ''FMR''); and each registered open-end management investment company or series thereof that in the future is advised or sub-advised by FMR Co., SAI or another FMR entity (together, with each series of the Trusts, each, a ''Fund'' and collectively, the ''Funds'').

DATES: *Filing Dates:* The application was filed on December 11, 2009 and amended on May 13, 2011, October 21, 2011, May 11, 2012, and October 19, 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 30, 2012 and should be accompanied by proof of service on 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: 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 551–6873 or Dalia Osman Blass, 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. Each Trust is formed as a business trust or limited liability company under the laws of Massachusetts or Delaware, as applicable. Each Trust is registered under the Act as an open-end management investment company.[2] FMR Co., SAI or another FMR entity serves as investment adviser or sub-adviser to each of the Funds. FMR Co. and SAI are investment advisers registered under the Investment Advisers Act of 1940 (''Advisers Act''). Any investment adviser to the Funds will be registered under the Advisers Act.

2. The Prior Order permits the Funds to participate in a credit facility administered by FMR (the ''IFL Program''). The IFL Program enables the Funds to lend money to each other for temporary purposes, such as when redemptions exceed anticipated levels. The IFL Program is designed both to reduce the cost of borrowing for the Funds and enhance the lending Funds' ability to earn higher rates of interest of investment on their short-term balances. The Prior Order requires that the interest rate for loans made through the IFL Program (the ''IFL Rate'') be based on the average of: (a) the higher of the overnight time deposit rate (the ''OTD Rate'') and the Funds' current overnight repurchase agreement rate (the ''FICASH Rate'');[3] and (b) a benchmark rate representing the lowest bank loan rate available for borrowing by the Funds (''Benchmark Rate''). The board of trustees (each, a ''Fund Board'' and collectively, the ''Fund Boards'') of each Fund, including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, (''Independent Trustees'') establishes the Benchmark Rate, and, reviews, no less frequently than annually, the continuing appropriateness of the Benchmark Rate. The Benchmark Rate is currently set each day based on the average actual spread between the lowest quoted bank loan rate and the Federal Funds rate over the previous 60 days.

3. Applicants state that their business purposes and operational preferences over time have made inclusion of the OTD Rate in calculation of the IFL Rate unnecessary. Therefore, applicants seek to amend the Prior Order to eliminate the use of the OTD Rate in the IFL Rate calculation provided in conditions 1 and 2 (''Rate Conditions''). Applicants also request an exemption from section 17(a)(2) of the Act.

Applicants' Legal Analysis

1. Section 17(a)(3) of the Act generally prohibits any affiliated person of a registered investment company, or affiliated person of an affiliated person, from borrowing money or other property from the registered investment company. Section 21(b) of the Act generally prohibits any registered management company from lending money or other property to any person, directly or indirectly, if that person controls or is under common control with that company. Section 2(a)(3)(C) of the Act defines an ''affiliated person'' of another person, in part, to be any person directly or indirectly controlling, controlled by, or under common control with, such other person. Section 2(a)(9) of the Act defines ''control'' as the ''power to exercise a controlling influence over the management or policies of a company,'' but excludes circumstances in which ''such power is solely the result of an official position with such company.'' Because the Funds share a common investment adviser or have an investment adviser

[2] All existing investment companies or series thereof advised by FMR that are currently participating in the IFL Program have been named as applicants (included in the term ''Funds''). Any other existing or future investment companies or series thereof advised by FMR that rely on the order will comply with the terms and conditions of the application.

[3] FICASH is one or more joint accounts that were established pursuant to Commission orders to enable the Funds to invest in certain repurchase agreements. *See* Daily Money Fund, *et al.,* Investment Company Act Release Nos. 19594 (Jul. 26, 1993) (notice) and 19647 (Aug. 23, 1993) (order), *amending,* Daily Money Fund, *et al.,* Investment Company Act Release Nos. 11962 (Sep. 29, 1981) (notice) and 12061 (Nov. 27, 1981) (order).

that is under common control with those of the other Funds, applicants state that each Fund may be deemed to be under common control with all the other Funds, and, therefore, an affiliated person of those Funds.

2. Section 17(a)(1) of the Act generally prohibits any affiliated person of a registered investment company, or any affiliated person of such a person, from selling securities or other property to the investment company. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, from purchasing securities or other property from the investment company. Section 12(d)(1) of the Act prohibits a registered investment company from purchasing or otherwise acquiring any security issued by any other investment company except in accordance with the limitations set forth in that section.

3. Section 18(f)(1) of the Act prohibits registered open-end investment companies from issuing any senior security except that a company is permitted to borrow from any bank, if immediately after the borrowing, there is asset coverage of at least 300 per centum for all borrowings of the company. Under section 18(g) of the Act, the term ''senior security'' generally includes any bond, debenture, note or similar obligation or instrument constituting a security and evidencing indebtedness.

4. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) provided that the terms of the transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of the investment company as recited in its registration statement and with the general purposes of the Act. Section 6(c) of the Act provides that an exemptive order may be granted where an 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. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exception is consistent with the public interest and the protection of investors.

5. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of a registered investment company, or any affiliated person of an affiliated person, when acting as principal, from effecting any joint transaction in which the company participates unless the transaction is approved by the Commission. Rule 17d–1(b) provides that in passing upon applications filed under the rule, the Commission will consider whether the participation of a registered investment company in a joint enterprise on the basis proposed is consistent with the provisions, policies, and purposes of the Act and the extent to which the company's participation is on a basis different from or less advantageous than that of other participants.

6. Applicants request an order under (a) section 6(c) of the Act granting an exemption from sections 18(f) and 21(b) of the Act; (b) section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act; (c) sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1), 17(a)(2) and 17(a)(3) of the Act; and (d) section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint arrangements. The requested order would amend the Rate Conditions in the Prior Order and grant applicants an exemption from section 17(a)(2) of the Act.

7. As noted previously, applicants state that their business purposes and operational preferences over time have made inclusion of the OTD Rate in calculation of the IFL Rate unnecessary. Applicants state further that the IFL Rate, as amended, would make it more likely that lending Funds would receive a market rate of return in excess of other market alternatives and that borrowing Funds would not be harmed because they would only participate in the IFL Program if the IFL Rate is lower than the lowest quoted bank loan rate. Applicants state that the Rate Conditions will prove to be a more efficient means for achieving savings to the Funds in connection with their routine daily cash management activities and for providing Funds with alternative sources of liquidity in times of substantial net redemption activity.

8. Applicants also state that the IFL Program, as modified by the Rate Conditions, will not involve any potential that one Fund might receive a preferential interest rate to the disadvantage of another Fund. Applicants state that under the IFL Program, as modified by the Rate Conditions, rates will be set under a pre-established formula, approved by the Fund Boards. Applicants state that all Funds participating in the IFL Program, as revised by the Rate Conditions, on any given day will receive the same interest rate.

9. Applicants therefore submit that the modifications to the Rate Conditions are necessary or appropriate in the public interest, consistent with the protection of investors and the policy and provisions of the Act, and meet the standards set forth in sections 6(c), 12(d)(1)(J), 17(b) and 17(d) of the Act and rule 17d–1 under the Act. Applicants represent that the transactions conducted subject to the Rate Conditions would be reasonable and fair, would not involve overreaching, and would be consistent with the investment policies of the Funds and with the general purposes of the Act. Applicants submit further that each Fund's participation in the IFL Program would be consistent with the provisions, policies and purposes of the Act, and would be on a basis which is no different from, or less advantageous than that of any other participant.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The IFL Rate to be charged to the Funds under the IFL Program will be the average of: (a) the FICASH Rate and (b) the Benchmark Rate.

2. On each business day, the Cash Management Services Department (''Cash Management Department'') of Fidelity Service Company, Inc. will compare the IFL Rate calculated as provided in condition 1 with the FICASH Rate that day and all short-term borrowing rates quoted to any of the Funds by any bank with which any Fund has a loan agreement. At least three such quotations will be obtained each day in which any Fund borrows through the IFL Program prior to such borrowing. The Cash Management Department will make cash available for interfund loans only if the IFL Rate is more favorable to the lending Fund than the FICASH Rate and more favorable to the borrowing Fund than the lowest quoted bank loan rate.

3. If a Fund has outstanding borrowings, any interfund loans to the Fund (i) will be at an interest rate equal to or lower than any outstanding bank loan, (ii) will be secured at least on an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding bank loan that requires collateral, (iii) will have a maturity no longer than any outstanding bank loan (and in any event not over seven days), and (iv) will provide that, if an event of default by the Fund occurs under any agreement evidencing an outstanding bank loan to the Fund, that event of default will automatically (without need for action or notice by the lending Fund) constitute an immediate event of default under the interfund

loan agreement entitling the lending Fund to call the loan (and exercise all rights with respect to any collateral) and that such call will be made if the lending bank exercises its right to call its loan under its agreement with the borrowing Fund.

4. A Fund may make an unsecured borrowing through the IFL Program if its outstanding borrowings from all sources immediately after the interfund borrowing total 10% or less of its total assets, provided that if the Fund has a secured loan outstanding from any other lender, including but not limited to another Fund, the Fund's interfund borrowing will be secured on at least an equal priority basis with at least an equivalent percentage of collateral to loan value as any outstanding loan that requires collateral. If a Fund's total outstanding borrowings immediately after an interfund borrowing would be greater than 10% of its total assets, the Fund may borrow through the IFL Program only on a secured basis. A Fund could not borrow through the IFL Program or from any other source if its total outstanding borrowings immediately after the interfund borrowing would be more than 33⅓% of its total assets.

5. Before any Fund that has outstanding interfund borrowings may, through additional borrowings, cause its outstanding borrowings from all sources to exceed 10% of its total assets, the Fund must first secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan. If the total outstanding borrowings of a Fund with outstanding interfund loans exceed 10% of its total assets for any other reason (such as a decline in net asset value or because of shareholder redemptions), the Fund will within one business day thereafter (i) repay all its outstanding interfund loans, (ii) reduce its outstanding indebtedness to 10% or less of its total assets, or (iii) secure each outstanding interfund loan by the pledge of segregated collateral with a market value at least equal to 102% of the outstanding principal value of the loan until the Fund's total outstanding borrowings cease to exceed 10% of its total assets, at which time the collateral called for by this condition shall no longer be required. Until each interfund loan that is outstanding at any time that a Fund's total outstanding borrowings exceed 10% is repaid or the Fund's total outstanding borrowings cease to exceed 10% of its total assets, the Fund will mark the value of the collateral to market each day and will pledge such additional collateral as is necessary to maintain the market value of the collateral that secures each outstanding interfund loan at least equal to 102% of the outstanding principal value of the interfund loan.

6. No Fund may lend to another Fund through the IFL Program if the loan would cause its aggregate outstanding loans through the IFL Program to exceed 15% of the lending Fund's current net assets at the time of the loan.

7. A Fund's interfund loans to any one Fund shall not exceed 5% of the lending Fund's net assets.

8. The duration of interfund loans will be limited to the time required to receive payment for securities sold, but in no event more than seven days. Loans effected within seven days of each other will be treated as separate loan transactions for purposes of this condition.

9. Each interfund loan may be called on one business day's notice by a lending Fund and may be repaid on any day by a borrowing Fund.

10. A Fund's participation in the IFL Program must be consistent with its investment objectives and limitations and organizational documents. No Fund may borrow through the IFL Program unless the Fund has a fundamental policy that prevents the Fund from borrowing for other than temporary or emergency purposes (and not for leveraging), except that certain Funds may engage in reverse repurchase agreements for any purpose.

11. The Cash Management Department will calculate total Fund borrowing and lending demand through the IFL Program, and allocate loans on an equitable basis among the Funds, without the intervention of any portfolio manager of the Funds. The Cash Management Department will not solicit cash for the IFL Program from any Fund or prospectively publish or disseminate loan demand data to portfolio managers. Cash amounts remaining after satisfaction of borrowing demand will be invested in FICASH, or in shares of one or more money market funds that are advised by FMR Co. or another FMR entity, or will be returned to be invested directly by the portfolio managers of the Funds.

12. FMR will monitor the IFL Rate and the other terms and conditions of the interfund loans and will make a quarterly report to the Fund Boards concerning the participation of the Funds in the IFL Program and the terms and other conditions of any extensions of credit under the IFL Program.

13. Each Fund Board, including a majority of the Independent Trustees, will:

(a) Review, no less frequently than quarterly, each Fund's participation in the IFL Program during the preceding quarter for compliance with the conditions of any order permitting such transactions,

(b) Establish the Benchmark Rate formula used to determine the interest rate on interfund loans, and review, no less frequently than annually, the continuing appropriateness of the Benchmark Rate formula, and

(c) Review, no less frequently than annually, the continuing appropriateness of each Fund's participation in the IFL Program.

14. In the event an interfund loan is not paid according to its terms and such default is not cured within two business days from its maturity or from the time the lending Fund makes a demand for payment under the provisions of the interfund loan agreement, FMR will promptly refer such loan for arbitration to an independent arbitrator selected by each Fund Board involved in the loan who will serve as arbitrator of disputes concerning interfund loans.[4] The arbitrator will resolve any problem promptly, and the arbitrator's decision will be binding on both Funds. The arbitrator will submit, at least annually, a written report to the Fund Boards setting forth a description of the nature of any dispute and the actions taken by the Funds to resolve the dispute.

15. Each Fund will maintain and preserve, for a period of not less than six years from the end of the fiscal year in which any transaction by it under the IFL Program occurred, the first two years in an easily accessible place, written records of all such transactions setting forth a description of the terms of the transactions, including the amount, the maturity and the IFL Rate, the rate of interest available at the time on overnight repurchase agreements and commercial bank borrowings, and such other information presented to the Fund's respective Fund Board in connection with the review required by conditions 12 and 13.

16. Each Fund's independent auditors, in connection with their audit examination of the Fund, will review the operation of the IFL Program for compliance with the conditions of the application and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR. Applicants will report on the operations of the IFL Program at the Fund Board meetings on a quarterly basis.

[4] If the dispute involves Funds with different Fund Boards, the respective Fund Board will select an independent arbitrator that is satisfactory to each Fund.

17. No Fund will be permitted to participate in the IFL Program unless the Fund has fully disclosed in its prospectus and/or statement of additional information all material facts about its intended participation.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin O'Neill,

Deputy Secretary.

[FR Doc. 2012–27494 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [TBD]

STATUS: Closed Meeting.

PLACE: 100 F Street NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: November 15, 2012 at 10:00 a.m.

CHANGE IN THE MEETING: Additional Items.

The following matters will also be considered during the 10:00 a.m. Closed Meeting scheduled for Thursday, November 15, 2012: Other matters related to enforcement proceedings.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions as set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the Closed Meeting in closed session.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: November 8, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–27647 Filed 11–8–12; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68149; File No. SR–BOX–2012–017]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule for Trading on BOX

November 5, 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 31, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act,[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal 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

BOX Options Exchange LLC (the ''Exchange'') proposes to amend its Fee Schedule for trading on its options facility, BOX Market LLC (''BOX''). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 1, 2012. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://boxexchange.com,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to implement a change to the BOX routing fees in Section III of the fee schedule. BOX believes the proposed structure will continue to provide an incentive to BOX Options Participants (''Participants'') to submit their customer orders for execution on BOX.[5]

Each U.S. options exchange is obligated to ensure that any order executed on its market is at a price at least equal to the best price available at the other options exchanges (''the NBBO''). To enable this, the Intermarket Linkage Plan (''IML'') [6] was implemented several years ago giving each exchange access to the markets on the other exchanges. During IML, individual customer orders were not actually routed to an away exchange for execution; rather, a designated market maker or specialist at each exchange would itself trade on the away market for the required price and quantity. Subsequently, an equal and offsetting order would be executed between the market maker/specialist and the customer on the originating exchange.

This execution structure meant that the customer order execution was billed at the prevailing transaction fee applicable to customer orders on the originating exchange. The fees associated with the trade on the away exchange were either absorbed by the market maker/specialist as part of his obligations to the exchange or were absorbed by the originating exchange.

IML was subsequently replaced by the Options Order Protection and Locked/Crossed Market national market system plan.[7] As a result, each exchange routes orders to an away exchange via a contractual agreement with an order routing broker (''third party router'' or TPR). The transaction fees on the away exchange are billed to the originating exchange by the TPR, together with any handling fees the TPR may charge. At present, many options exchanges other than BOX pass this away execution fee,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Note that BOX does not route broker-dealer proprietary orders and thus does not assess them any routing fees.

[6] Plan for the Purpose of Creating and Operating an Intermarket Options Linkage. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the IML Plan submitted by the Amex, CBOE, and ISE).

[7] *See* Securities Exchange Act Release No. 60405 (July 30, 2009), 74 FR 39362 (August 6, 2009).

together with a service/handling charge, to the broker acting as agent for the order which was executed on the away exchange.

BOX, however, charges a flat fifty cents per contract for these away executions and provides for an exemption from this fee for its Participants provided that the monthly total of such away transactions represents less than 45% of the Participant's total BOX non-Professional, Public Customer [8] account trading activity.

The purpose of this proposed rule change is to adjust the conditions of this routing fee exemption. BOX proposes to:

- Continue to charge all Professional customer accounts fifty cents per contract executed on away exchanges by BOX on their behalf;
- Charge all Public Customer accounts fifty cents per contract for orders executed on away exchanges by BOX on behalf of Public Customer accounts where such orders were non-Directed Orders; and
- Continue to exempt Public Customer accounts from the routing fee for orders received by BOX via Directed Order provided that:
  - 33% or more of a Participant's Public Customer Directed Orders received during the month are executed through the BOX Price Improvement Period (''the PIP''), AND
  - Less than 45% of a Participant's Directed Orders received are routed to and executed on an away exchange during the month.

The reason BOX proposes to reduce the scope of the away trade fee exemption is that is [sic] has proven too costly for BOX. However, BOX wishes to continue to provide incentives to Participants to seek price improvement for their Public Customer orders by entering them into the PIP. A majority of BOX Participants submitting orders to the PIP are sent to BOX via Directed Order, and therefore, BOX proposes to maintain the away fee exemption for Directed Orders sent to BOX for price improvement provided that at least 33% of the contracts submitted via Directed Order are executed through the PIP.

Instructing BOX to route orders away if they are not able to be executed on BOX is voluntary for BOX Participants. Participants may choose not to route their Public Customer orders to another exchange. Participants may also avoid paying the proposed routing fee by choosing to designate their orders as Fill and Kill (''FAK''). FAK orders are not eligible for routing to away exchanges. FAK orders are executed on BOX, if possible, and then cancelled.

Additionally, BOX believes the 45% threshold is appropriate as BOX has reviewed its routing costs over time and believes this is a reasonable percentage of Public Customer Directed Orders that BOX may route at no charge to the Participant, provided 33% of the Participant's Public Customer Directed Orders are submitted to the PIP during the month. Similarly, BOX's cost-benefit analysis led BOX to conclude that 33% of Public Customer Directed Orders submitted to the PIP was a reasonable level for liquidity providers accepting such orders on BOX. BOX believes that imposing a routing fee structure that provides a benefit to Participants for trading on BOX will allow BOX to recoup a portion of the costs incurred for providing routing services, while also providing an incentive to Participants to trade on BOX.

While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 1, 2012.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes the changes proposed are an equitable allocation of reasonable fees and charges among BOX Options Participants.

The Exchange believes the proposed BOX routing fee structure is a reasonable attempt for BOX to recoup the costs incurred in providing routing services for customer orders. BOX incurs costs, including transaction fees at away exchanges, every time it routes a customer order to an away exchange for execution. The away execution fees vary, but may cost up to $0.45 per contract.[11] As stated, BOX incurs this cost in addition to handling fees assessed by its TPR. As such, BOX aims to recover its costs by assessing Participants fees for routing Public Customer orders to away exchanges if they choose not to seek liquidity on BOX by sending non-Directed Orders.

For some period of time, BOX has provided optional routing services for certain Public Customer orders at no charge, and the Exchange believes it is also reasonable to continue to provide an economic incentive to BOX Participants to seek price improvement for their Public Customer orders by sending them to BOX to access the PIP. The Exchange believes that providing these Participants with a limited exemption from routing fees for continuing to send their Public Customer orders to BOX via Directed Orders to access the PIP, is a fair, reasonable and equitable incentive program for these Participants.

Additionally, BOX believes the 45% threshold is appropriate as BOX has reviewed its routing costs over time and believes this is a reasonable percentage of Public Customer Directed Orders that BOX may route at no charge to the Participant, provided 33% of the Participant's Public Customer Directed Orders are submitted to the PIP during the month. Similarly, BOX's cost-benefit analysis led BOX to conclude that 33% of Public Customer Directed Orders submitted to the PIP was a reasonable level for liquidity providers accepting such orders on BOX. BOX believes that imposing a routing fee structure that provides a benefit to Participants for trading on BOX will allow BOX to recoup a portion of the costs incurred for providing routing services, while also providing an incentive to Participants to trade on BOX.

BOX believes the proposed change is not unfairly discriminatory for the following reasons: First, any BOX Participant is welcome to enter an agreement with any other BOX Participant providing liquidity in order to send Directed Orders to seek price improvement for his customers. However, certain order flow providers (''OFPs) acting as agent for Public Customers lack the technological sophistication to ensure an order is not routed away by BOX; BOX fears, as a consequence, these firms will simply avoid sending their customer orders to BOX via Directed Order to seek price improvement if the OFPs' risk of higher trading fees due to away executions cannot be managed. As such, BOX believes it is appropriate and not unfairly discriminatory to provide an exemption from routing fees of the limited scope provided for these Participants.

Secondly, BOX Participants choosing to offer price improvement to customers directly via internalization through the PIP (*i.e.,* without using Directed Orders)

[8] For the purposes of the discussion in this proposed rule change, these non-Professional, Public Customer orders will be referred to as Public Customer orders.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See e.g.,* Take Fee of NYSE Arca Options, Options Pricing on BATS BZX Exchange Fee Schedule, C2 Options Exchange Fee Schedule, and NASDAQ Options Pricing as of October 2012.

can avoid any potential BOX away execution fee by simply not sending any orders to BOX where BOX is not on the NBBO for the options series in question. BOX believes that any firm with the technical sophistication to interact with its own customer order flow via the PIP will encounter no difficulties in avoiding sending an order to BOX which risks being routed away by BOX.

Furthermore, such Participants can ensure that this never happens by choosing to instruct BOX not to route their customer orders. This will ensure that where BOX cannot execute any portion of an order at a price equal to NBBO, the BOX trading system will return the order to the submitting Participant after the BOX quantity at NBBO has executed with the order.

BOX notes that the away fee exemption will be equally available to order consolidator firms that are the most significant users of Directed Orders, using them to route orders for price improvement to their affiliated market maker.

For all the reasons stated above, BOX believes that all firms wishing to offer price improvement to their customers will be on equal footing under the BOX proposal. Each is free to choose the mechanism he finds suits his business model best and BOX believes no firm will encounter unreasonable levels of away execution transaction fees.

The Exchange believes the proposed routing fee structure is equitable and not unfairly discriminatory because the incentive to send Public Customer orders to BOX via Directed Order is available to all Participants on an equal basis. The Exchange believes it is reasonable and equitable to provide Participants (A) an incentive to trade on BOX, and (B) the ability to route a limited amount of customer orders at no cost, because transactions executed on BOX increase BOX market activity and market quality. Greater liquidity and additional volume executed on BOX aids the price and volume discovery process. Participant trading on BOX also results in revenue that BOX is able to use to provide routing services for a limited amount of customer orders at no cost to Participants. Accordingly, the Exchange believes that the proposal is not unfairly discriminatory because it promotes enhancing BOX market quality. As discussed above, BOX Participants can manage their own routing to different options exchanges or can utilize a myriad of other routing solutions that are available to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [12] and Rule 19b–4(f)(2) thereunder,[13] because it establishes or changes a due, fee, or other charge applicable only to a member.

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 Exchange Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BOX–2012–017 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–BOX–2012–017. 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–BOX–2012–017 and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27491 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68166; File No. SR–EDGX–2012–46]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

November 6, 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 November 1, 2012, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add the Step-up Take Tier to the Exchange's fee schedule in Footnote 2. A Member will qualify for the Step-up Take Tier by (i) adding an average daily volume (''ADV'') of at least 2 million shares on a daily basis, measured monthly more than that Member's September 2012 added ADV (the ''September Added Baseline''); and (ii) removing at least 0.40% total consolidated volume (''TCV'') on a daily basis, measured monthly more than that Member's September 2012 removed ADV (the ''September Removal Baseline''). Members qualifying for the Step-up Take Tier will earn a rebate of $0.0030 per share for orders that add liquidity and yield Flags B, V, Y, 3 and 4, and will be assessed a fee of $0.0028 per share for orders that remove liquidity and yield Flags N, W, BB, PI, and 6.[4] Accordingly, the Exchange proposes to append Footnote 2 to the default rates for adding and removing liquidity on the fee schedule, and Flags B, V, Y, 3, 4, N, W, BB, PI, and 6. The Exchange believes the Step-Up Take Tier will encourage large market participants, who are not currently large takers, to grow their take volume over an established baseline in order to achieve the tier.

In Footnote 8 of the fee schedule that is appended to Flag SW., the Exchange proposes to assess a fee of $0.0025 per share in lieu of the current fee of $0.0023 per share for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies [5] and remove liquidity from the New York Stock Exchange (''NYSE''), yielding Flag D. This proposed change represents a pass-through of the rate that Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's affiliated routing broker dealer, is charged for routing orders to NYSE, in response to the pricing changes in NYSE's filing with the Securities and Exchange Commission (''SEC'').[6] Accordingly, the Exchange proposes to delete the reference to the fee of $0.0023 per share in Footnote 8 because the rate for Flag D is $0.0025 per share. Therefore, the Exchange will assess a charge of $0.0025 for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies and remove liquidity from NYSE, yielding Flag D. In addition, the Exchange proposes deleting the reference to ''either'' in the text of Footnote 8 given it is grammatically incorrect. The Exchange notes that its proposed deletion does not alter the intended purpose of the footnote.

In Footnote 3 of the fee schedule that is appended to Flags C, D, J, L and 2, the Exchange proposes to assess a fee of 0.30% of the dollar value of the transaction in lieu of the current fee of $0.0023 per share for stocks priced below $1.00 that are routed or re-routed to NYSE and remove liquidity, yielding Flag D.[7] This proposed change now represents a pass-through of the rate that DE Route is charged for routing orders to NYSE that remove liquidity.[8]

On Flag RS, the Exchange proposes to offer a rebate of $0.0026 per share [9] in lieu of the current rebate of $0.0016 per share for orders that are routed to the Nasdaq OMX PSX (''PSX'') and add liquidity. This proposed change represents a pass-through of the rebate that DE Route receives for routing orders to PSX, in response to recent pricing changes in PSX's filing with the SEC.[10]

Currently, the Exchange charges Members a rate of $0.0027 per share for orders that are routed to PSX using the ROUC or ROUE routing strategies,[11] yielding Flag K. The Exchange proposes to increase the rate to $0.0028 per share for orders that yield Flag K in response to recent pricing changes in PSX's filing with the SEC.[12]

The Exchange proposes adding the title ''EdgeBook Depth Fees'' to the fee schedule describing the fees for the EdgeBook Depth X to increase the transparency of the fee schedule for Members.

The Exchange also proposes deleting the dollar sign ($) on the fee table next to the fees on Flags N, W, 6, BB and PI. The Exchange regards this change as non-substantive in nature and is intended to conform to the other rates displayed on the fee table.

The Exchange proposes to implement these amendments to its fee schedule on November 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Securities and Exchange Act of 1934 (the ''Act''),[13] in general, and furthers the objectives of Section 6(b)(4),[14] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its

[3] As defined in Exchange Rule 1.5(n).

[4] The Exchange notes that to the extent Members qualify for a rebate higher than $0.0030 per share through other volume tiers, such as the Mega Tier, Market Depth Tier or the Ultra Tier, they will earn the higher rebate on the add flags instead of the Step-up Take Tier. In addition, such Members will still qualify for the reduced charge of $0.0028 per share for the removal flags.

[5] As defined in Exchange Rules 11.9(b)(3)(o), (p) and (q).

[6] *See* Securities Exchange Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR–NYSE–2012–50).

[7] The Exchange does not propose to amend the rates for stocks priced below $1.00 that are routed to Nasdaq OMX BX (''BX'') or NASDAQ, yielding Flags C, J, L and 2, as described in Footnote 3 of the fee schedule.

[8] Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.3% of the total dollar value of the transaction and (ii) $0.0023 per share. *See* Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR–NYSE–2012–07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than $1.00 is now 0.3% of the total dollar value of the transaction.

[9] The Exchange notes that it is passing through the standard rebate of $0.0026 per share even though it possibly can achieve a tiered rebate of $0.0028 per share if it meets certain criteria.

[10] *See* Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR–PHLX–2012–119).

[11] As defined in Exchange Rules 11.9(b)(3)(a) and (c).

[12] *See* Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR–PHLX–2012–119).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(4).

Members and other persons using its facilities.

The Exchange believes that the proposed Step-up Take Tier is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The requirements of the Step-up Take Tier to add ADV of at least 2 million shares (on a daily basis, measured monthly) more than the Member's September Added Baseline and to remove at least 0.40% TCV (on a daily basis, measured monthly) more than the Member's September Removal Baseline incentivizes substantial take volume from Members that generally add and remove volume from the Exchange by offering Members an increased add rebate of $0.0030 per share and a discounted removal rate of $0.0028 per share. The Exchange also believes that establishing Member's September Added Baseline and September Removal Baselines rewards liquidity provision attributes, encourages price discovery and market transparency by encouraging growth in liquidity over a defined baseline. The Exchange believes the Step-Up Take Tier will also encourage large market participants, who are not currently large takers, to grow their take volume over an established baseline in order to achieve the tier. In addition, the Exchange believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange believes the Step-up Take Tier will increase volume on the Exchange. Therefore, the Exchange can increase the add rebate from $0.0023 per share to $0.0030 per share and discount the removal rate from $0.0030 per share to $0.0028 per share. The increased volume increases potential revenue to the Exchange, and allows the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of higher rebates and lower fees. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

The Step-Up Take Tier represents an equitable allocation of reasonable dues, fees, and other charges. First, the Step-Up Take Tier allows the Exchange to compete with other exchanges such as NASDAQ, NYSE ARCA and BATS BZX in offering a discounted removal rate that is designed to incent fee sensitive liquidity takers to EDGX if they are willing to increase or grow their volume over an established baseline. This incentive recognizes that liquidity takers often have different trading strategies and types of order flow that they typically handle—such as market orders, marketable limit orders, or proprietary removal strategies. Thus, when multiple exchanges are quoting at the same price level, the Exchange believes that certain liquidity takers that are incented to achieve the Step-Up Take Tier would be attracted to EDGX first. In turn, this would lead to increased price discovery on EDGX, result in additional prints on the Tape, and would have the effect of bringing additional liquidity providers to the exchange, thus bolstering its standing and value as a market. Since the Step-Up Take Tier offers lower removal fees for Members and fosters competition among exchanges, it could translate into costs savings for all market participants and their end customers. The Exchange also believes that the $0.0028 per share removal rate makes EDGX a more attractive venue to take liquidity from, which brings a higher quality of order flow to the EDGX Exchange and supports price discovery on EDGX. Finally, the Exchange believes that the Step-Up Take Tier will also help it to grow its market share as new takers who are incentivized to achieve the Step-Up Take Tier would send additional volume to the Exchange or remove additional shares from the Exchange in future trading opportunities. In addition, the Exchange believes that the proposed Step-Up Take Tier is non-discriminatory because it applies the same criteria uniformly to all Members.

In addition, the criteria for the Step-up Take Tier is also reasonable as compared to similar pricing mechanisms employed by NYSE Arca,[15] where NYSE Arca offers customers step-up tiers for Tape B and C securities that discount the default removal rate of $0.0030 per share when a baseline ADV is achieved. The Tape B Step Up Tier requires customers to add in excess of the greater of (i) 0.25% of US Tape B ADV over a January 2012 benchmark or (ii) 20% more than their January 2012 benchmark to earn a discounted removal rate of $0.0026 per share. In addition, the Tape C Step Up Tier requires customers to add in excess of the greater of (i) 0.10% of US Tape C ADV over a January 2012 benchmark or (ii) 20% more than their January 2012 benchmark plus 20%to earn a discounted removal rate of $0.0029 per share. The Exchange's discounted removal rate from $0.0030 per share to $0.0028 per share for Members that achieve the Step-up Take Tier is also reasonable because it is within the range of discounts offered by NYSE Arca, where the default removal rate is $0.0030 per share and customers that qualify for the step-up earn discounts of $0.0026 per share or $0.0029 per share.

The proposed rate change in Footnote 8 associated with routing orders to NYSE through DE Route on the Exchange's fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, in Footnote 8, for orders yielding Flag D that use the SWPA, SWPB, or SWPC routing strategies and remove liquidity from NYSE, NYSE charged DE Route a fee of $0.0023 per share, which, in turn, was passed through to the Exchange. The Exchange, in turn, charged its Members a fee of $0.0023 per share as a pass-through. On October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from $0.0023 per share to a charge of $0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 8 from a fee of $0.0023 per share to a fee of $0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange

[15] *See* NYSE Arca Equities Trading Fees, *http://usequities.nyx.com/markets/nyse-arca-equities/trading-fees. See also* Securities Exchange Release No. 66568 (March 9, 2012), 77 FR 15819 (March 16, 2012) (SR–NYSEARCA–2012–17).

also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change in Footnote 3 associated with routing orders to NYSE through DE Route now represents a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. For stocks priced below $1.00 that are routed or re-routed to NYSE and remove liquidity, DE Route charged its Members a fee of $0.0023 per share.[16] NYSE modified the rate it charged its customers, such as DE Route, effective March 2012, to a charge of 0.30% of the dollar value of the transaction [17] for stocks priced below $1.00 that remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 3 from a fee of $0.0023 per share to a fee of 0.30% of the dollar value of the transaction is equitable and reasonable because it allows the Exchange to now charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change for Flag RS associated with routing orders to PSX through DE Route on the Exchange's fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag RS, PSX offers DE Route a rebate of $0.0016 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, offers its Members a rebate of $0.0016 per share as a pass-through. On October 1, 2012, PSX increased the rebate it offers its customers, such as DE Route, from $0.0016 per share to a rebate of $0.0026 per share [18] for orders that are routed to PSX and add liquidity. Therefore, the Exchange believes that the proposed change for Flag RS from a rebate of $0.0016 per share to a rebate of $0.0026 per share is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through of the standard rebate [19] for orders that are routed to PSX and add liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to amend the rate for Flag K represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. DE Route is charged either a fee of $0.0028 per share or $0.0030 per share depending on the routing strategy employed.[20] Because the Exchange does not distinguish between ROUC and ROUE when yielding Flag K, the Exchange proposes to assess a charge of $0.0028 per share for Members orders that are routed to PSX using either ROUC or ROUE, which represents the more favorable of the two rates for its Members. The Exchange's proposal to offer its Members the more favorable of two rates is a reasonable pricing strategy because it is similar to the pricing strategy of Flag C on EDGA Exchange, Inc. (''EDGA''), where EDGA offers its customers the more favorable rebate of $0.0014 per share for orders routed to BX that remove liquidity regardless of whether the Member achieves the tiered volume necessary to exceed the default rebate of $0.0005 per share.[21] In addition, the rate of $0.0028 per share for Flag K is reasonable because it is similar to the rates charged by PSX for orders routed to its exchange, where PSX assesses charges between $0.0028 per share and $0.0030 per share depending on the routing strategy employed.[22] Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange's proposal to add the title ''EdgeBook Depth Fees'' to the fee schedule increases transparency on the fee schedule for Members and does not represent any change in EdgeBook Depth fees.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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) of the Act [23] and Rule 19b–4(f)(2) [24] thereunder. 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

[16] Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) $0.0023 per share. *See* Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR–NYSE–2012–07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than $1.00 is now 0.3% of the total dollar value of the transaction.

[17] *Id.*

[18] The Exchange notes that it is passing through the standard rebate of $0.0026 per share even though it possibly can achieve a tiered rebate of $0.0028 per share if it meets certain criteria.

[19] *Id.*

[20] *See* NASDAQ OMX PSX, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing.*

[21] *See* Securities Exchange Release No. 67980 (October 4, 2012), 77 FR 61800 (October 11, 2012) (SR–EDGA–2012–45).

[22] *See* NASDAQ OMX PSX, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing.*

[23] 15 U.S.C. 78s(b)(3)(A).

[24] 17 CFR 19b–4(f)(2).

investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–EDGX–2012–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2012–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2012–46 and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27492 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68168; File No. SR–EDGA–2012–46]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

November 6, 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 November 1, 2012, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

In Footnote 8 of the fee schedule that is appended to Flag SW., the Exchange proposes to assess a fee of $0.0025 per share in lieu of the current fee of $0.0023 per share for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies [4] and remove liquidity from the New York Stock Exchange (''NYSE''), yielding Flag D. This proposed change represents a pass-through of the rate that Direct Edge ECN LLC d/b/a DE Route (''DE Route''), the Exchange's affiliated routing broker dealer, is charged for routing orders to NYSE, in response to the pricing changes in NYSE's filing with the Securities and Exchange Commission (''SEC'').[5] Accordingly, the Exchange proposes to delete the reference to the fee of $0.0023 per share in Footnote 8 because the rate for Flag D is $0.0025 per share. Therefore, the Exchange will assess a charge of $0.0025 for Members' orders that are routed using the SWPA, SWPB or SWPC routing strategies and remove liquidity from NYSE, yielding Flag D.

In Footnote 3 of the fee schedule that is appended to Flags C, D, J, L and 2, the Exchange proposes to assess a fee of 0.30% of the dollar value of the transaction in lieu of the current fee of $0.0023 per share for stocks priced below $1.00 that are routed or re-routed to NYSE and remove liquidity, yielding Flag D.[6] This proposed change now represents a pass-through of the rate that DE Route is charged for routing orders to NYSE that remove liquidity.[7]

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

[4] As defined in Exchange Rules 11.9(b)(3)(o), (p) and (q).

[5] *See* Securities Exchange Release No. 68021 (October 9, 2012), 77 FR 63406 (October 16, 2012) (SR–NYSE–2012–50).

[6] The Exchange does not propose to amend the rates for stocks priced below $1.00 that are routed to Nasdaq OMX BX (''BX'') or NASDAQ, yielding Flags C, J, L and 2, as described in Footnote 3 of the fee schedule.

[7] Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) $0.0023 per share. *See* Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR–NYSE–2012–07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than $1.00 is now 0.3% of the total dollar value of the transaction.

On Flag RS, the Exchange proposes to offer a rebate of $0.0026 per share [8] in lieu of the current rebate of $0.0016 per share for orders that are routed to the Nasdaq OMX PSX (''PSX'') and add liquidity. This proposed change represents a pass-through of the rebate that DE Route receives for routing orders to PSX, in response to recent pricing changes in PSX's filing with the SEC.[9]

Currently, the Exchange charges Members a rate of $0.0027 per share for orders that are routed to PSX using the ROUC or ROUE routing strategies,[10] yielding Flag K. The Exchange proposes to increase the rate to $0.0028 per share for orders that yield Flag K in response to recent pricing changes in PSX's filing with the SEC.[11]

The Exchange proposes adding the title ''EdgeBook Depth Fees'' to the fee schedule describing the fees for the EdgeBook Depth A to increase the transparency of the fee schedule for Members.

The Exchange proposes to implement these amendments to its fee schedule on November 1, 2012.

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as the proposed rule changes are designed to provide for the equitable allocation of reasonable dues, fees and other charges among the Exchange's Members and other persons using its facilities.

The proposed rate change in Footnote 8 associated with routing orders to NYSE through DE Route on the Exchange's fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, in Footnote 8, for orders yielding Flag D that use the SWPA, SWPB, or SWPC routing strategies and remove liquidity from NYSE, NYSE charged DE Route a fee of $0.0023 per share, which, in turn, was passed through to the Exchange. The Exchange, in turn, charged its Members a fee of $0.0023 per share as a pass-through. On October 1, 2012, NYSE increased the rate it charges its customers, such as DE Route, from $0.0023 per share to a charge of $0.0025 per share for orders that are routed or re-routed to NYSE and remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 8 from a fee of $0.0023 per share to a fee of $0.0025 per share is equitable and reasonable because it accounts for the pricing changes on NYSE. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change in Footnote 3 associated with routing orders to NYSE through DE Route now represents a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to NYSE through DE Route. The Exchange notes that routing through DE Route is voluntary. For stocks priced below $1.00 that are routed or re-routed to NYSE and remove liquidity, DE Route charged its Members a fee of $0.0023 per share.[14] NYSE modified the rate it charged its customers, such as DE Route, effective March 2012, to a charge of 0.30% of the dollar value of the transaction [15] for stocks priced below $1.00 that remove liquidity. Therefore, the Exchange believes that the proposed change in Footnote 3 from a fee of $0.0023 per share to a fee of 0.30% of the dollar value of the transaction is equitable and reasonable because it allows the Exchange to now charge its Members a pass-through rate for orders that are routed or re-routed to NYSE and remove liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The proposed rate change for Flag RS associated with routing orders to PSX through DE Route on the Exchange's fee schedule is a pass-through rate from DE Route to the Exchange and from the Exchange, in turn, to its Members. The Exchange's proposal represents an equitable allocation of reasonable dues, fees, and other charges among Members of the Exchange and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through DE Route. The Exchange notes that routing through DE Route is voluntary. Currently, for orders yielding Flag RS, PSX offers DE Route a rebate of $0.0016 per share, which, in turn, is passed through to the Exchange. The Exchange, in turn, offers its Members a rebate of $0.0016 per share as a pass-through. On October 1, 2012, PSX increased the rebate it offers its customers, such as DE Route, from $0.0016 per share to a rebate of $0.0026 per share[16] for orders that are routed to PSX and add liquidity. Therefore, the Exchange believes that the proposed change for Flag RS from a rebate of $0.0016 per share to a rebate of $0.0026 per share is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through of the standard rebate[17] for orders that are routed to PSX and add liquidity using DE Route. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange believes that its proposal to amend the rate for Flag K represents an equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. DE Route is charged either a fee of $0.0028 per share or $0.0030 per share depending on the routing strategy employed.[18] Because

[8] The Exchange notes that it is passing through the standard rebate of $0.0026 per share even though it possibly can achieve a tiered rebate of $0.0028 per share if it meets certain criteria.

[9] *See* Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR–PHLX–2012–119).

[10] As defined in Exchange Rules 11.9(b)(3)(a) and (c).

[11] *See* Securities Exchange Release No. 68052 (October 12, 2012), 77 FR 64170 (October 18, 2012) (SR–PHLX–2012–119).

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] Prior to March 1, 2012, the NYSE Price List generally specified that the applicable rate was the lesser of (i) 0.30% of the total dollar value of the transaction and (ii) $0.0023 per share. *See* Securities Exchange Act Release No. 66600, (March 14, 2012), 77 FR 16298 (March 20, 2012) (SR–NYSE–2012–07). Effective March 1, 2012, the rate for these transactions with a per-share price of less than $1.00 is now 0.3% of the total dollar value of the transaction.

[15] *Id.*

[16] The Exchange notes that it is passing through the standard rebate of $0.0026 per share even though it possibly can achieve a tiered rebate of $0.0028 per share if it meets certain criteria.

[17] *Id.*

[18] *See* NASDAQ OMX PSX, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing.*

the Exchange does not distinguish between ROUC and ROUE when yielding Flag K, the Exchange proposes to assess a charge of $0.0028 per share for Members orders that are routed to PSX using either ROUC or ROUE, which represents the more favorable of the two rates for its Members. The Exchange's proposal to offer its Members the more favorable of two rates is also equitable because it is similar to the rates associated with Flag C, where the Exchange offers Members the more favorable rebate of $0.0014 per share for orders routed to BX that remove liquidity regardless of whether the Member achieves the tiered volume necessary to exceed the default rebate of $0.0005 per share.[19] In addition, the rate of $0.0028 per share for Flag K is also reasonable because it is similar to the rates charged by PSX for orders routed to its exchange, where PSX assesses charges between $0.0028 per share and $0.0030 per share depending on the routing strategy employed.[20] Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

The Exchange's proposal to add the title ''EdgeBook Depth Fees'' to the fee schedule increases transparency on the fee schedule for Members and does not represent any change in EdgeBook Depth fees.

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

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.

[19] *See* Securities Exchange Release No. 67980 (October 4, 2012), 77 FR 61800 (October 11, 2012) (SR–EDGA–2012–45).

[20] *See* NASDAQ OMX PSX, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PSX_pricing.*

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) of the Act [21] and Rule 19b–4(f)(2) [22] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2012–46 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2012–46. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2012–46 and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27493 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 19b–4(f)(2).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68163; File No. SR–CBOE–2012–098]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 6, 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 24, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Beginning on November 1, 2012, the Exchange will be introducing a new origin code. The ''J'' origin code will be used to indicate orders for a joint back office (''JBO'') account to be cleared into the Firm range at the Options Clearing Corporation (''OCC'').[3] Currently, such orders are marked with the ''F'' origin code and are included within the category of Clearing Trading Permit Holder Proprietary orders (and assessed fees as if they were Clearing Trading Permit Holder Proprietary orders). Going forward, such orders will continue to be assessed the same fees as Clearing Trading Permit Holder Proprietary orders. Because origin codes are now listed on the CBOE Fees Schedule, the Exchange merely proposes to amend its Fees Schedule to add the ''J'' origin code to any section that currently lists the ''F'' origin code (with the exception of the tables for the CBOE Proprietary Products Sliding Scale (the ''Sliding Scale'') and Clearing Trading Permit Holder Fee Cap (the ''Fee Cap''), since the Sliding Scale and Fee Cap do not apply to orders of JBO participants).[4] No substantive changes to any fee amounts are being made.

The proposed change is to take effect on November 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest. Adding the ''J'' origin code to the appropriate sections on the Fees Schedule will ensure that market participants entering JBO orders account to be cleared into the Firm range at the OCC will easily be able to discern the fees that apply to such orders. This will eliminate any potential confusion, thereby removing a potential impediment to and perfecting the mechanism for a free and open market and a national market system, and, in general, protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[7] of the Act and paragraph (f) of Rule 19b–4[8] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2012–098 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–098. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–098 and should be submitted on or before December 4, 2012.

[3] *See* CBOE Regulatory Circulars RG12–118 (August 27, 2012) and RG12–136 (October 5, 2012).

[4] *See* CBOE Fees Schedule, Footnote (11).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27509 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68169; File No. SR–CBOE–2012–105]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

November 6, 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 26, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange intends to introduce its Automated Improvement Mechanism (''AIM'') for FLexible EXchange Options (''FLEX Options'') transactions beginning November 1, 2012. In conjunction with that introduction, the Exchange proposes to amend its CFLEX fees in order to encourage greater FLEX Options trading activity. Specifically, the Exchange proposes to eliminate the CFLEX Surcharge Fee as it applies to equity, ETF, ETN, HOLDRs and index (excluding SPX, SPXW, SPX Range Options, OEX, XEO, VIX and Volatility Indexes, XSP and DJX (the ''Excluded Classes'')) FLEX Options transactions (the ''Fee Elimination'').

The Exchange also proposes to provide a $0.10-per-contract credit for all equity, ETF, ETN, HOLDRs and index (excluding the Excluded Classes) FLEX Options orders executed via a CFLEX AIM auction from November 1, 2012 through December 31, 2012 (the ''CFLEX AIM Credit''). The CFLEX AIM Credit would apply to transactions executed via AIM because the Exchange wants to encourage the distribution of the newly-developed CFLEX AIM technology among Trading Permit Holders (''TPHs'') in order to attract greater FLEX Options order flow. AIM is a facilitation mechanism, and facilitation trades are the manner in which most FLEX Options trades are currently executed, and so the Exchange correspondingly wants to attract more FLEX Options facilitation trades to the Exchange via this CFLEX AIM technology. The CFLEX AIM Credit is limited to the Agency/Primary side of a FLEX Options AIM transaction because this will encourage the entry of FLEX Options AIM orders, as well as the adoption of the FLEX Options AIM technology by any party wishing to execute a FLEX Options AIM order. The CFLEX AIM Credit would be capped at $250 (2,500 contracts) per trade in order to limit the Exchange's potential exposure for providing the CFLEX AIM Credit and ensure that the provision of the CFLEX AIM Credit is economically viable to the Exchange. In addition, $250 per trade is the current maximum fee for the CFLEX Surcharge Fee.

Each TPH may only receive the CFLEX AIM Credit on one order per underlying product per day, and the CFLEX AIM Credit will be applied to the smallest-sized order in each underlying product sent to the Exchange by that TPH on each day. The purpose of this limitation is to limit the Exchange's potential exposure for providing rebates and ensure that the provision of the CFLEX AIM Credit is economically viable to the Exchange. For purposes of the CFLEX AIM Credit, multiple legs of a complex order will be considered separate simple orders in order to prevent parties from being able to receive the CFLEX AIM Credit on multiple orders in the same underlying product in the same day. These details of the CFLEX AIM Credit will be explained in new Footnote 28 to the Exchange Fees Schedule.

The purpose of this is to encourage greater FLEX Options trading via the newly-introduced AIM (which encourages facilitation) and the distribution of the FLEX Options AIM technology among the Exchange's TPHs. The proposed changes are to take effect on November 1, 2012.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[3] Specifically, the Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[4] which provides that Exchange rules may provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Fee Elimination is reasonable because it will allow market participants who are currently engaging in FLEX Options trades in equity, ETF, ETN, HOLDRs and index options (excluding the Excluded Classes) to avoid having to pay the CFLEX Surcharge Fee in the future. Eliminating the CFLEX Surcharge Fee for equity, ETF, ETN, HOLDRs and most index options while not eliminating the CFLEX Surcharge Fee for the Excluded Classes is equitable and not unfairly discriminatory because the Exchange expended significant resources developing the products listed in the Excluded Classes and must receive fees in order to recoup such expenditures.

The CFLEX AIM Credit is reasonable because it will allow market participants who engage in FLEX Options trades in equity, ETF, ETN, HOLDRs and index options (excluding the Excluded Classes) to receive a rebate for such transactions. Excluding the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

Excluded Classes from the CFLEX AIM Credit is equitable and not unfairly discriminatory because the Exchange expended significant resources developing the products listed in the Excluded Classes and must receive fees in order to recoup such expenditures. Limiting the CFLEX AIM Credit to FLEX Options AIM transactions is equitable and not unfairly discriminatory because the Exchange expended considerable resources to develop the new FLEX Options AIM technology and therefore desires to encourage the adoption of such technology. Further, AIM is a facilitation mechanism and greater facilitation of FLEX Options trading will encourage greater trading of FLEX Options. Limiting the CFLEX AIM Credit to the Agency/Primary side of FLEX Options AIM transactions is equitable and not unfairly discriminatory because the Agency/Primary side of an AIM transaction is the side on which an order is entered. Providing the CFLEX AIM Credit for the Primary side of FLEX Options AIM orders will encourage the entry of more FLEX Options orders, which will benefit parties wishing to take the Contra side of FLEX Options AIM orders by providing them with more FLEX Options AIM orders on which to take the Contra side. Capping the CFLEX AIM Credit at $250 per transaction and limiting the CFLEX AIM Credit to one order per underlying product per TPH (per day and only the smallest order from that TPH) is equitable and not unfairly discriminatory because such limitations are necessary to ensure the financial viability of the CFLEX AIM Credit, and without such limitations the Exchange would not be able to offer the CFLEX AIM Credit at all. Further, these limitations will apply to all market participants equally.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)[5] of the Act and paragraph (f) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–105 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–105. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–105, and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27511 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR [sic] 240.19b–4(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68161; File No. SR–NYSE–2012–61]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Suspension of Those Aspects of Rules 36.20, 36.21, and 36.30 That Would Not Permit Designated Market Makers and Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy From November 5, 2012 Until the Earlier of When Phone Service Is Fully Restored or Friday, November 9, 2012

November 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 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 extend the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Designated Market Makers (''DMMs'') and Floor brokers to use personal portable phone devices on the Trading Floor following the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

aftermath of Hurricane Sandy from November 5, 2012 until the earlier of when phone service is fully restored or Friday, November 9, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [3] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[4] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

As of Monday, November 5, 2012, although power has been restored to the downtown Manhattan vicinity, other services are not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange are still not fully operational on the Trading Floor, which impacts the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36.

Because of intermittent cell phone service, many Exchange authorized and provided portable phones continue to not be functional and therefore Floor brokers still cannot use the Exchange authorized and provided portable phones, pursuant to Rules 36.20 and 36.21. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone service continues to be intermittent, Floor brokers should be permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones.

Similarly, the Exchange continues to experience problems with the DMM unit wired telephone lines, which are permitted pursuant to Rule 36.30. In some circumstances, the DMM unit location at the Trading Floor post may receive incoming calls, but the phones are not capable of making outgoing calls. The continued inability of a DMM unit to use its telephone lines could impact the ability of a DMM unit to comply with its obligations in securities registered to the DMM unit. For example, if a DMM unit experiences connectivity issues or problems with its algorithms and needs to speak with one of its back-office support teams, with the current phone limitations, the DMM would not be able to do so.

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor. The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 to permit use of the personal portable phones on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[5]

In particular, as set forth in the prior filing, Floor brokers and DMMs that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker and DMM member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker and DMM member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, the Exchange further notes that DMM units and their Floor-based personnel would remain subject to both the Rule 36.30 and 98 limitations of whom they may contact directly from the Trading Floor.[6] However, because of the extensive, ongoing issues with power and phone lines in the New York City area and vicinity, the persons with whom a DMM may be permitted to communicate from the Trading Floor may not be at their regular physical location. Accordingly, the Exchange proposes to continue to temporarily permit DMMs to use their personal portable phones to contact the off-Floor persons that they are permitted to contact by rule, even if such off-Floor personnel are not located in their regular office locations. The Exchange believes that this relief is consistent with guidance issued by FINRA, which recognizes that in the aftermath of Hurricane Sandy, a FINRA member may relocate displaced office personnel to temporary locations.[7]

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service on the Trading Floor, the Exchange does not know how long the proposed temporary suspension will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored until at least Wednesday, November 7, 2012, and most likely later than that date. Accordingly, the Exchange proposes

[3] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[4] *See* Securities Exchange Act Release No. 68137 (Nov. 1, 2012) (SR–NYSE–2012–58).

[5] *See id.* (notice that describes the terms and conditions of the temporary suspension).

[6] Rule 36.30 restricts a DMM unit from using the post telephone lines to transmit to the Floor orders for the purchase or sale of securities. In addition, Rule 98 sets forth restrictions on communications between the Floor-based personnel of a DMM unit and off-Floor personnel. *See, e.g.,* Rules 98(c)(2)(A), (d)(2)(B)(iii), (f)(1)(A)(ii), and (f)(2)(A).

[7] *See* FINRA Regulatory Notice 12–45. The Exchange notes that all member organizations operating a DMM unit are also FINRA members, and therefore subject to the guidance set forth in FINRA Regulatory Notice 12–45.

that the extension of the temporary suspensions of those aspects of Rule 36 that do not permit DMMs or Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, November 9, 2012.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36 that restrict the use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable both Floor brokers and DMMs to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, both Floor brokers and DMMs would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor. For DMM units, any inability to communicate with personnel from their off-Floor offices, clearing firms, or non-trading related support staff, regardless of where such off-Floor personnel may be located in the aftermath of Hurricane Sandy, could compromise the DMM unit's ability to meet their obligations, particularly if the DMM unit experiences issues with connectivity or its algorithms.

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filing seeking such relief, until the earlier of when phone service is fully restored or Friday, November 9, 2012. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2012–61 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–2012–61. 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

[8] The Exchange will provide notice of this rule filing to the DMMs and Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to November 9, 2012, the Exchange will notify DMMs and Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2012–61 and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27548 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68165; File No. SR–NYSEArca–2012–102]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Relating to the Listing and Trading of Twelve Funds of the Direxion Shares ETF Trust II Under NYSE Arca Equities Rule 8.200

November 6, 2012.

I. Introduction

On September 5, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of twelve funds of the Direxion Shares ETF Trust II (each a ''Fund'' and, collectively, ''Funds'') under NYSE Arca Equities Rule 8.200, Commentary .02. The proposed rule change was published for comment in the **Federal Register** on September 24, 2012.[3] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to list and trade Shares of the following Funds pursuant to NYSE Arca Equities Rule 8.200, Commentary .02: Direxion Daily Gold Bear 1X Shares; Direxion Daily Gold Bull 3X Shares; Direxion Daily Gold Bear 3X Shares; Direxion Daily Silver Bear 1X Shares; Direxion Daily Silver Bull 3X Shares; Direxion Daily Silver Bear 3X Shares; Direxion Daily Japanese Yen Bull 3X Shares; Direxion Daily Japanese Yen Bear 3X Shares; Direxion Daily Dollar Bull 3X Shares; Direxion Daily Dollar Bear 3X Shares; Direxion Daily Euro Bull 3X Shares; and Direxion Daily Euro Bear 3X Shares.[4]

The Shares will be issued by Direxion Shares ETF Trust II (''Trust''), a Delaware statutory trust.[5] Direxion Asset Management, LLC will be the sponsor (''Sponsor'') for the Trust. The Bank of New York Mellon will be the administrator, custodian, and transfer agent for the Funds, and Foreside Fund Services, LLC will be the distributor for the Shares.

Twelve Funds of the Direxion Shares ETF Trust II

All Funds except for the Direxion Daily Gold Bear 1X Shares and Direxion Daily Silver Bear 1X Shares are also referred to herein as ''Leveraged Funds,'' and the Direxion Daily Gold Bear 1X Shares and Direxion Daily Silver Bear 1X Shares are also referred to herein as ''Bear 1X Funds.'' The Leveraged Funds will seek daily leveraged investment results and are intended to be used as short-term trading vehicles. The Leveraged Funds with the word ''Bull'' in their name (collectively, ''Leveraged Bull Funds'') will attempt to provide daily leveraged investment results (before fees and expenses) that correlate positively to three times (300%) the daily return of a target benchmark, meaning a Leveraged Bull Fund will attempt to move in the same direction as the target benchmark. The Leveraged Funds with the word ''Bear'' in their name (collectively, ''Leveraged Bear Funds'') will attempt to provide daily leveraged investment results (before fees and expenses) that correlate to the inverse (opposite) of three times the return of a target benchmark, meaning that the Leveraged Bear Funds will attempt to move in the opposite or inverse direction of the target benchmark.

The Bear 1X Funds will attempt to provide daily investment results (before fees and expenses) that correlate to the inverse (opposite) of the return of a target benchmark commodity, meaning that the Bear 1X Funds will attempt to move in the opposite or inverse direction of a target benchmark commodity.

Principal Investment Strategies

In seeking to achieve each Fund's daily investment objective, the Sponsor will use statistical and quantitative analysis to determine the investments each Fund will make and the techniques it will employ. Using this approach, the Sponsor will determine the type, quantity, and mix of investment positions that the Sponsor believes in combination should produce daily returns consistent with a Fund's objective. The Sponsor will rely upon a pre-determined model to generate orders that result in repositioning each Fund's investments in accordance with its daily investment objective. As a consequence, if a Fund is performing as designed, the return of the applicable benchmark (as discussed below) will dictate the return for that Fund. Each Fund will pursue its investment objective regardless of market conditions and will not take defensive positions.

Each of the Direxion Daily Gold Bear 1X Shares, Direxion Daily Gold Bull 3X Shares, and Direxion Daily Gold Bear 3X Shares (collectively, ''Gold Funds'') and Direxion Daily Silver Bear 1X Shares, Direxion Daily Silver Bull 3X Shares, and Direxion Daily Silver Bear 3X Shares (collectively, ''Silver Funds,'' and collectively with the Gold Funds, ''Commodity Funds'') will seek to achieve its investment objective by investing in futures contracts related to its benchmark commodity. As such, the Gold Funds will invest in gold futures contracts traded on the Commodity Exchange, Inc. (''COMEX,'' an affiliate of the CME Group, Inc. (''CME'')) (''Gold Futures Contracts''), and the Silver Funds will invest in silver futures contracts traded on COMEX (''Silver Futures Contracts'' and, collectively with Gold Futures Contracts,

[16] 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. 67882 (September 18, 2012), 77 FR 58881 (''Notice'').

[4] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[5] *See* Pre-Effective Amendment No. 1 to Form S–1, dated October 13, 2010 (''Registration Statement'') (File No. 333–168227).

''Commodity Futures Contracts'').[6] For each of the Commodity Funds, in the event position limits or position accountability levels are reached with respect to the applicable Commodity Futures Contracts, or if trading of such Commodity Futures Contracts is suspended due to price fluctuation limits being reached or if the CME imposes any other suspension or limitation on trading in a Commodity Futures Contract, the Sponsor may, in its commercially reasonable judgment, cause the Commodity Funds to obtain exposure through cash-settled, exchange-traded options on Commodity Futures Contracts, as applicable, and forward contracts, swaps,[7] and other over-the-counter transactions that are based on the price of Commodity Futures Contracts, as applicable, if such instruments tend to exhibit trading prices or returns that correlate with any Commodity Futures Contract and will further the investment objective of such Commodity Fund (collectively, ''Commodity Financial Instruments'').[8]

The Gold Funds' benchmark will be the daily last sale price occurring on or before 4:00 p.m. E.T. of a standard Gold Futures Contract for 100 troy ounces of gold, specified by the CME to be of a grade and quality that shall assay to a minimum of 995 fineness, as measured in U.S. Dollars and cents per troy ounce with a minimum fluctuation of $0.10 per troy ounce (''Gold Benchmark Futures Contract''). The Silver Funds' benchmark will be the daily last sale price occurring on or before 4:00 p.m. E.T. of a standard Silver Futures Contract for 5,000 troy ounces of silver, specified by the CME to be at a grade and quality that shall assay to a minimum of 999 fineness, as measured in U.S. Dollars and cents per troy ounce with a minimum fluctuation of $0.10 per troy ounce (''Silver Benchmark Futures Contract''). For both the Gold Benchmark Futures Contract and the Silver Benchmark Futures Contract, the last sale price value will be calculated as the last sale price published by the CME on or before 4:00 p.m. E.T. for the current active month Commodity Futures Contract. The last sale price and benchmark valuation may reflect trades occurring and published by the CME outside the normal trading session for the applicable Commodity Futures Contract.

Each of the Direxion Daily Japanese Yen Bull 3X Shares and Direxion Daily Japanese Yen Bear 3X Shares (collectively, ''Yen Funds''); Direxion Daily Dollar Bull 3X Shares and Direxion Daily Dollar Bear 3X Shares (collectively, ''Dollar Funds''); and Direxion Daily Euro Bull 3X Shares and Direxion Daily Euro Bear 3X Shares (collectively, ''Euro Funds'' and, collectively with the Yen Funds and Dollar Funds, ''Currency Funds'') will seek to achieve its investment objective by investing in futures contracts related to its benchmark currency. As such, the Yen Funds will invest in Japanese Yen futures contracts traded on the CME (''Yen Futures Contracts''), the Euro Funds will invest in Euro futures traded on the CME (''Euro Futures Contracts''), and the Dollar Funds will invest in U.S. Dollar Index futures contracts traded on the ICE Futures U.S. (''ICE'') (''Dollar Futures Contracts'' and, collectively with Yen Futures Contracts and Euro Futures Contracts, ''Currency Futures Contracts'').[9] For each Currency Fund except the Dollar Funds, which invest in futures contracts that do not have position limits, accountability levels, or price fluctuation limits, in the event position limits or position accountability levels are reached with respect to the applicable Currency Futures Contracts, or if trading of such Currency Futures Contracts is suspended due to price fluctuation limits being reached or if the CME or ICE (with respect to the Dollar Funds), as applicable, imposes any other suspension or limitation on trading in a Currency Futures Contract, the Sponsor may, in its commercially reasonable judgment, cause the Currency Funds to obtain exposure through cash-settled, exchange-traded options on Currency Futures Contracts, as applicable, and forward contracts, swaps,[10] and other over-the-counter transactions that are based on the price of Currency Futures Contracts, as applicable, if such instruments tend to exhibit trading prices or returns that correlate with any Currency Futures Contract and will further the investment objective of such Currency Fund (collectively, ''Currency Financial Instruments'').

The benchmark for the Yen Funds will be the last sale price occurring on or before 4:00 p.m. E.T. of a standard Yen Futures Contract for 12,500,000 Japanese Yen, priced in U.S. Dollars and traded on the CME (''Yen Benchmark Futures Contract''). The benchmark for the Euro Funds will be the last sale price occurring on or before 4:00 p.m. E.T. of a standard Euro Futures Contract for 125,000 Euro, priced in U.S. Dollars and traded on the CME (''Euro Benchmark Futures Contract''). For both the Yen Benchmark Futures Contract and Euro Benchmark Futures Contract, the last sale price value will be calculated as the last sale price published by the CME on or before 4:00 p.m. E.T. for the current active month Currency Futures Contract. The last sale price and benchmark valuation may reflect trades occurring and published by the CME outside the normal trading session for the applicable Currency Futures Contract.

The benchmark for the Dollar Funds will be the last sale price occurring on or before 4:00 p.m. E.T. of a standard Dollar Futures Contract for $1,000 times the U.S. Dollar Index value as measured in U.S. Dollars and traded on the ICE (''Dollar Benchmark Futures Contract'' and, collectively with the Gold Benchmark Futures Contract, Silver Benchmark Futures Contract, Yen Benchmark Futures Contract, and Euro Benchmark Futures Contract, ''Benchmark Futures Contracts''). The U.S. Dollar Index indicates the general international value of the U.S. Dollar. The U.S. Dollar Index does this by geometrically weighting the exchange rates between the U.S. Dollar and six major world currencies. The U.S. Dollar Index consists of the following six currencies: Euro, Japanese Yen, British Pound, Canadian Dollar, Swedish Krona, and Swiss Franc. The components and weightings are held

[6] According to the Exchange, Gold and Silver Futures Contracts traded on COMEX are the global benchmark contracts and most liquid futures contracts in the world for each respective commodity. As of March 15, 2012, open interest in Gold Futures Contracts and Silver Futures Contracts traded on the CME was $23.7 billion and $8.5 billion, respectively. Gold Futures Contracts and Silver Futures Contracts had an average daily trading volume in 2011 of 138,964 contracts and 63,913 contracts, respectively. The trading hours for the Gold Futures Contracts and Silver Futures Contracts are 8:20 a.m. until 1:30 p.m. Eastern Time (''E.T.'').

[7] To the extent practicable, the Commodity Funds will invest in swaps cleared through the facilities of a centralized clearing house.

[8] Each Fund will enter into swap agreements and other over-the-counter transactions only with large, established and well capitalized financial institutions that meet certain credit quality standards and monitoring policies. Each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.

[9] According to the Exchange, the CME constitutes the largest regulated foreign exchange marketplace in the world, with over $100 billion in daily liquidity. As of March 15, 2012, open interest in Euro Futures Contracts and Yen Futures Contracts traded on the CME and, for Dollar Futures Contracts, on the ICE, were $42.7 billion, $20.8 billion, and $4.8 billion, respectively. Euro Futures Contracts, Yen Futures Contracts, and Dollar Futures Contracts had an average daily trading volume in 2011 of 325,103, 106,824, and 27,258 contracts, respectively. The trading hours for the Euro Futures Contracts and Yen Futures Contracts are 8:20 a.m. until 3:00 p.m. E.T., and the trading hours for the Dollar Futures Contracts are 8:00 p.m. E.T. until 5:00 p.m. E.T. the following day.

[10] To the extent practicable, the Currency Funds will invest in swaps cleared through the facilities of a centralized clearing house.

constant, and have not changed since the introduction of the Euro. Because the U.S. Dollar Index is geometrically weighted, holding the individual currencies in their specified weights will not necessarily mimic U.S. Dollar Index moves. The last sale price for the Dollar Benchmark Futures Contract will be calculated using the last sale price published by the ICE on or before 4:00 p.m. E.T. for the current active month Dollar Futures Contract.

In seeking its investment objective, each Fund will invest in Commodity or Currency Futures Contracts, as applicable, including (but not limited to)[11] the Fund's related Benchmark Futures Contract, as well as Commodity or Currency Financial Instruments in certain circumstances. Assets of each Fund not invested in Commodity Futures Contracts, Currency Futures Contracts, or other Commodity Financial Instruments or Currency Financial Instruments, as applicable, will be held in cash or invested in cash equivalents and/or U.S. Treasury Securities or other high credit quality short-term fixed-income or similar securities (such as shares of money market funds, bank deposits, bank money market accounts, certain variable rate-demand notes, and repurchase agreements collateralized by government securities, whether denominated in U.S. or the applicable foreign currency with respect to a Currency Fund) that serve as collateral for Commodity Futures Contracts, Currency Futures Contracts, and Commodity or Currency Financial Instruments, as applicable.

At the close of the U.S. equity markets each trading day, each Fund will position its portfolio to ensure that the Fund's exposure to its benchmark is consistent with the Fund's stated goals. The impact of market movements during the day will determine whether a portfolio needs to be repositioned. If the target benchmark has risen on a given day, a Leveraged Bull Fund's net assets should rise, meaning their exposure may need to be increased. Conversely, if the target benchmark has fallen on a given day, a Leveraged Bull Fund's net assets should fall, meaning their exposure may need to be reduced.

If a Leveraged Bull Fund is successful in meeting its objective, its value in a given day (before fees and expenses) should gain approximately three times as much on a percentage basis as its corresponding benchmark when the benchmark rises during a given day. Conversely, its value in a given day (before fees and expenses) should lose approximately three times as much on a percentage basis as the corresponding benchmark when the benchmark declines during a given day. Each Leveraged Bull Fund will acquire long exposure through investment in Commodity or Currency Futures Contracts, including (but not limited to) the applicable Benchmark Futures Contracts, and, once position limits or position accountability levels are reached, if trading of such Commodity or Currency Futures Contracts is suspended due to price fluctuation limits being reached, or if the CME or ICE, as applicable, imposes any other suspension or limitation on trading in a Commodity or Currency Futures Contract, in Commodity Financial Instruments or Currency Financial Instruments, as applicable, such that each Leveraged Bull Fund has approximately 300% exposure to the corresponding benchmark at the time of the net asset value (''NAV'') calculation.

If a Leveraged Bear Fund is successful in meeting its objective, its value in a given day (before fees and expenses) should gain approximately three times as much on a percentage basis as its corresponding benchmark loses when the benchmark falls in a given day. Conversely, its value in a given day (before fees and expenses) should lose approximately three times as much on a percentage basis as the corresponding benchmark gains when the benchmark rises in a given day. Each Leveraged Bear Fund will acquire short exposure through investment in Commodity or Currency Futures Contracts, including (but not limited to) the applicable Benchmark Futures Contracts, and, once position limits or position accountability levels are reached, if trading of such Commodity or Currency Futures Contracts is suspended due to price fluctuation limits being reached, or if the CME or ICE, as applicable, imposes any other suspension or limitation on trading in a Commodity or Currency Futures Contract, in Commodity Financial Instruments or Currency Financial Instruments, as applicable, such that each Leveraged Bear Fund has approximately −300% exposure to the corresponding benchmark at the time of the NAV calculation.

If a Bear 1X Fund is successful in meeting its objective, its value in a given day (before fees and expenses) should gain approximately an equal amount on a percentage basis as its corresponding benchmark when the benchmark falls in a given day. Conversely, its value in a given day (before fees and expenses) should lose approximately an equal amount on a percentage basis as the corresponding benchmark when the benchmark rises in a given day. Each Bear 1X Fund will acquire short exposure through investment in Commodity Futures Contracts, including (but not limited to) the applicable Benchmark Futures Contracts, and, once position limits or position accountability levels, if applicable, are reached, if trading of the Commodity Futures Contracts is suspended due to price fluctuation limits being reached, or if the CME imposes any other suspension or limitation on trading in a Commodity Futures Contract, a Bear 1X Fund may invest in Commodity Financial Instruments such that each Bear 1X Fund has approximately −100% exposure to the corresponding benchmark at the time of the NAV calculation.

In the event that trading of a Commodity or Currency Futures Contract is suspended due to price fluctuation limits being reached for that futures contract, or if CME or ICE, as applicable, imposes any other suspension or limitation on trading in a Commodity or Currency Futures Contract, the related Fund or Funds may be limited in their ability to seek their investment objective until trading resumes.

Additional information regarding the Funds and the Shares, including investment strategies, risks, creation and redemption procedures, NAV, fees, portfolio holdings disclosure, distributions, and taxes, among other things, is included in the Notice and Registration Statement, as applicable.[12]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[13] and the rules and regulations thereunder applicable to a national securities exchange.[14] In

[11] A Fund, in seeking to achieve its investment objective by investing in futures contracts related to its target benchmark, may be invested in futures contracts that are not the current active month futures contracts on which the Fund's target benchmark is based. For example, if, on a date in September 2012, the current active month futures contract with respect to a target benchmark is December 2012, a Fund may have a portion of its assets in the October 2012 or February 2013 contracts. A Fund may use this flexibility, for example, in case of liquidity issues with respect to the applicable, current active month futures contracts or when deciding when to roll the Fund's assets into the next current active month contract.

[12] *See* Notice and Registration Statement, *supra* notes 3 and 5, respectively.

[13] 15 U.S.C. 78f.

[14] In approving this proposed rule change, the Commission notes that it has considered the

Continued

particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission notes that the Funds and the Shares must comply with the requirements of NYSE Arca Equities Rule 8.200 and Commentary .02 thereto to be listed and traded on the Exchange.

The Commission finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[16] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. Quotation and last-sale information for the Shares will be disseminated through the facilities of the Consolidated Tape Association (''CTA''). The value of the benchmarks, updated at least every 15 seconds during the NYSE Arca Core Trading Session, will be disseminated by one or more major market data vendors. The closing and daily settlement prices for the Commodity and Currency Futures Contracts are publicly available on the Web site of the CME and ICE, as applicable. Intraday prices for the Commodity and Currency Futures Contracts are updated at least every 15 seconds and are available through major market data vendors. Further, the applicable specific contract specifications for Commodity and Currency Futures Contracts are available from the CME and ICE Web sites, as well as other financial information sources. Real-time dissemination of spot pricing for gold, silver, Yen, Euro, and currencies included in the U.S. Dollar Index is available on a 24-hour basis worldwide from various major market data vendors. In addition, there is a considerable amount of foreign currency price and market information available on public Web sites and through professional and subscription services, including price information with respect to currencies included in the U.S. Dollar Index. The U.S. Dollar Index value is disseminated every 15 seconds by major market data vendors during the Exchange's Core Trading Session. Further, the Funds will provide Web site disclosure of portfolio holdings daily and will include, as applicable, the names and value (in U.S. dollars) of Commodity Futures Contracts and Currency Futures Contracts, as applicable; Commodity Financial Instruments and Currency Financial Instruments, if any; and the amount of cash and/or cash equivalents held in the portfolio of the Funds. This Web site disclosure will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized participants so that all market participants are provided portfolio composition information at the same time. The current trading prices of each Fund will be published continuously under its ticker symbol as trades occur throughout each trading day via CTA, Reuters, and/or Bloomberg. The intraday indicative value (''IIV'') with respect to each Fund will be updated every 15 seconds and be widely disseminated by one or more major market data vendors during the NYSE Arca Core Trading Session.[17] The NAV of each Fund will be calculated at 4:00 p.m. E.T. and will be disseminated daily to all market participants at the same time. Recent NAV and Shares outstanding will be disseminated on a daily basis via CTA. The Web site of the Funds and/or the Exchange will include the prospectus for the Funds and additional data relating to NAV and other applicable quantitative information.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such times as the NAV is available to all market participants. Further, the Exchange represents that it may halt trading during the day in which an interruption to the dissemination of the IIV, trading in the applicable Commodity or Currency Futures Contract, or trading in Currency or Commodity Financial Instruments occurs for a Fund. If the interruption persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. The Exchange may halt trading in the Shares if trading is not occurring in the Commodity or Currency Futures Contracts or Commodity or Currency Financial Instruments held by the Funds, or if other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[18] The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. Moreover, the trading of the Shares will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders[19] acting as registered Market Makers[20] in Trust Issued Receipts to facilitate surveillance. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities or currencies underlying options, futures or options on futures through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange can obtain market

proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[17] According to the Exchange, several major market data vendors display and/or make widely available IIVs taken from the CTA or other data feeds. In addition, the Exchange states that circumstances may arise in which the NYSE Arca Core Trading Session is in progress, but trading in Commodity or Currency Futures Contracts is not occurring. Such circumstances may result from reasons including, but not limited to, the CME or ICE, as applicable, having a separate holiday schedule than the NYSE Arca, the CME or ICE closing prior to the close of the NYSE Arca, price fluctuation limits being reached in a Commodity or Currency Futures Contract, or the CME or ICE, as applicable, imposing any other suspension or limitation on trading in a Commodity or Currency Futures Contract. In such instances, the value of the applicable Commodity or Currency Futures Contracts, as well as Commodity or Currency Financial Instruments whose value is derived from the Commodity or Currency Futures Contracts, held by the Funds would be static or priced by the Fund at the applicable early cut-off time of the exchange trading the applicable Commodity or Currency Futures Contract. Moreover, any cash held by the Funds for collateralization purposes will be invested in short term treasury vehicles that do not have market exposure, such that their value would change throughout the trading day. As such, during such periods, the disseminated IIV for the affected Fund or Funds will be static.

[18] With respect to trading halts, the Exchange may consider other relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Funds. Trading in Shares of the Funds will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.

[19] *See* NYSE Arca Equities Rule 1.1(n) (defining ETP Holder).

[20] *See* NYSE Arca Equities Rule 1.1(v) (defining Market Maker).

surveillance information, including customer identity information, with respect to transactions (including transactions in cash-settled options on Commodity or Currency Futures Contracts) occurring on the CME, ICE, or COMEX (''Futures Exchanges''), which are members of the Intermarket Surveillance Group (''ISG'').

Prior to the commencement of trading, the Exchange will inform its ETP Holders of the suitability requirements of NYSE Arca Equities Rule 9.2(a) in an Information Bulletin. Specifically, ETP Holders will be reminded in the Information Bulletin that, in recommending transactions in the Shares, they must have a reasonable basis to believe that (1) the recommendation is suitable for a customer given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such ETP Holder, and (2) the customer can evaluate the special characteristics, and is able to bear the financial risks, of an investment in the Shares. In connection with the suitability obligation, the Information Bulletin will also provide that ETP Holders must make reasonable efforts to obtain the following information: (1) The customer's financial status; (2) the customer's tax status; (3) the customer's investment objectives; and (4) such other information used or considered to be reasonable by such ETP Holder or registered representative in making recommendations to the customer.

In addition, the Exchange states that the Financial Industry Regulatory Authority (''FINRA'') has implemented increased sales practice and customer margin requirements for FINRA members applicable to leveraged exchange-traded funds (which include the Shares) and options on leveraged exchange-traded funds, as described in FINRA Regulatory Notices 09–31 (June 2009), 09–53 (August 2009), and 09–65 (November 2009) (collectively, ''FINRA Regulatory Notices''). ETP Holders that carry customer accounts will be required to follow the FINRA guidance set forth in these notices. As noted above, each Leveraged Fund will seek a multiple or inverse multiple (plus or minus 300%) of the return (before fees and expenses) of its target benchmark commodity or currency on a given day, and each Bear 1X Fund will seek −100% of the return (before fees and expenses) of its target benchmark commodity on a given day. Over a period of time in excess of one day, the cumulative percentage increase or decrease in the NAV of the Shares of a Fund may diverge significantly from a multiple or inverse multiple of the cumulative percentage decrease or increase in the relevant benchmark due to a compounding effect.

The Exchange represents that the Shares are deemed to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made representations, including:

(1) The Shares will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange's surveillance procedures applicable to derivative products, which include Trust Issued Receipts, are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (a) The risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated IIV will not be calculated or publicly disseminated; (b) except for the Dollar Funds, a static IIV may be disseminated between the close of trading of all applicable Commodity or Currency Futures Contracts on Futures Exchanges and the close of the NYSE Arca Core Trading Session; (c) the procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (d) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (e) how information regarding the IIV is disseminated; (f) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (g) trading information. The Information Bulletin will further advise ETP Holders that FINRA has implemented increased sales practice and customer margin requirements for FINRA members applicable to leveraged exchange-traded funds (which include the Shares) and options on leveraged exchange-traded funds, as described in the FINRA Regulatory Notices.

(5) For initial and continued listing, the Funds must be in compliance with NYSE Arca Equities Rule 5.3 and Rule 10A–3 under the Exchange Act.[21]

(6) To the extent practicable, the Funds will invest in swaps cleared through the facilities of a centralized clearing house. In addition, each Fund will enter into swap agreements and other over-the-counter transactions only with large, established and well capitalized financial institutions that meet certain credit quality standards and monitoring policies. Each Fund will use various techniques to minimize credit risk including early termination or reset and payment, using different counterparties and limiting the net amount due from any individual counterparty.

(7) A minimum of 100,000 Shares of each Fund will be outstanding at the commencement of trading on the Exchange.

This approval order is based on all of the Exchange's representations and description of the Funds, including those set forth above and in the Notice.[22]

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[23] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NYSEArca–2012–102) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27550 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 240.10A–3.

[22] The Commission notes that it does not regulate the market for futures in which the Funds plan to take positions, which is the responsibility of the Commodity Futures Trading Commission (''CFTC''). The CFTC has the authority to set limits on the positions that any person may take in futures. These limits may be directly set by the CFTC or by the markets on which the futures are traded. The Commission has no role in establishing position limits on futures even though such limits could impact an exchange-traded product that is under the jurisdiction of the Commission.

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68173; File No. SR–NYSEArca–2012–120]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the United States Asian Commodities Basket Fund Under NYSE Arca Equities Rule 8.200

November 6, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on October 25, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the United States Asian Commodities Basket Fund (''UAC'' or ''Fund'') under NYSE Arca Equities Rule 8.200. 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

NYSE Arca Equities Rule 8.200, Commentary .02, permits the trading of Trust Issued Receipts either by listing or pursuant to unlisted trading privileges (''UTP'').[3] The Exchange proposes to list and trade shares (''Units'') of UAC pursuant to NYSE Arca Equities Rule 8.200.

The Exchange notes that the Commission has previously approved the listing and trading of other issues of Trust Issued Receipts on the American Stock Exchange LLC,[4] trading on NYSE Arca pursuant to UTP,[5] and listing on NYSE Arca.[6] In addition, the Commission has approved the listing and trading of other exchange-traded fund-like products linked to the performance of underlying commodities.[7]

The Units represent beneficial ownership interests in UAC, as described in the Registration Statement.[8] UAC is a commodity pool that is a series of the United States Commodity Funds Trust I (''Trust''), a Delaware statutory trust. UAC is managed and controlled by United States Commodity Funds LLC (''Sponsor''). The Sponsor is a Delaware limited liability company that is registered as a commodity pool operator with the Commodity Futures Trading Commission (''CFTC'') and is a member of the National Futures Association. Brown Brothers Harriman & Co. Inc. (''BBH & Co., Inc.'') is the administrator for the Trust (''Administrator'').

According to the Registration Statement, the net assets of UAC will consist of (a) investments in futures contracts for Asian commodities that are traded on the Chicago Mercantile Exchange (''CME''), Chicago Board of Trade (''CBOT''), the New York Mercantile Exchange (''NYMEX''), Commodity Exchange, Inc. (''COMEX''), ICE Futures US (''ICE US''), ICE Futures Canada (''ICE Canada''), ICE Futures Europe (''ICE Europe''), London Metal Exchange (''LME''), Tokyo Commodity Exchange (''TOCOM''), Dubai Mercantile Exchange (''DME''), and Bursa Malaysia (''Malaysia'')[9] (collectively, ''Futures Contracts'') and (b) if applicable, other Asian commodities-related investments such as exchange-listed cash-settled options on Futures Contracts, forward contracts for Asian commodities, cleared swap contracts, and over-the-counter transactions that are based on the price of Asian commodities, Futures Contracts and indices based on the foregoing (collectively, ''Other Asian Commodities-Related Investments''). Futures Contracts and Other Asian Commodities-Related Investments collectively are referred to as ''Asian Commodities Interests.'' UAC will also invest in short-term obligations of the United States of two years or less (''Treasuries''), cash, and cash equivalents for margining purposes and as collateral.[10]

According to the Registration Statement, UAC will invest in Asian Commodities Interests, to the fullest extent possible, without being leveraged or unable to satisfy its current or potential margin and/or collateral obligations with respect to its investments in Futures Contracts and Other Asian Commodities-Related Investments.[11] The primary focus of the Sponsor will be the investment in Futures Contracts and the management of UAC's investments in Treasuries, cash, and cash equivalents for margining purposes and as collateral.

According to the Registration Statement, the investment objective of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commentary .02 to NYSE Arca Equities Rule 8.200 applies to Trust Issued Receipts that invest in ''Financial Instruments.'' The term ''Financial Instruments,'' as defined in Commentary .02(b)(4) to NYSE Arca Equities Rule 8.200, means any combination of investments, including cash; securities; options on securities and indices; futures contracts; options on futures contracts; forward contracts; equity caps, collars, and floors; and swap agreements.

[4] *See, e.g.,* Securities Exchange Act Release No. 58161 (July 15, 2008), 73 FR 42380 (July 21, 2008) (SR–Amex–2008–39).

[5] *See, e.g.,* Securities Exchange Act Release No. 58163 (July 15, 2008), 73 FR 42391 (July 21, 2008) (SR–NYSEArca–2008–73).

[6] *See, e.g.,* Securities Exchange Act Release No. 58457 (September 3, 2008), 73 FR 52711 (September 10, 2008) (SR–NYSEArca–2008–91).

[7] *See, e.g.,* Securities Exchange Act Release Nos. 57456 (March 7, 2008), 73 FR 13599 (March 13, 2008) (SR–NYSEArca–2007–91) (order granting accelerated approval for NYSE Arca listing the iShares GS Commodity Trusts); 59781 (April 17, 2009), 74 FR 18771 (April 24, 2009) (SR–NYSEArca–2009–28) (order granting accelerated approval for NYSE Arca listing the ETFS Silver Trust); 59895 (May 8, 2009), 74 FR 22993 (May 15, 2009) (SR–NYSEArca–2009–40) (order granting accelerated approval for NYSE Arca listing the ETFS Gold Trust); and 62527 (July 19, 2010), 75 FR 43606 (July 26, 2010) (SR–NYSEArca–2010–44) (order approving listing on NYSE Arca of the United States Commodity Index Fund).

[8] *See* Amendment No. 2 to the registration statement on Form S–1 for the United States Commodity Funds Trust I, dated June 18, 2012 (File No. 333–177188) relating to UAC (''Registration Statement''). The discussion herein relating to the Trust and the Units is based, in part, on the Registration Statement.

[9] CME, CBOT, NYMEX, COMEX, ICE US, ICE Canada, ICE Europe, LME, TOCOM, DME, and Malaysia are each referred to herein as a ''Futures Exchange.''

[10] Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the CFTC has been tasked with implementing rules and regulations that are expected to impact position limits and visibility levels and other regulatory requirements that will be applicable to the Fund and its holdings.

[11] The Sponsor represents that the Fund will invest in Asian Commodities Interests in a manner consistent with the Fund's investment objective and not to achieve additional leverage.

UAC (before fees and expenses) will be to have the daily changes in percentage terms of its net asset value (''NAV'') reflect the daily changes in percentage terms of the price of a basket of Futures Contracts, each of which tracks one of the Asian Benchmark Commodities (''Futures Basket''). The ''Asian Benchmark Commodities'' will be commodities selected by the Sponsor. The Futures Contracts designated for inclusion in the Futures Basket will be selected by the Sponsor, and are referred to as the ''Benchmark Futures Contracts.''

According to the Registration Statement, the Asian Benchmark Commodities will be selected by the Sponsor [12] based on either their systemic importance to Asian economies, including the three major Asian economies of China, Japan, and India, or the fact that there are futures contracts relating to the commodity or commodities that trade on an Asian domiciled futures exchange. The Sponsor will select the Asian Benchmark Commodities based on the following four criteria:

- First, the physical commodity must be one in which the economies of China, Japan, and India annually consume 10% or more of global consumption based on publically available industry and government statistics.
- Second, the physical commodity must be one in which, based on publically available industry and government statistics, China, Japan, and India annually produce less of the commodity than they typically consume, indicating that they are likely to be net importers of the commodity and not net exporters.
- Third, the Futures Contracts on the physical commodity must be traded on a regulated Futures Exchange in the United States, Canada, the United Kingdom, Japan, Dubai, Malaysia, or other domicile which allows a U.S. domiciled passive investment fund to buy and sell such contracts.
- Fourth and finally, the Futures Contracts traded on such commodities must have average open interest measured in U.S. dollars in excess of $150 million at the time of the commodity's selection. In the event the same or substantially similar physical contract is traded on more than one Futures Exchange, the minimum liquidity test will be applied to the exchange with the largest open interest US dollar terms in that particular commodity.

The Asian Benchmark Commodities will be selected by the Sponsor in accordance with the above specific quantitative data. Then, according to the Registration Statement, in the first quarter of each calendar year, the Sponsor will reevaluate the selection of commodities based on the prior year's data. As a result of changes in Asian commodity production, commodity consumption, net imports or exports of commodities, and changes in commodity futures contract liquidity and in strict accordance with the criteria and factors listed above, the Sponsor may elect to add or delete a commodity from the list of Asian Benchmark Commodities, and thus the Futures Basket.[13] Under normal circumstances,[14] the Sponsor anticipates that any changes in either the list of Asian Benchmark Commodities, the list of Benchmark Futures Contracts in the Futures Basket, or their weightings, would be made as part of the annual review process and disclosed to investors with no less than 30 days advanced notice of the change.

From time to time throughout the year, it is possible that the Sponsor may determine that a Futures Contract that is currently a Benchmark Futures Contract is no longer suitable due to changes in the liquidity of the Futures Contract or due to changes in the rules regarding that particular Futures Contract on its regulated Futures Exchange.[15] In such cases the Sponsor would first attempt to select another Futures Contract based on the same commodity that trades on either the current regulated Futures Exchange, or trades on another regulated Futures Exchange, and disclose on the Fund's Web site and in a prospectus supplement that the new Futures Contract will become a Benchmark Futures Contract for the relevant Asian Benchmark Commodity and the prior Benchmark Futures Contract for such Asian Benchmark Commodity would be deleted. In the event that the Sponsor determined that no other existing Futures Contract is a suitable replacement, then the Sponsor would file a prospectus supplement and post on the Web site indicating that the relevant Benchmark Futures Contract would no longer be included as part of the Futures Basket. In cases where a suitable Benchmark Futures Contract no longer exists, the Sponsor will also remove the underlying commodity from the list of Asian Benchmark Commodities.[16] Although the Sponsor would normally seek to provide at least 30 days' notice of any such change, specific circumstances could mean that the Sponsor would be unable to provide that amount of advanced notice.

The Benchmark Futures Contracts may trade on any of the Futures Exchanges. It is not the intent of UAC to be operated in a fashion such that its NAV will equal, in dollar terms, the spot price of any particular commodity or any particular Benchmark Futures Contract. It is not the intent of UAC to be operated in a fashion such that its NAV will reflect the percentage change of the price of the Futures Basket as measured over a time period greater than one day. The Sponsor does not believe that is an achievable goal due to the potential impact of backwardation and contango on returns of any portfolio of futures contracts.

According to the Registration Statement, UAC will seek to achieve its investment objective by investing in Futures Contracts and, if applicable, Other Asian Commodities-Related Investments such that the daily changes in UAC's NAV will closely track changes in the daily price of the Futures Basket. The Sponsor believes changes in the price of the Benchmark Futures Contracts have historically exhibited a close correlation with the changes in the price of the corresponding Asian Benchmark Commodities. On any valuation day (a valuation day is any NYSE Arca trading day as of which UAC calculates its NAV, as described herein), each Benchmark Futures Contract will be the near month contract for the corresponding Asian Benchmark

[12] The Sponsor is not a broker-dealer or a registered investment adviser. The Sponsor represents that it will implement and maintain procedures designed to prevent the use and dissemination of material, non-public information regarding the Futures Basket.

[13] In making any such change, the Sponsor will file a prospectus supplement informing investors of the proposed changes no less than 30 days prior to the first month in which the commodity or commodities added will become part of the Asian Benchmark Commodities, or 30 days prior to the first month in which the commodity or commodities deleted will no longer be part of the Asian Benchmark Commodities. Any changes to the eligible Asian Benchmark Commodities will also be published on the Web site for the Fund.

[14] ''Normal circumstances'' as used herein includes, but is not limited to, the absence of extreme volatility or trading halts in the commodity markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance.

[15] According to the Sponsor, an example would be a case where a Futures Contract has decreased average liquidity under $150 million.

[16] According to the Sponsor, in a case where an underlying commodity is removed from the list of Asian Benchmark Commodities as described, if a Futures Contract in such commodity becomes available at some later date, the underlying commodity would be eligible for selection as an Asian Benchmark Commodity in the annual review process.

Commodity traded on the Futures Exchange where such Benchmark Futures Contract is listed, unless the near month contract will expire within 4 business days prior to the end of the month. Only the Benchmark Futures Contracts that will be reaching expiration in the upcoming month will be sold and the next Futures Contract for that commodity that expires later than the upcoming month, the next month contract, will be used to replace the contract being sold. Benchmark Futures Contracts which are not reaching expiration in the upcoming month will not be ''rolled'' forward.

UAC will invest in Benchmark Futures Contracts to the fullest extent possible, turning next to investments in other Futures Contracts, and finally to Other Asian Commodities-Related Investments only if required to by applicable regulatory requirements or under adverse market conditions.[17] The types of regulatory requirements and market conditions that would cause UAC to invest in this manner are of a limited nature. An example of a regulatory requirement that would cause UAC to invest in Futures Contracts or Other Asian Commodities-Related Investments other than Benchmark Futures Contracts would be where UAC received payment from an Authorized Purchaser for the issuance of a Creation Basket, but could not invest the payment in Benchmark Futures Contracts because doing so would cause UAC to exceed the position limits applicable to such Benchmark Futures Contracts. Imposition of other regulatory requirements, such as accountability levels, daily price fluctuation limits, or the imposition of capital controls on foreign investments, may cause UAC to invest in Futures Contracts or Other Asian Commodities-Related Investments other than Benchmark Futures Contracts.[18] Adverse market conditions that the Sponsor currently anticipates could cause UAC to invest in Futures Contracts and Other Asian Commodities-Related Investments would be those allowing UAC to obtain greater liquidity or to execute transactions with more favorable pricing.

More specifically, if applicable regulatory requirements or adverse market conditions make investing in Benchmark Futures Contracts impracticable, UAC would then invest to the fullest extent possible in other Futures Contracts that, while relating to the same commodity and trading on the same Futures Exchange as a Benchmark Futures Contract, have a different expiration date. If and when investing in such other Futures Contracts becomes impracticable because of regulatory requirements or adverse market conditions, UAC would then invest to the fullest extent possible in Futures Contracts that, while relating to the same commodity as the corresponding Benchmark Futures Contract, are traded on a different futures exchange. Only when UAC has invested in Benchmark Futures Contracts and other Futures Contracts to the fullest extent possible in the manner described above, will it then invest in Other Asian Commodities-Related Investments.[19]

According to the Registration Statement, the Sponsor will endeavor to place UAC's trades in Asian Commodities Interests and otherwise manage UAC's investments so that ''A'' will be within plus/minus 10 percent of ''B,'' where:

- A is the average daily percentage change in UAC's NAV for any period of 30 successive valuation days, *i.e.,* any NYSE Arca trading day as of which UAC calculates its NAV; and
- B is the average daily percentage change in the price of the Futures Basket over the same period.

A list of the current Asian Benchmark Commodities is shown in the table below. Included with the list is the Sponsor's estimate of the percentage of global production and consumption for each commodity that is attributable to China, Japan, and India combined. Finally, the current assigned base weight of each commodity for use in the Futures Basket is listed.

ASIAN BENCHMARK COMMODITIES

[As of December 31, 2011]

Commodity	China, Japan, and India's share of global production (percent)	China, Japan, and India's share of global consumption (percent)	Current base weight (percent)
Crude Oil	5.9	19.0	22
Gasoil	5.9	19.0	2
Corn	23.3	24.6	10
Soybeans	9.1	32.1	10
Wheat	32.3	32.6	10
Copper	4.8	60.9	10
Zinc	34.5	48.9	5
Nickel	4.3	41.6	5
Sugar	24.4	26.2	5

[17] ''Adverse market conditions'' as used herein includes, but is not limited to, those conditions whereby the Sponsor believes the price of the Benchmark Futures Contract appears adversely impacted or economically dislocated compared to substantially similar Futures Contracts, *i.e.,* those futures contracts of the same commodity as the Benchmark Futures Contract, but traded on a different exchange.

[18] According to the Registration Statement, U.S. designated contract markets such as the CME, CBOT, COMEX, NYMEX, and ICE US have established accountability levels and position limits on the maximum net long or net short futures contracts in commodity interests that any person or group of persons under common trading control (other than as a hedge, which an investment by UAC is not) may hold, own, or control.

In addition to accountability levels and position limits, the regulated Futures Exchanges may also set daily price fluctuation limits on futures contracts. The daily price fluctuation limit establishes the maximum amount that the price of a futures contract may vary either up or down from the previous day's settlement price. Once the daily price fluctuation limit has been reached in a particular futures contract, no trades may be made at a price beyond that limit.

Imposition of, or changes in, accountability levels, position limits or fluctuation limits on futures contracts could constitute a regulatory requirement that would cause UAC to invest in Futures Contracts or Other Asian Commodities-Related Investments other than Benchmark Futures Contracts. All of these limits may potentially cause a tracking error between the price of the Units and the price of the Futures Basket. This may in turn prevent investors from being able to effectively use UAC as a way to hedge against Asian commodities-related losses or as a way to indirectly invest in Asian commodities.

[19] UAC anticipates that, to the extent it invests in Futures Contracts other than the Benchmark Futures Contracts and Other Asian Commodities-Related Investments that are not economically equivalent to the Benchmark Futures Contracts, it will enter into various non-exchange-traded derivative contracts to hedge the short-term price movements of such Futures Contracts and Other Asian Commodities-Related Investments against the current Benchmark Futures Contracts.

ASIAN BENCHMARK COMMODITIES—Continued

[As of December 31, 2011]

Commodity	China, Japan, and India's share of global production (percent)	China, Japan, and India's share of global consumption (percent)	Current base weight (percent)
Platinum	0	41.9	5
Gold	13.1	63.8	5
Silver	15.1	66.8	5
Canola Oil	15	44.7	2
Palm Oil	0	40.1	2
Rubber	14.6	47.3	2
Total			100

A list of the current Benchmark Futures Contracts and their weighting in the Futures Basket is shown in the table below.

BENCHMARK FUTURES CONTRACTS

Commodity	Primary futures exchange	Trading hours (eastern time)	Contract ticker or code	Contract size	Pricing convention	Futures basket weighting (percent)
Crude Oil-Light/Sweet-Brent	ICE Europe	8 p.m.–6 p.m.*	CO	1,000	USD/bbl	20.0
Crude Oil-Medium-DME/Oman	DME/CME**	6 p.m.–5:15 p.m.*	OQD	1,000	USD/bbl	2.0
Gasoil	ICE Europe	8 p.m.–6 p.m.*	QS	100	USD/Tonne	2.0
Corn	CBOT	8:30 a.m.–12:15 p.m.	ZC	5,000	c/bu	10.0
Soybeans	CBOT	8:30 a.m.–12:15 p.m.	ZS	5,000	c/bu	10.0
Wheat	CBOT	8:30 a.m.–12:15 p.m.	ZW	5,000	c/bu	10.0
Copper	COMEX	8:10 a.m.–1 p.m.	HG	25,000	USD/lb	10.0
Zinc	LME	8 p.m.–2 p.m.	LX	25	USD/Tonne	5.0
Nickel	LME	8 p.m.–2 p.m.	LN	6	USD/Tonne	5.0
Sugar	ICE US	3:30 a.m.–2 p.m.	SB	112,000	c/lb	5.0
Platinum	TOCOM***	7 p.m.–1:30 a.m.*	JA	500	JPY/g	5.0
Gold	COMEX	8:20 a.m.–1:30 p.m	GC	100	USD/T.Oz	5.0
Silver	COMEX	8:25 a.m.–1:25 p.m	SI	5,000	USD/T.Oz	5.0
Canola Oil	ICE Canada	8 p.m.–2:15 p.m.	RS	20	CAD/Tonne	2.0
Palm Oil	Bursa Malaysia/ CME**.	7 p.m.–3:50 a.m.*	KO	25	MYR/Tonne	2.0
Rubber	TOCOM	7 p.m.–1:30 a.m.*	JN	5,000	JPY/kg	2.0
Total						100

* Trading ends on next calendar day.
** Non-U.S. Futures Contracts that are also cross-listed on the CME and trade during U.S. market hours.
*** A substantially similar, but not identical, physically settled Futures Contract trades in the U.S. on the CME.

The Sponsor believes that market arbitrage opportunities will cause daily changes in UAC's Unit price on the NYSE Arca to closely track daily changes in UAC's NAV per Unit. The Sponsor believes that the net effect of this expected relationship and the expected relationship described above between UAC's NAV and the Futures Basket will be that the daily changes in the price of UAC's Units on the NYSE Arca will closely track in percentage terms, changes in the Futures Basket less UAC's expenses.

The Sponsor will employ a ''neutral'' investment strategy intended to track the changes in the Futures Basket regardless of whether the price goes up or goes down. UAC's ''neutral'' investment strategy is designed to permit investors generally to purchase and sell UAC's Units for the purpose of trading indirectly in the commodities market in a cost-effective manner, and/or to permit participants in the commodities or other industries to hedge the risk of losses in their Asian Commodities Interests. Accordingly, depending on the investment objective of an individual investor, the risks generally associated with investing in the Asian commodities market and/or the risks involved in hedging may exist. In addition, an investment in UAC involves the risk that the changes in the price of UAC's Units will not accurately track changes in the Futures Basket and that changes in the Benchmark Futures Contracts will not closely correlate with changes in the prices of the corresponding Asian Benchmark Commodities. Furthermore, UAC will also hold Treasuries, cash, and/or cash equivalents to meet its current or potential margin or collateral requirements with respect to its investments in Asian Commodities Interests and invest cash not required to be used as margin or collateral. UAC does not expect there to be any meaningful correlation between the performance of UAC's investments in Treasuries, cash, and/or cash equivalents and the changes in the

prices of commodities or Asian Commodities Interests. While the level of interest earned on or the market price of these investments may in some respect correlate to changes in the prices of commodities, this correlation is not anticipated as part of UAC's efforts to meet its objective.

Each month, the Benchmark Futures Contracts will change, starting four business days prior to the end of the month. Only the near month Benchmark Futures Contracts that will be reaching expiration in the upcoming month will be sold. The next Benchmark Futures Contract for the relevant Asian Benchmark Commodity that expires later than the upcoming month, the next month contract, will be used to replace the Benchmark Futures Contract being sold. Near month Benchmark Futures Contracts which are not reaching expiration in the upcoming month will not be ''rolled'' forward. During the first three days of such period, the applicable value of each Benchmark Futures Contract being rolled forward will be based on a combination of the corresponding near month contract and the ''next month contract'' as follows:

(1) Day 1 will consist of 75% of the then near month contract's total return for the day, plus 25% of the total return for the day of the next month contract,

(2) Day 2 will consist of 50% of the then near month contract's total return for the day, plus 50% of the total return for the day of the next month contract, and

(3) Day 3 will consist of 25% of the then near month contract's total return for the day, plus 75% of the total return for the day of the next month contract.

On day 4, such Benchmark Futures Contract will be the next month contract to expire at that time. That contract will remain the Benchmark Futures Contract until the following month's change in the Benchmark Futures Contract, the period for which begins four business days prior to the end of the month.

The Sponsor will attempt to manage the credit risk of UAC by following certain trading limitations and policies. In particular, UAC intends to post margin and collateral and/or hold liquid assets that will be equal to approximately the face amount of the Asian Commodity Interests it holds. The Sponsor will implement procedures that will include, but will not be limited to, executing and clearing trades and entering into over-the-counter transactions only with parties it deems creditworthy and/or requiring the posting of collateral by such parties for the benefit of UAC to limit its credit exposure. To reduce the credit risk that arises in connection with over-the-counter derivative contracts, UAC will generally enter into an agreement with each counterparty based on the Master Agreement published by the International Swaps and Derivatives Association, Inc. that provides for the netting of its overall exposure to its counterparty.

The creditworthiness of each potential counterparty will be assessed by the Sponsor. The Sponsor will assess or review, as appropriate, the creditworthiness of each potential or existing counterparty to an over-the-counter contract pursuant to guidelines approved by the Sponsor. Furthermore, the Sponsor on behalf of UAC will only enter into over-the-counter contracts with counterparties who are, or are affiliates of, (a) banks regulated by a United States federal bank regulator, (b) broker-dealers regulated by the Commission, (c) insurance companies domiciled in the United States, and (d) producers, users, or traders of commodities, whether or not regulated by the CFTC. Existing counterparties will be reviewed periodically by the Sponsor. UAC also may require that the counterparty be highly rated and/or provide collateral or other credit support.

Creation and Redemption of Units

UAC will create Units only in blocks of 50,000 Units called ''Creation Baskets'' and redeem Units only in blocks of 50,000 Units called ''Redemption Baskets.'' Only authorized purchasers may purchase or redeem Creation Baskets or Redemption Baskets, respectively. An authorized purchaser is under no obligation to create or redeem baskets, and an authorized purchaser is under no obligation to offer to the public Units of any baskets it does create. Baskets are generally created when there is a demand for Units, including, but not limited to, when the market price per Unit is at a premium to the NAV per Unit. Authorized purchasers will then sell such Units, which will be listed on NYSE Arca, to the public at per Unit offering prices that are expected to reflect, among other factors, the trading price of the Units on NYSE Arca, the NAV of UAC at the time the authorized purchaser purchased the Creation Baskets and the NAV at the time of the offer of the Units to the public, the supply of and demand for Units at the time of sale, and the liquidity of the Futures Contracts market and the market for Other Asian Commodities-Related Investments. The prices of Units offered by Authorized Purchasers are expected to fall between UAC's NAV and the trading price of the Units on the NYSE Arca at the time of sale. Similarly, baskets are generally redeemed when the market price per Unit is at a discount to the NAV per Unit. Retail investors seeking to purchase or sell Units on any day will effect such transactions in the secondary market, on NYSE Arca, at the market price per Unit, rather than in connection with the creation or redemption of baskets.

Purchase and redemption orders must be placed by 10:30 a.m. Eastern Time (''E.T.'') or the close of regular trading on the NYSE Arca, whichever is earlier.

The creation and redemption of baskets will only be made in exchange for delivery to UAC or the distribution by UAC of the amount of Treasuries and/or cash equal to the combined NAV of the number of Units included in the baskets being created or redeemed determined as of 4:00 p.m. E.T. on the day the order to create or redeem baskets is properly received.

All proceeds from the sale of Creation Baskets will be invested in the investments described in the Registration Statement. Investments and related margin or collateral are held through the custodian for UAC, BBH & Co., Inc., in accounts with UAC's futures commission merchant, UBS USA, LLC, or other custodian.

UAC and the Units will meet the initial and continued listing requirements applicable to Trust Issued Receipts in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. With respect to application of Rule 10A–3 under the Act,[20] the Trust relies on the exception contained in Rule 10A–3(c)(7).[21] A minimum of 100,000 Units for UAC will be outstanding as of the start of trading on the Exchange.

A more detailed description of UAC's investments, as well as of the investment risks, creation and redemption procedures and fees, is set forth in the Registration Statement. All terms relating to UAC that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Net Asset Value

UAC's NAV will be calculated by:

- Taking the current market value of its total assets, and
- Subtracting any liabilities.

BBH & Co., Inc, the Administrator, will calculate the NAV of UAC once each NYSE Arca trading day. The NAV for a particular trading day will be released after 4:00 p.m. E.T. Trading during the Core Trading Session (9:30 a.m. E.T. to 4:00 p.m. E.T.) on the NYSE

[20] 17 CFR 240.10A–3.

[21] 17 CFR 240.10A–3(c)(7).

Arca typically closes at 4:00 p.m. E.T. The Administrator will use the closing prices on the relevant Futures Exchanges of the Benchmark Futures Contracts (determined at the earlier of the close of such exchange or 2:30 p.m. E.T.) for the contracts traded on the Futures Exchanges, but will calculate or determine the value of all other UAC investments using market quotations, if available, or other information customarily used to determine the fair value of such investments as of the earlier of the close of the NYSE Arca or 4:00 p.m. E.T.

''Other information'' customarily used in determining fair value includes information consisting of market data in the relevant market supplied by one or more third parties including, without limitation, relevant rates, prices, yields, yield curves, volatilities, spreads, correlations or other market data in the relevant market, or information of the types described above from internal sources if that information is of the same type used by UAC in the regular course of its business for the valuation of similar transactions. The information may include costs of funding, to the extent costs of funding are not and would not be a component of the other information being utilized. Third parties supplying quotations or market data may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors, brokers, and other sources of market information.

Dissemination of Indicative Fund Value

In order to provide updated information relating to UAC for use by investors and market professionals, the NYSE Arca will calculate and disseminate throughout the Core Trading Session on each trading day an updated Indicative Fund Value (''IFV''). The IFV will be calculated by using the prior day's closing NAV per Unit of UAC as a base and updating that value throughout the trading day to reflect changes in the most recently reported price level of the Benchmark Futures Contracts as reported by Bloomberg, L.P. or another reporting service.

The IFV disseminated during NYSE Arca Core Trading Session hours should not be viewed as an actual real time update of the NAV, because NAV is calculated only once at the end of each trading day based upon the relevant end of day values of UAC's investments.

The IFV will be widely disseminated by one or more major market data vendors at least every 15 seconds during the NYSE Arca Core Trading Session.[22] The normal trading hours of the Futures Exchanges vary, with some Futures Exchanges ending their trading hours before the close of the Core Trading Session on NYSE Arca (for example, the normal trading hours of the NYMEX are 10:00 a.m. E.T. to 2:30 p.m. E.T.). When UAC holds Futures Contracts from Futures Exchanges with different trading hours than the NYSE Arca there will be a gap in time at the beginning and/or the end of each day during which UAC's Units are traded on the NYSE Arca, but real-time Futures Exchange trading prices for Futures Contracts traded on such Futures Exchanges are not available. During such gaps in time, the IFV will be calculated based on the end of day price of such Futures Contracts from the relevant Futures Exchange's immediately previous trading session. In addition, other Futures Contracts, Other Asian Commodities-Related Investments, and Treasuries held by UAC will be valued by the Administrator, using rates and points received from client-approved third party vendors (such as Reuters and WM Company) and advisor quotes. These investments will not be included in the IFV.

Availability of Information Regarding the Units

The NAV for UAC will be disseminated daily to all market participants at the same time. The Exchange will make available on its Web site daily trading volume of each of the Units, closing prices of such Units, and number of Units outstanding.

The intraday, closing prices, and settlement prices of the Futures Contracts and Futures Basket are or will be readily available from the Web sites of the relevant Futures Exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters, and the value of the Futures Basket will be disseminated at least every 15 seconds. Complete real-time data for the Futures Contracts is available by subscription from Reuters and Bloomberg. The relevant Futures Exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the Futures Contracts are also available on such Web sites, as well as other financial informational sources. Information regarding exchange-traded cash-settled options and cleared swap contracts will be available from the applicable exchanges and major market data vendors. Quotation and last-sale information regarding the Units will be disseminated through the facilities of the CTA. In addition, UAC's Web site, *www.unitedstatesasiancommoditiesbasketfund.com,* will display the applicable end of day closing NAV.

UAC's total portfolio composition will be disclosed each business day that the NYSE Arca is open for trading, on UAC's Web site. The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the name, percentage weighting, and value of each Benchmark Futures Contract, (iii) the specific types, percentage weightings, and values of Other Asian Commodities-Related Investments and characteristics of such Other Asian Commodities-Related Investments, (iv) the name and value of each Treasury security and cash equivalent, and (v) the amount of cash held in UAC's portfolio. In addition, on each business day that the NYSE Arca is open for trading, the Web site disclosure will include the contents and percentage weighting of the Futures Basket and the list and percentage weighting of the Asian Benchmark Commodities. The sources the Sponsor uses to determine global production, consumption, and economic tendencies will be available on the Fund's Web site. UAC's Web site is publicly accessible at no charge.

This Web site disclosure of the portfolio composition of UAC will occur at the same time as the disclosure by the Sponsor of the portfolio composition to authorized purchasers so that all market participants are provided portfolio composition information at the same time. Therefore, the same portfolio information will be provided on the public Web site as well as in electronic files provided to authorized purchasers. Accordingly, each investor will have access to the current portfolio composition of UAC through UAC's Web site.

Trading Rules

The Exchange deems the Units to be equity securities, thus rendering trading in the Units subject to the Exchange's existing rules governing the trading of equity securities. Units will trade on the NYSE Arca Marketplace from 4:00 a.m. to 8:00 p.m. E.T. The Exchange has appropriate rules to facilitate transactions in the Units during all trading sessions. As provided in NYSE

[22] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available IFV published on CTA or other data feeds.

Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

The trading of the Units will be subject to NYSE Arca Equities Rule 8.200, Commentary .02(e), which sets forth certain restrictions on Equity Trading Permit (''ETP'') Holders acting as registered Market Makers in Trust Issued Receipts to facilitate surveillance. See ''Surveillance'' below for more information.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Units. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. These may include: (1) The extent to which trading is not occurring in the underlying futures contracts, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Units will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule [23] or by the halt or suspension of trading of the underlying futures contracts.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV, the value of the Futures Basket, or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the IFV, the value of the Futures Basket, or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products, including Trust Issued Receipts, to monitor trading in the Units. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillances focus on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Units, the physical commodities included in, or options, futures, or options on futures on, Units through ETP Holders, in connection with such ETP Holders' proprietary trades or customer trades through ETP Holders which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on exchanges that are members of the Intermarket Surveillance Group (''ISG''), including CME, COMEX, CBOT, NYMEX, ICE US, ICE Canada, DME, and Malaysia. In addition, the Exchange has entered into comprehensive surveillance sharing agreements with ICE Europe and LME that apply with respect to trading in the applicable Futures Contracts. A list of ISG members is available at *www.isgportal.org.* [24]

In addition, with respect to UAC's Futures Contracts traded on exchanges, not more than 10% of the weight of such Futures Contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

The Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. Specifically, the Information Bulletin will discuss the following: (1) The risks involved in trading the Units during the Opening and Late Trading Sessions when an updated IFV will not be calculated or publicly disseminated; (2) the procedures for purchases and redemptions of Units in Creation Baskets and Redemption Baskets (and that Units are not individually redeemable); (3) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Units; (4) how information regarding the IFV is disseminated; (5) that a static IFV will be disseminated, between the close of trading on the applicable Futures Exchange and the close of the NYSE Arca Core Trading Session; (6) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Units prior to or concurrently with the confirmation of a transaction; and (7) trading information.

In addition, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to UAC. The Exchange notes that investors purchasing Units directly from UAC will receive a prospectus. ETP Holders purchasing Units from UAC for resale to investors will deliver a prospectus to such investors. The Information Bulletin will also discuss any exemptive, no-action, and interpretive relief granted by the Commission from any rules under the Act.

In addition, the Information Bulletin will reference that UAC is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference that the CFTC has regulatory jurisdiction over the trading of Futures Contracts traded on U.S. markets.

The Information Bulletin will also disclose the trading hours of the Units of UAC and that the NAV for the Units is calculated after 4:00 p.m. E.T. each trading day. The Information Bulletin will disclose that information about the Units of UAC is publicly available on UAC's Web site.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [25] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Units will be listed and traded on the Exchange

[23] *See* NYSE Arca Equities Rule 7.12.

[24] The Exchange notes that not all Other Asian Commodities-Related Investments may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[25] 15 U.S.C. 78f(b)(5).

pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.200 and Commentary .02 thereto. The Sponsor is not a broker-dealer or a registered investment adviser. The Sponsor represents that it will implement and maintain procedures designed to prevent the use and dissemination of material non-public information regarding the Futures Basket. UAC will invest in Benchmark Futures Contracts to the fullest extent possible, turning next to investments in other Futures Contracts, and finally to Other Asian Commodities-Related Investments only if required to by applicable regulatory requirements or in adverse market conditions.[26] The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Units in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. With respect to UAC's Futures Contracts traded on exchanges, not more than 10% of the weight of such Futures Contracts in the aggregate shall consist of components whose principal trading market is not a member of ISG or is a market with which the Exchange does not have a comprehensive surveillance sharing agreement. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. The intraday, closing prices, and settlement prices of the Futures Contracts held by UAC are readily available from the Web sites of the relevant Futures Exchanges, automated quotation systems, published or other public sources, or on-line information services such as Bloomberg or Reuters. The relevant Futures Exchanges also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. Quotation and last-sale information for the Units will be available via CTA. In addition, UAC's Web site will display the applicable end of day closing NAV. UAC's total portfolio composition will be disclosed on its Web site.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that a large amount of information is publicly available regarding UAC and the Units, thereby promoting market transparency. The IFV and value of the Futures Basket will be disseminated by one or more major market data vendors at least every 15 seconds during the regular NYSE Arca Core Trading Session. Trading in Units of UAC will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Units inadvisable. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Units. UAC's total portfolio composition will be disclosed each business day that the NYSE Arca is open for trading, on UAC's Web site at *www.unitedstatesasiancommodities basketfund.com.* The Web site disclosure of portfolio holdings will be made daily and will include, as applicable, (i) the composite value of the total portfolio, (ii) the name, percentage weighting, and value of each Benchmark Futures Contract, (iii) the specific types, percentage weightings, and values of Other Asian Commodities-Related Investments and characteristics of such Other Asian Commodities-Related Investments, (iv) the name and value of each Treasury security and cash equivalent, and (v) the amount of cash held in UAC's portfolio. In addition, on each business day that the NYSE Arca is open for trading, the Web site disclosure will include the contents and percentage weighting of the Futures Basket and the list and percentage weighting of the Asian Benchmark Commodities.

The Exchange may halt trading during the day in which an interruption to the dissemination of the IFV, the value of the Futures Basket, or the value of the underlying Futures Contracts occurs. If the interruption to the dissemination of the IFV, value of the Futures Basket, or the value of the underlying Futures Contracts persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. In addition, if the Exchange becomes aware that the NAV with respect to the Units is not disseminated to all market participants at the same time, it will halt trading in the Units until such time as the NAV is available to all market participants.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of trust issued receipts that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Units and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding UAC's holdings, IFV, and quotation and last-sale information for the Units.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2012–120 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.

[26] *See* note 17, *supra.*

All submissions should refer to File Number SR–NYSEArca–2012–120. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549–1090, on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–120 and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27551 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68162; File No. SR–NYSEMKT–2012–62]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Temporary Suspension of Those Aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities That Would Not Permit Designated Market Makers and Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy From November 5, 2012 Until the Earlier of When Phone Service Is Fully Restored or Friday, November 9, 2012

November 5, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2012, NYSE MKT LLC (''NYSE MKT'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Designated Market Makers (''DMMs'') and Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy from November 5, 2012 until the earlier of when phone service is fully restored or Friday, November 9, 2012. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor[3] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[4] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

As of Monday, November 5, 2012, although power has been restored to the downtown Manhattan vicinity, other services are not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange are still not fully operational on the Trading Floor, which impacts the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36—Equities.

Because of intermittent cell phone service, many Exchange authorized and provided portable phones continue to not be functional and therefore Floor brokers still cannot use the Exchange authorized and provided portable phones, pursuant to Rules 36.20—Equities and 36.21—Equities. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone service continues to be intermittent, Floor brokers should be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to Rule 6A—Equities, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[4] *See* Securities Exchange Act Release No. 68138 (Nov. 1, 2012) (SR–NYSEMKT–2012–59).

permitted to use personal portable phone devices in lieu of the non-operational Exchange authorized and provided portable phones.

Similarly, the Exchange continues to experience problems with the DMM unit wired telephone lines, which are permitted pursuant to Rule 36.30—Equities. In some circumstances, the DMM unit location at the Trading Floor post may receive incoming calls, but the phones are not capable of making outgoing calls. The continued inability of a DMM unit to use its telephone lines could impact the ability of a DMM unit to comply with its obligations in securities registered to the DMM unit. For example, if a DMM unit experiences connectivity issues or problems with its algorithms and needs to speak with one of its back-office support teams, with the current phone limitations, the DMM would not be able to do so.

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor. The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities to permit use of the personal portable phones on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[5]

In particular, as set forth in the prior filing, Floor brokers and DMMs that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker and DMM member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker and DMM member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

In addition, the Exchange further notes that DMM units and their Floor-based personnel would remain subject to both the Rule 36.30—Equities and 98—Equities limitations of whom they may contact directly from the Trading Floor.[6] However, because of the extensive, ongoing issues with power and phone lines in the New York City area and vicinity, the persons with whom a DMM may be permitted to communicate from the Trading Floor may not be at their regular physical location. Accordingly, the Exchange proposes to continue to temporarily permit DMMs to use their personal portable phones to contact the off-Floor persons that they are permitted to contact by rule, even if such off-Floor personnel are not located in their regular office locations. The Exchange believes that this relief is consistent with guidance issued by FINRA, which recognizes that in the aftermath of Hurricane Sandy, a FINRA member may relocate displaced office personnel to temporary locations.[7]

As noted above, because the Exchange is dependent on third-party carriers for both wired and wireless phone service on the Trading Floor, the Exchange does not know how long the proposed temporary suspension will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored until at least Wednesday, November 7, 2012, and most likely later than that date. Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36—Equities that do not permit DMMs or Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, November 9, 2012.[8]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36—Equities that restrict the use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable both Floor brokers and DMMs to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, both Floor brokers and DMMs would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor. For DMM units, any inability to communicate with personnel from their off-Floor offices, clearing firms, or non-trading related support staff, regardless of where such off-Floor personnel may be located in the aftermath of Hurricane Sandy, could compromise the DMM unit's ability to meet their obligations, particularly if the DMM unit experiences issues with connectivity or its algorithms.

[5] *See id.* (notice that describes the terms and conditions of the temporary suspension).

[6] Rule 36.30—Equities restricts a DMM unit from using the post telephone lines to transmit to the Floor orders for the purchase or sale of securities. In addition, Rule 98 sets forth restrictions on communications between the Floor-based personnel of a DMM unit and off-Floor personnel. *See, e.g.,* Rules 98(c)(2)(A)—Equities, (d)(2)(B)(iii)—Equities, (f)(1)(A)(ii)—Equities, and (f)(2)(A)—Equities.

[7] *See* FINRA Regulatory Notice 12–45. The Exchange notes that all member organizations operating a DMM unit are also FINRA members, and therefore subject to the guidance set forth in FINRA Regulatory Notice 12–45.

[8] The Exchange will provide notice of this rule filing to the DMMs and Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to November 9, 2012, the Exchange will notify DMMs and Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

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 proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(6) thereunder.[12]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [13] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission notes that doing so will allow the Exchange to continue uninterrupted the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filing seeking such relief, until the earlier of when phone service is fully restored or Friday, November 9, 2012. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*.Please include File Number SR–NYSEMKT–2012–62 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–2012–62. 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–2012–62 and should be submitted on or before December 4, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27549 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 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, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68170; File No. 4–655]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing of Proposed Minor Rule Violation Plan

November 6, 2012.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 (the ''Act'') [1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on October 15, 2012, BOX Options Exchange LLC (the ''Exchange''), filed with the Securities and Exchange Commission (the ''Commission'') a proposed minor rule violation plan (''MRVP'') with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act [3] requiring that a self-regulatory organization (''SRO'') promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with Rule 19d–1(c)(2) under the Act, the Exchange proposed to designate certain specified rule

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission shall not be considered ''final'' for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

violations as minor rule violations, and requested that it be relieved of the prompt reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis.

The Exchange proposes to include in its MRVP the procedures and violations currently included in Exchange Rule 12140 (''Imposition of Fines for Minor Rule Violations'').[5]

According to the Exchange's proposed MRVP, under Rule 12140, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule violation listed in Rule 12140(d). The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed for each such violation, and the date by which such fine shall be paid, such determination becomes final or such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under the Exchange Rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written answer, at which point the matter shall become a disciplinary proceeding.

The Exchange proposes that, as set forth in Exchange Rule 12140(d), violations of the following rules would be appropriate for disposition under the MRVP: Rule 3120 (Position Limits); Rule 10030 (Focus Reports); Rule 10040 (Requests for Trade Data); Rules 7110(a), 7150(d)–(f), and 8050(a)–(d) (Order Entry); Rule 8040(a)(7) (Quotation Parameters); Rule 8050(e) (Continuous Quotes); Rule 3180 (Mandatory Systems Testing); Rules 2020, 2040, and 2050 related to failure to timely file amendments to Form U4, Form U5, and Form BD; Rule 9000(c)–(e), (g) and (h) (Contrary Exercise Advice); Rule 15020 (Locked and Crossed Markets); Rule 8030(e) (Market Maker Assigned Activity); Rule 8050(c)(2)–(4) (Request for Quote); and Rule 15010(a) (Trade-Through).[6]

Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include, among other things: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[7]

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Exchange's proposed MRVP, including whether the proposed MRVP is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. 4–655 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 No. 4–655. 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 MRVP that are filed with the Commission, and all written communications relating to the proposed MRVP 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 proposed MRVP 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 No. 4–655 and should be submitted on or before December 4, 2012.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder,[8] after December 4, 2012, the Commission may, by order, declare the Exchange's proposed MRVP effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed MRVP, File No. 4–655, and to the period of its effectiveness, which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of the Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27527 Filed 11–9–12; 8:45 am]

BILLING CODE 8011–01–P

[5] On April 27, 2012, the Exchange's application for registration as a national securities exchange, including the rules governing the Exchange, was approved. *See* Securities Exchange Act Release No. 66871 (April 27, 2012), 77 FR 26323 (May 3, 2012) (File No. 10–206).

[6] The Commission notes that the list of violations set forth in this notice corrects certain rule reference errors that are presently in Exchange Rule 12140. The Exchange has informed Commission staff that it will submit a rule filing to correct such errors.

[7] The Exchange attached a sample form of the quarterly report with its submission to the Commission.

[8] 15 U.S.C. 78s(d)(1); 17 CFR 240.19d–1(c)(2).

[9] 17 CFR 200.30–3(a)(44).

[1] 15 U.S.C. 78s(b)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68164; File No. SR–CBOE–2012–071]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change To Increase the Maximum Term for LEAPS to Fifteen Years

November 6, 2012.

I. Introduction

On July 24, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

thereunder,[2] a proposed rule change to increase the maximum term for Long-Term Equity Options Series (''LEAPS'') to fifteen years. The proposed rule change was published for comment in the **Federal Register** on August 10, 2012.[3] A designation of a longer period for Commission action was published in the **Federal Register** on September 25, 2012.[4] The Commission received one comment on the proposed rule change.[5] On September 6, 2012, CBOE responded to the comment letter.[6] This order approves the proposed rule change.

II. Description of the Proposal

Currently, the maximum term for equity and interest rate LEAPS is 36 months (three years) and the maximum term for index LEAPS is 60 months (five years). CBOE proposes to amend CBOE Rules 5.8, 23.5(b) and 24.9(b) to increase the maximum term for all LEAPS to 180 months (fifteen years).[7] CBOE notes that similar fifteen year maximum terms exist for FLEX Options.[8]

CBOE states that expanding the eligible term for all LEAPS to fifteen years would allow the Exchange to offer products in an exchange-traded environment that could compete with comparable over-the counter (''OTC'') products. According to CBOE, it has received numerous requests from market participants that currently enter into OTC positions that have longer-dated expirations than are currently available on CBOE to list LEAPS with longer dated expirations on the Exchange. CBOE represents that it has confirmed that the OCC can configure its systems to support LEAPS that have a maximum term of fifteen years.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

KOR suggests that CBOE's proposal lacks data evidencing actual interest in extended LEAPS terms.[11] With regard to interest in the proposed product, CBOE responds that its proposal is geared toward an unmet demand of institutional investors, and was prompted by numerous requests from market participants, such as insurance companies offering equity-linked variable annuities, that have typically turned to OTC dealers to trade options with longer-dated expirations.[12] CBOE also states that it believes that additional institutional demand for longer-dated LEAPS (such as, for example, S&P 500 Index options) would come from sell-side firms hedging longer-dated OTC instruments (such as, for example, S&P variance).[13] Further, CBOE states that virtually all of the firms it queried suggested that the ideal maturity for hedging trading activity exceeds the 10-year mark and that it seeks to offer various maturities (particularly in S&P 500 Index options) out to fifteen years in order to provide a more robust and flexible market for longer-dated options.

KOR also expresses concern that the proposal does not specify classes to which the proposal would apply and that the proposal could unduly burden the market through its potential impact on quote traffic and the costs associated with disseminating and maintaining the data for longer-termed LEAPS.[14] CBOE states that it does not currently know all of the specific classes for which there will be future market demand for longer-dated LEAPS, and thus it is unable to identify such classes at this time.[15] CBOE notes, however, that S&P 500 Index options are one of the classes that it anticipates would underlie longer-dated LEAPS.[16] CBOE also states that it does not expect there to be a significant increase to quote traffic because CBOE anticipates listing longer-dated LEAPS in response to specific market demand and does not expect to significantly populate expirations.[17] In addition, CBOE notes that certain liquidity providers are not subject to quoting obligations for LEAPS, which will assist with quote traffic mitigation.[18]

Given CBOE's representation that there is demand for options with longer-dated expirations from institutional investors who are currently trading such options in the OTC market,[19] the Commission believes that the proposal is reasonably designed to provide such investors with additional means of hedging equity portfolios from long-term market risk with an exchange-traded standardized security, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets. The Commission notes that fifteen-year expirations are already permitted for non-standardized FLEX Options.[20] In addition, the Commission notes the Exchange's representation that it does not anticipate a significant increase in quote traffic.[21] Accordingly, for the reasons discussed above, the Commission believes that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–CBOE–2012–071) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–27510 Filed 11–9–12; 8:45 am]

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[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67600 (August 6, 2012), 77 FR 47890 (''Notice'').

[4] *See* Securities Exchange Act Release No. 67892 (September 19, 2012), 77 FR 59029.

[5] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Christopher Nagy, President, KOR Trading LLC, dated August 17, 2012 (''KOR Letter'').

[6] *See* letter to Elizabeth M. Murphy, Secretary, Commission, from Jenny Klebes-Golding, Senior Attorney, CBOE, dated September 6, 2012 (''CBOE Letter'').

[7] CBOE also proposes to make technical, non-substantive changes to CBOE Rules 5.8 and 24.9 to delete ''®'' symbols.

[8] *See* Securities Exchange Act Release No. 58890 (October 30, 2008), 73 FR 66085 (November 6, 2008) and CBOE Rules 24A.4(a)(2)(iv) and 24B.4(a)(2)(iv).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* KOR Letter, *supra* note 5.

[12] *See* CBOE Letter, *supra* note 6.

[13] *Id.*

[14] *See* KOR Letter, *supra* note 5.

[15] *See* CBOE Letter, *supra* note 6.

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *See* Notice; *see also* CBOE Letter, *supra* note 6.

[20] *See supra* note 8.

[21] *See* CBOE Letter, *supra* note 6.

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2012–0058]

Rescission of Social Security Acquiescence Ruling 05–1(9)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling 05–1(9)—*Gillett-Netting* v. *Barnhart,* 371 F.3d 593 (9th Cir. 2004).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e)(1) and 416.1485(e)(1), the Commissioner of Social Security gives notice of the rescission of Social Security Acquiescence Ruling (AR) 05–1(9).

DATES: *Effective Date:* November 13, 2012.

FOR FURTHER INFORMATION CONTACT: Karen Aviles, Office of the General Counsel, Office of Program Law, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–3457, or TTY 410–966–5609, for information about this notice. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov.*

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of the case or is unsuccessful on further review. As provided by 20 CFR 404.985(e)(1) and 416.1485(e)(1), we may rescind an AR as obsolete and apply our interpretation of the Act or regulations if the Supreme Court overrules or limits a circuit court holding that was the basis of an AR.

On September 22, 2005, we issued AR 05–1(9) to reflect the holding of the United States Court of Appeals for the Ninth Circuit in *Gillett-Netting* v. *Barnhart,* 371 F.3d 593 (9th Cir. 2004), *reh'g denied* (9th Cir. Dec. 14, 2004) (70 FR 55656). The Ninth Circuit held that an undisputed biological child of an insured individual who was conceived by artificial means after the insured's death is the insured's ''child'' for purposes of sections 202(d)(1) and 212(e)(1) of the Act. The Ninth Circuit rejected our longstanding interpretation of section 216(h) of the Act, as set forth in the regulations, that state intestacy law determines the child-parent relationship.

On January 4, 2011, in *Capato* v. *Commissioner of Social Security,* 631 F.3d 626 (3d Cir. 2011), the United States Court of Appeals for the Third Circuit followed the decision in *Gillett-Netting* and held that under sections 202(d)(1) and 216(e)(1) of the Act, a posthumously-conceived applicant can satisfy the Act child-parent relationship requirement by demonstrating that he or she is the undisputed biological child of the deceased insured individual. Similar to the Ninth Circuit, the Third Circuit found that section 216(h) requirement to apply state intestacy law is triggered only in cases where parentage is disputed.

The Government sought review of the Third Circuit's decision in the Supreme Court of the United States, and on May 21, 2012, the Supreme Court reversed the Third Circuit's decision. The Supreme Court upheld our interpretation of section 216(h) of the Act, under which we apply state intestacy law when we determine a child-parent relationship under sections 202(d)(1) and 216(e)(1) of the Act. *Astrue* v. *Capato,* ____U.S. ____, 132 S. Ct. 2021 (2012).

The Supreme Court stated that, ''The SSA's interpretation of the relevant provisions, adhered to without deviation for many decades, is at least reasonable; the agency's reading is therefore entitled to this Court's deference under *Chevron.* * * * *Chevron* deference is appropriate 'when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law, and that the agency interpretation claiming deference was promulgated in the exercise of that authority.' * * * Here, as already noted, the SSA's longstanding interpretation is set forth in regulations published after notice-and-comment rulemaking.'' 132 S. Ct. at 2033–2034 (citations omitted).

Because, in *Capato,* the Supreme Court rejected the holding in *Gillett-Netting* by upholding our policy of applying state intestacy law in all child-parent determinations, we are rescinding AR 05–1(9), in accordance with 20 C.F.R. 404.985(e)(1), 416.1485(e)(1).

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: November 5, 2012.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. 2012–27447 Filed 11–9–12; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 8085]

Culturally Significant Object Imported for Exhibition Determinations: ''Michelangelo's David Apollo''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object to be included in the exhibition ''Michelangelo's David Apollo,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the National Gallery of Art, Washington, DC, from on or about December 13, 2012, until on or about March 3, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 6, 2012.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–27545 Filed 11–9–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Delegation of Authority No. 346]

Delegation by the Secretary of State to the Assistant Secretary for East Asian and Pacific Affairs of the Authority To Waive the Visa Ban Under the JADE Act

By virtue of the authority vested in the Secretary by the laws of the United

States, including the State Department Basic Authorities Act, as amended (22 U.S.C. 2651a), Section 5(a) of the Tom Lantos Block Burmese Junta's Anti-Democratic Efforts (JADE) Act of 2008 (Pub. L. 110–286), Presidential Memorandum of August 29, 2012, I hereby delegate to the Assistant Secretary for East Asian and Pacific Affairs, to the extent authorized by law, the authority under Section 5(a)(2) to waive the visa bans imposed pursuant to Section 5(a)(1) of Public Law 110–286.

Any act, executive order, regulation, or procedure subject to, or affected by, this delegation shall be deemed to be such act, executive order, regulation, or procedure as amended from time to time.

Notwithstanding this delegation of authority, the Secretary, the Deputy Secretary, or the Deputy Secretary for Management and Resources may at any time exercise any authority or function delegated by this delegation of authority.

This document shall be published in the **Federal Register**.

Dated: September 29, 2012.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2012–27547 Filed 11–9–12; 8:45 am]

BILLING CODE 4710–30–P

DEPARTMENT OF STATE

[Public Notice 8086]

Department of State: State Department Sanctions Information and Guidance

AGENCY: Department of State.

ACTION: Policy guidance.

SUMMARY: The Department of State is publishing information and guidance for the public addressing the State Department's sanctions authorities, including under the Iran Sanctions Act, as amended, certain Executive Orders related to Iran sanctions, section 106 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010 (CISADA) and certain related provisions of law, and certain statutes and Executive Orders related to terrorism and weapons of mass destruction.

DATES: The Department of State will accept comments on the Guidance on Iran Sanctions and the Guidance on Sensitive Technology until January 12, 2013.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any email at *sanctions@state.gov* with the subject line, ''Sanctions Guidance''.

SUPPLEMENTARY INFORMATION: The Secretary of State has legal authority to make determinations regarding sanctions on individuals and entities that meet certain criteria in three areas that are important to the national security, foreign policy, and economy of the United States: certain activities related to Iran; certain activities related to weapons proliferation; and certain activities related to global terrorism. This notice includes policy guidance outlining the State Department's authorities under the Iran Sanctions Act, as amended, and related Executive Orders (EOs); provides guidelines to further describe the technologies that may be considered ''sensitive technology'' for purposes of section 106 of CISADA, as required under section 412 of the Iran Threat Reduction and Syria Human Rights Act of 2012, and other related provisions of law; and provides information on the State Department's authorities under certain other EOs and statutory provisions related to terrorism and weapons of mass destruction.

I. Guidance on Iran Sanctions

Iran Sanctions Act. Section 5(a) of the Iran Sanctions Act of 1996 (ISA) (Pub. L. 104–172) (50 U.S.C. 1701 note), as amended, including by the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) (Pub. L. 111–195) (22 U.S.C. 8501 *et seq.*), and most recently by the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) (Pub. L. 112–158), requires that the President impose or waive sanctions on persons, and certain affiliated persons, that are determined to have knowingly engaged in specified activities. The President has delegated the responsibility to make these determinations to the Secretary of State. As such, the Secretary of State is required to impose or waive sanctions on persons, including certain affiliated persons, that the Secretary of State determines have: (1) Made certain investments in Iran's energy sector; (2) provided to Iran certain goods, services, or technology for Iran's refined petroleum sector; (3) provided certain refined petroleum products to Iran or provided goods, services, technology, information, or support for refined petroleum imports into Iran; (4) entered into certain types of joint ventures involving the development of petroleum resources outside of Iran; (5) contributed to the maintenance or enhancement of Iran's development of petroleum resources and refined petroleum products; (6) contributed to the maintenance or expansion of Iran's production of petrochemical products; (7) been connected in certain ways with a vessel used to transport crude oil from Iran (with certain exceptions made for transactions related to the transportation of crude oil from Iran to countries that the Secretary of State has determined qualified for an exception to sanctions under section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012, Public Law 112–81, as amended); or (8) been connected in certain ways with a vessel that conceals the Iranian origin of the crude oil or refined petroleum products.

There is an exception, outlined in section 5(a)(9) of ISA, as amended, to sanctions applicable to categories (7) and (8) above for persons that provide underwriting services or insurance or reinsurance if the Secretary of State determines that the person has exercised due diligence in establishing and enforcing official policies, procedures, and controls to ensure that the person does not provide underwriting services or insurance or reinsurance for the transportation of crude oil or refined petroleum products from Iran in a manner for which sanctions may be imposed under either of those sections. In addition to this exception, all persons involved in activities in high-risk sectors should consider implementing enhanced due diligence in order to minimize the risks of inadvertently becoming engaged in a sanctionable transaction. This could include, but is not limited to, confirming that transactions in these sectors do not involve an entity owned or controlled by Iran or that Iran is not otherwise connected to any entities in the commercial transactions, including by reviewing the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons (SDN) List; searching commercial databases and verifying ownership structures of unknown companies; and, in the case of transportation or insurance of crude oil and petroleum products, verifying that Iran is not the origin of the cargo. Persons with questions on sections 5(a)(7)–(9) of ISA, as amended, should contact the State Department's Office of Sanctions Policy and Implementation in the Bureau of Economic and Business Affairs at *eb-iransanctions@state.gov* or at: (202) 647–7489.

Section 5(b) of ISA, as amended, requires the Secretary of State to impose or waive sanctions on persons, and certain affiliated persons, that are determined to have: (1) Exported or transferred goods, services, technology, or other items that would contribute

materially to Iran's ability to acquire or develop chemical, biological, or nuclear weapons, or destabilizing numbers and types of advanced conventional weapons, or facilitated such activities; or (2) entered into a joint venture involving Iran and activity relating to the mining, production, or transportation of uranium.

In addition to expanding the types of sanctionable activities under ISA, the TRA added new sanctions that can be imposed under ISA. For activities commenced on or after August 10, 2012, section 6 of ISA, as amended, now permits the Secretary to choose from a list of 12 possible sanctions; section 5(a) requires selection of at least five of these sanctions. In addition, new section 5(a)(8)(B) of ISA, as amended, which relates to concealing the Iranian origin of crude oil and refined petroleum products, authorizes an additional sanction: prohibiting a vessel owned, operated, or controlled by a person, including a controlling beneficial owner, with respect to which the Secretary of State has imposed sanctions, from landing at a port in the United States for a period of not more than two years after the date on which the Secretary of State imposes the sanction. If this sanction is chosen by the Secretary of State, the Department of State would provide the relevant information on sanctioned persons and vessels to the United States Coast Guard's Office of Commercial Vessel Compliance and the Captains of the Ports would inform the vessel that it is prohibited from entering the United States for the prescribed period consistent with the Secretary of State's decision under ISA, as amended.

The other new sanctions, which are applicable to all sanctionable activities outlined in ISA, as amended, and occurring on or after August 10, 2012, are: (1) Prohibiting any U.S. person from investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person; (2) denying a visa to and excluding from the United States any alien determined to be a corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person; and (3) imposing on the principal executive officer or officers of any sanctioned person, or on persons performing similar functions and with similar authorities as such officer or officers, any of the sanctions outlined in section 6(a) of ISA, as amended.

Potential ISA sanctions that were already in place before the enactment of TRA include: (1) Denying Export-Import Bank financing assistance in connection with the export of goods or services to the sanctioned person; (2) denying issuance of export licensing or other authority to export any goods or technology to the sanctioned person; (3) prohibiting U.S. financial institutions from making certain loans or providing certain credits to the sanctioned person; (4) prohibiting a sanctioned financial institution from acting as a primary dealer in U.S. government debt instruments or serving as a repository of U.S. government funds; (5) prohibiting U.S. government agencies from procuring or entering into contracts for the procurement of any goods or services from a sanctioned person; (6) prohibiting any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest; (7) prohibiting transfers of credit or payments between financial institutions or by, through, or to any financial institution if the transactions are within the jurisdiction of the United States and involve any interest of the sanctioned person; (8) blocking all property and interests in the property of the sanctioned person that are within the jurisdiction of the United States, and providing that such property and interests in property may not be transferred, paid, or otherwise dealt in; and (9) restricting or prohibiting imports of goods, technology, or services into the United States from the sanctioned person. In addition, section 5(b)(3) of ISA, as amended, provides for additional sanctions relating to the transfer of nuclear technology.

The President initially delegated the authorities associated with these sanctions to the Secretary of State, in consultation with various other agencies, in 1996 (*see* 61 FR 64249 (Dec. 4, 1996)). Another delegation was issued in 2010 when CISADA was enacted (*see* 75 FR 67025 (Nov. 1, 2010)), and Executive Order 13574 followed on May 23, 2011 (*see* 76 FR 30505 (May 25, 2011)). The most recent Presidential delegation memorandum was issued on October 9, 2012, to address the changes to ISA made by TRA (*see* 77 FR 62139 (Oct. 12, 2012)), along with Executive Order 13628, issued on October 9, 2012 (*see* 77 FR 62139 (Oct. 12, 2012)). This most recent Presidential delegation memorandum also delegated to the Secretary of State the President's authority under section 212 of TRA, which draws on ISA authorities, to sanction persons that knowingly provide underwriting services or insurance or reinsurance for the National Iranian Oil Company, the National Iranian Tanker Company, or a successor entity to either company. There is authority to not impose sanctions under this provision with respect to persons exercising due diligence in establishing and enforcing official policies, procedures, and controls to ensure that such insurance is not provided. There is also authority, under section 312(d) of the TRA, to not impose sanctions with respect to transactions that are solely for the purchase of petroleum or petroleum products and for which sanctions may be imposed solely as a result of the involvement of NIOC or NITC in the transactions, where the country receiving the petroleum or petroleum products has been determined by the Secretary of State to qualify for an exception to sanctions under section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as amended.

For purposes of ISA, ''person'' means a natural person as well as a corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise, as well any successors to any such entities.

Section 4 of ISA provides for a waiver of the application of sanctions provisions under certain circumstances. Section 4 also provides for the initiation of investigations and contains a ''Special Rule'' outlining the circumstances under which an investigation may be terminated or not initiated. In deciding whether to invoke the Special Rule or take another step to mitigate sanctions such as a waiver under this section, the State Department typically requires a letter providing certain assurances and supporting documentation. More information regarding what is specifically required is provided to companies that seek to be considered for application of the Special Rule. Section 7 of ISA provides authority for the Secretary of State to issue advisory opinions, when specifically requested, with respect to whether a proposed activity would subject a person to sanctions under ISA. Section 9 of ISA, as amended, provides for delay of imposition of sanctions or waiver in certain circumstances, and provides that a sanction imposed under section 5 of ISA, as amended, shall remain in effect for not less than two years or, if the Secretary of State determines and certifies to the Congress that the sanctioned person is no longer engaging in sanctionable activities and that the Secretary of State has received reliable assurances that such person will

not knowingly engage in such activities in the future, for not less than one year. Questions about implementation of ISA, as amended, can be directed to the State Department's Office of Sanctions Policy and Implementation in the Bureau of Economic and Business Affairs at *eb-iransanctions@state.gov* or at (202) 647–7489. A list of entities sanctioned pursuant to section 5 of ISA, as amended, can be found at *www.state.gov/iransanctions.*

Executive Order 13590 (issued on November 20, 2011). EO 13590 provides for sanctions by the Secretary of State on persons knowingly engaging in activities that could directly and significantly contribute to the maintenance or enhancement of Iran's ability to develop petroleum resources located in Iran, or the maintenance or expansion of Iran's domestic production of petrochemical products, and on certain affiliated persons. Entities involved in transactions in these sectors are expected to conduct adequate due diligence to confirm that transactions do not involve an entity owned or controlled by Iran or that Iran is not otherwise connected to any entities in the commercial transactions.

For purposes of the Executive Orders addressed in this guidance the term ''person'' means an individual or entity. For purposes of Executive Orders and statutes addressed in this guidance, the following definitions apply:

• ''Petroleum'' (also known as crude oil) means a mixture of hydrocarbons that exists in liquid phase in natural underground reservoirs and remains liquid at atmospheric pressure after passing through surface separating facilities;

• ''Petroleum products'' includes unfinished oils, liquefied petroleum gases, pentanes plus, aviation gasoline, motor gasoline, naptha-type jet fuel, kerosene-type jet fuel, kerosene, distillate fuel oil, residual fuel oil, petrochemical feedstocks, special naphthas, lubricants, waxes, petroleum coke, asphalt, road oil, still gas, and miscellaneous products obtained from the processing of: crude oil (including lease condensate), natural gas, and other hydrocarbon compounds. The term does not include natural gas, liquefied natural gas, biofuels, methanol, and other non-petroleum fuels. Since enactment of section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), questions have been raised about some other specific products and whether they would fall under this definition. The following additional products are considered petroleum products for the purposes of this guidance: condensates (occurring naturally or derived from the processing of petroleum or natural gas), and liquefied petroleum gases (LPGs) including propane and butane. This list, however, is not exhaustive and other products not on this list that fall under the definition above remain potentially sanctionable.

• ''Petrochemical products'' includes any aromatic, olefin, and synthesis gas, and any of their derivatives, including ethylene, propylene, butadiene, benzene, toluene, xylene, ammonia, methanol, and urea. Since the issuance of E.O. 13590, questions have been raised about some other specific products and whether they would fall under this definition. The following additional products are considered petrochemical products for the purposes of this guidance: butene, ethylhexanol, acetic acid, acrylonitrile butadiene styrene, alachlor, ammonium nitrate, ammonium sulfate, anhydrous ammonia, argon, butachlor, C2+, C3+, C4 cut, chlorinated paraffin, chlorine, chloracetyl chloride, citric acid, diammonium phosphate, diethanolamine, ethylene glycol, diethylene glycol, dioctyl phthalate, dodecycle benzene, ethane, ethoxylates, ethylbenzene, ethylene dichloride, ethylene glycol, ethylene oxide, heavy alkyl benzene, high density polyethylene, hydrochloric acid, isoprene, linear alkyl benzene, linear low density polyethylene, low density polyethylene, melamine, methyl tertiary butyl ether, methylene diphenyl diisocyanate, mid density polyethylene, monoethanolamine, monoethylene glycol, nitric acid, nitrogen, orthoxylene, paraxylene, pentene, perchlorine, phosphoric acid, phthalic anhydride, polybutadiene, polyethylene terephthalate, polypropylene, polystyrene, polyvinyl chloride, propylene, purified terephthalic acid, pyrolysis gasoline, raffinate, soda ash, sodium bicarbonate, sodium carbonate, sodium chloride, sodium hydroxide, sodium hypochlorite, styrene, tyrene acrylonite copolymer, sulfur, sulfuric acid, styrene butadiene, toluene diisocyanate, triethanolamine, triethylene glycol, and vinyl chloride monomer. This list, however, is not exhaustive and other products not on this list that fall under the definition above remain potentially sanctionable. ''Petrochemical products'' do not include finished products derived from these substances, such as pipes, plastic bags, tires, and solvents. For purposes of this and other E.O.'s and legislation outlined in this guidance, an item cannot be both a petroleum product and a petrochemical product.

Executive Order 13622 (issued on July 30, 2012). Section 2 of E.O. 13622 provides for sanctions by the Secretary of State on a person determined to knowingly, on or after July 31, engage in a significant transaction for the purchase or acquisition of petroleum or petroleum products from Iran or for the purchase or acquisition of petrochemical products from Iran, and on certain affiliated persons. Entities involved in transactions in these sectors are expected to conduct adequate due diligence to confirm that Iran is not the country of origin of the petroleum, petroleum products, or petrochemicals. Certain exceptions are made for transactions for the purchase of petroleum or petroleum products where the Secretary of State has granted exceptions to sanctions under section 1245(d)(4)(D) of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. 112–81), as amended.

Executive Order 13628 (issued on October 9, 2012). Sections 5, 6, and 7 of E.O. 13628 authorize the Secretary of State to impose certain sanctions in sections 5(a) and 6 of ISA that were enacted by CISADA for activity occurring between July 1, 2010 and August 10, 2012. Section 201 of TRA amended the effective date of the relevant sanctions to August 10, 2012, and did not otherwise preserve their applicability for activity occurring between the enactment dates of CISADA (July 1, 2010) and TRA (August 10, 2012).

Questions about the State Department's implementation of these Executive Orders can be directed to the State Department's Office of Sanctions Policy and Implementation in the Bureau of Economic and Business Affairs at *eb-iransanctions@state.gov* or at (202) 647–7489.

II. Guidance on the Provision of ''Sensitive Technology'' to Iran and Syria

Section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (CISADA) (Pub. L. 111–195) (22 U.S.C. 8501 *et seq.*) prohibits U.S. government agencies from entering into or renewing procurement contracts with individuals or entities that export ''sensitive technology'' to Iran. Further, sections 402 and 703 of the Iran Threat Reduction and Syria Human Rights Act of 2012 (TRA) (Pub. L. 112–158) mandate the imposition of sanctions on persons who are determined to have engaged in certain activities, including, on or after August 10, 2012, to knowingly transfer, or facilitate the transfer of ''sensitive technology'' to

Iran or Syria, or provide services with respect to ''sensitive technology'' after such technology is transferred to Iran or Syria.

Section 106 of CISADA defines ''sensitive technology'' as ''hardware, software, telecommunications equipment, or any other technology, that the President determines is to be used specifically—(A) to restrict the free flow of unbiased information in Iran; or (B) to disrupt, monitor, or otherwise restrict speech of the people of Iran.'' Section 703 of TRA defines ''sensitive technology'' in the same way with respect to Syria.

These guidelines, which are required under section 412 of TRA, are intended to assist individuals and entities so that, going forward, they can make appropriate decisions with regard to business in Iran and Syria and take steps to avoid engaging in potentially sanctionable transactions under sections 106 and 105A of CISADA, as amended by section 402 of TRA, Executive Order 13628, and section 703 of TRA due to the similarity of the definition of ''sensitive technology'' to section 106 of CISADA.

Misuse of Technology in Iran and Syria

Information and communications technology serves to facilitate communication, share information, and connect users to each other. Over the last several years, the world has witnessed the important role this technology can assume in holding repressive regimes accountable, assisting people in exercising their human rights and protecting emerging elements of civil society. However, certain information and communications technology can also provide unprecedented capabilities for governments to conduct surveillance on users' communications and movements, and to block or disrupt communications.

The people of Iran and Syria use telecommunications technology and networks to communicate with each other and the rest of the world. The United States government supports efforts to facilitate the free flow of information and freedom of expression in Iran and Syria and is cognizant of the vital importance of providing technology that enables the Iranian and Syrian people to freely communicate with each other and the outside world.

At the same time, the Iranian and Syrian governments have taken steps to restrict the free flow of information and freedom of expression over their networks, to track and monitor the communications of their people for the purpose of perpetrating human rights abuses, or to disrupt networks in support of military operations against their own people.

Determining ''Sensitive Technology''

In determining whether a particular transaction involves a good or technology that may be considered ''sensitive technology'' under CISADA and TRA, the United States government will closely examine transactions that could provide significant surveillance, censorship, or network disruption capabilities to the Iranian or Syrian governments as a result of the particular end-user, its end-use, or the type of technology.

The United States government recognizes that certain geolocation and other monitoring capabilities are part of the basic functioning of modern telecommunications networks. The United States government further recognizes that online communications services commonly track users' network addresses and usage patterns and may request additional personal information from users. These capabilities generally would not be considered ''sensitive technology'' under CISADA and TRA. Moreover, ''sensitive technology'' does not generally include technology essential for ordinary network operation, personal computing or private communications that does not provide significant surveillance, censorship or network disruption capabilities, including: Wi-Fi access points, network routers, switches and mobile phone base stations; cables (fiber optic, coaxial and twisted pair); basic network performance monitoring tools; wireless antennas and other architectural elements; mobile phones and mass market desktop, laptop and tablet computers without external monitoring or surveillance capabilities such as keyloggers; computer monitors, screens, speakers, mice, headphones, headsets, and other accessories; defensive technologies to protect individual computers against malware and related security threats (including software and definition updates); software development tools including libraries, integrated development environments, hosting services, and collaboration platforms; mass market document creation, viewing and editing tools without special surveillance capabilities; censorship-circumvention technologies and services; virtual private network (VPN) services; anti-tracking and encryption technologies to protect user privacy, if supplied without monitoring or surveillance capabilities; personal communications technologies (including software updates to such technologies) such as instant messaging, chat, email, social networking, photo and movie sharing, web browsing, and blogging; web browser plug-ins for rendering web content; data and web hosting and storage technology without monitoring or surveillance capabilities; RSS feed production, distribution, and reading tools and comparable information transmission technologies; and other similar equipment that does not provide significant surveillance, censorship or network disruption capabilities.

When making an assessment of whether or not a company, entity, or individual is exporting, transferring, facilitating the transfer of, or providing services that may be considered sensitive technology with regard to Iran or Syria, the State Department will review all available information, including through direct communication with the entity or individual if possible. It will consider, among other factors, whether a company knew, or should have known, that a particular end-user of its technology was likely to misuse such technology, or that a particular technology has a history of being misused in Iran or Syria to further human rights abuses. As such, individuals or entities engaged in transactions with Iran or Syria involving telecommunications goods, services or technology should conduct rigorous due diligence to ''know their customer'' and assess the potential risk that a particular technology is likely to be used to facilitate human rights abuses, restrict the free flow of information, or disrupt, monitor, or otherwise restrict speech of the people of Iran and Syria.

For example, individuals or entities sanctioned by the U.S. government for activities related to human rights abuses in Iran and Syria may pose a more apparent risk of misusing technology. Under these circumstances, any hardware, software, or telecommunications equipment provided to persons sanctioned for human rights abuses pose the potential to be considered ''sensitive technology'' for the purposes of CISADA and TRA, and any type of support provided to these individuals or entities may subject the provider to sanctions.

Regardless of the recipient or known end-use, specific telecommunications technologies such as ''lawful interception'' and ''surreptitious listening'' devices, systems and technology for the interception of wire, oral or electronic communications or to jam or intercept the air interface of mobile telecommunications, have the potential to be considered ''sensitive technology'' for the purposes of CISADA and TRA under some, but not all,

circumstances. Similarly, keyword list blocking technology that allows persons to block the transmission of content containing certain words, has the potential to be considered ''sensitive technology'' for the purposes of CISADA and TRA under some, but not all, circumstances. The following is an illustrative, but not exclusive, list of other technologies and capabilities that pose the risk of being misused by the Iranian and Syrian governments, and that have the potential to be considered ''sensitive technology'':

- Key logging technology/spyware
  - Allows persons to record key strokes, mouse clicks, data processes, or activity on a touchscreen without consent of the device user
- Mobile device forensics data extraction and analysis technology
  - Allows persons to extract and analyze data from a mobile phone device, even if password protected
- Nonconsensual remote forensic technology
  - Allows persons to perform undetected collection and analysis of data from remote target computers
- Nonconsensual tracking/monitoring technology
  - Allows persons to cause a mobile or networked device to reveal its geographic location, operating status or application data, without consent of the device owner or content provider
- Network disruption technology
  - Designed to enable disruption, inhibition or degradation of networks or sub-parts
- Infection vectors technology
  - Allows persons to install or execute malware or perform other attacks
- Rootkit technology
  - Allows persons to defeat or bypass security, hide malware, or enable privileged access to computer process or network resources
- DNS poisoning technology
  - Allows persons to hijack Domain Name System (DNS) requests and reroute Internet traffic to illegitimate Web sites/servers
- Censorship-enhancement technology
  - Designed to allow persons to enforce content blocking or to fingerprint and/or defeat anti-censorship technologies

This guidance was developed for its applicability to current conditions in Iran, as called for by section 412 of TRA and by section 106 of CISADA, and in Syria, due to the similarity of section 703 of TRA to section 106 of CISADA, and should not be considered automatically relevant for other contexts or conditions. The State Department will periodically review these guidelines and, if necessary, amend them to take into account new information and circumstances regarding the use of technology in Iran and Syria. U.S. entities and individuals are generally prohibited from engaging in any transaction involving Iran and Syria unless such transactions are authorized by the Department of the Treasury's Office of Foreign Assets Control. Foreign entities and individuals may also be subject to license requirements if their transactions involving Iran or Syria also involve the United States, such as a funds transfer that transits a U.S. bank. For transactions involving exports to Iran or Syria, U.S. companies should also consult with the Department of Commerce's Bureau of Industry and Security regarding relevant licensing requirements.

Persons with questions on sensitive technology, section 106 of CISADA, or TRA should contact the State Department's Office of Sanctions Policy and Implementation in the Bureau of Economic and Business Affairs at (202) 647–7489 or emailing *CISADA106@state.gov*.

Information on Terrorism Designations

Executive Order 13224 (issued on September 23, 2001), as amended by Executive Orders 13268, 13284, and 13372, provides the Secretary of State with the authority, in consultation with the Secretary of the Treasury, the Secretary of Homeland Security, and the Attorney General, to designate foreign persons that the Secretary of State determines have committed, or 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. Among other things, this designation blocks, with limited exceptions, all of the designated persons' property and interests in property that are in the United States or come within the United States or that come within the possession or control of U.S. persons. The Secretary of the Treasury also may, in consultation with the Secretary of State, the Secretary of Homeland Security, and the Attorney General, designate individuals and entities that are owned or controlled by the designated persons; act for or on behalf of the designated persons; assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to, or in support of, the designated persons; or are otherwise associated with the designated persons. Section 211 of TRA also provides for certain sanctions to be imposed under E.O. 13224 in connection with provision of vessels, insurance, or any other shipping service for the transportation of goods to or from Iran that could materially contribute to the activities of the Government of Iran with respect to support for acts of international terrorism. The list of individuals and entities designated by the Secretary of State pursuant to E.O. 13224 is available at *http://www.state.gov/j/ct/rls/other/des/143210.htm*.

The Secretary of State also has authority, pursuant to section 219 of the Immigration and Nationality Act, as amended (INA) (8 U.S.C. 1189), to designate an organization as a foreign terrorist organization (FTO) if the Secretary of State finds that the organization is a foreign organization; engages in terrorist activity or terrorism, as defined by the relevant statute, or retains the capability and intent to engage in terrorist activity or terrorism; and the terrorist activity or terrorism of the organization threatens the security of United States nationals or the national security of the United States. Additional information on the designations process and the consequences of designation, along with a list of organizations designated by the Secretary of State pursuant to section 219 of the INA, is available at *http://www.state.gov/j/ct/rls/other/des/123085.htm*.

Information on Weapons of Mass Destruction Designations

In Executive Order 12938 (November 14, 1994), President Clinton declared a national emergency with respect to the proliferation of nuclear, biological and chemical weapons (weapons of mass destruction or WMD) and the means of delivering them. EO 12938, as amended by EO 13094 and EO 13382, provides that the Secretary of the Treasury shall prohibit the importation into the United States of goods, technology, or services produced or provided by any foreign person the Secretary of State, in consultation with the Secretary of the Treasury, determines has engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer, or use such items, by an person or foreign country of proliferation concern. E.O. 12938, as

amended, also imposes the following measures against such foreign persons: no departments or agencies of the United States government shall procure or enter into any contract for the procurement of any goods, technology, or services from these persons including the termination of existing contracts; and no departments or agencies of the United States government shall provide any assistance to these persons, and shall not obligate further funds for such purposes.

The complete list of foreign persons on which the Secretary of State has determined to impose an import ban because of their WMD proliferation activities can be found at *http://www.state.gov/t/isn/c15233.htm*.

Executive Order 13382 (issued on June 28, 2005) provides the Secretary of State with the authority, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to designate foreign persons that the Secretary of State determines to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern. Among other things, this designation blocks, with limited exceptions, all of the designated persons' property and interests in property that are in the United States or come within the United States or that come within the possession or control of U.S. persons. The Secretary of the Treasury also may, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, designate individuals and entities that: (1) Are owned or controlled by a person blocked pursuant to the order, including a person designated by the Secretary of State; (2) act or purport to act for or on behalf of, directly or indirectly, a person blocked pursuant to the order, including a person designated by the Secretary of State; or (3) have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, a person blocked pursuant to the order, including a person designated by the Secretary of State. Section 211 of TRA also provides for certain sanctions to be imposed pursuant to E.O. 13382 in connection with the knowing sale, lease, or provision of vessels, insurance, or any other shipping service for the transportation to or from Iran of goods that could materially contribute to the activities of the Government of Iran with respect to the proliferation of weapons of mass destruction. The list of individuals and entities designated by the Secretary of State pursuant to E.O. 13382 is available at *http://www.state.gov/t/isn/c22080.htm*.

The Arms Export Control Act and the Export Administration Act require the imposition of sanctions against any foreign person that knowingly transfers items on the Missile Technology Control Regime (MTCR) Annex that contribute to MTCR-class missile programs in non-MTCR adherent countries. Sanctions consist of a ban on export licenses and U.S. government procurement, and they may also include an import ban. The sanctions may be waived if it is essential to the national security interest of the United States, and the sanctions need not be imposed if the transfer was authorized by the laws of an MTCR adherent or if an MTCR adherent has taken adequate enforcement action. These laws also require imposition of sanctions against any foreign person that knowingly and materially contributes to the efforts of another foreign country, project, or entity to use, develop, produce, stockpile, or otherwise acquire chemical and biological weapons. Sanctions consist of a ban on U.S. government procurement and imports. The sanctions may be waived after 12 months if it is important to the national security interests of the United States, and sanctions need not be applied if the government with primary jurisdiction over the offender has taken effective steps to terminate the sanctions-triggering activities.

Under the Iran-Iraq Arms Non-Proliferation Act, sanctions are required against entities that transfer goods or technology so as to contribute knowingly and materially to the efforts by Iran and Iraq to acquire chemical, biological or nuclear weapons or destabilizing numbers and types of advance conventional weapons, as defined in the statute. Sanctions include a procurement ban, export prohibition on items contained on the United States Munitions List, and the authority to impose sanctions pursuant to the International Emergency Economic Powers Act. A waiver is available if it is essential to the national security of the United States.

The Iran, North Korea, and Syria Nonproliferation Act requires the Secretary of State to report to Congress, and further gives the Secretary the authority to sanction, a foreign entity if there is credible information indicating that that the entity transferred to or acquired from Iran, North Korea, or Syria items listed on certain multilateral export control regimes or if the entity transferred to or acquired from those countries goods, services or technology not listed in the multilateral export regimes but which nevertheless would be if they were U.S. goods, services or technology prohibited for export to those countries because of their potential to make a material contribution to the development of nuclear, biological, or chemical weapons, or of ballistic or cruise missile systems. Sanctions include those provided for under EO 12938 as well as an arms export prohibition and a dual use export prohibition.

The Nuclear Proliferation Prevention Act of 1994 requires a cutoff of government contracts with any U.S. or foreign person that contributes knowingly and materially, through the export of nuclear-related goods or technology, to the efforts of any individual, group, or nonnuclear weapon state to acquire a nuclear explosive device or unsafeguarded special nuclear material. The sanction may be waived after 12 months if continued imposition would have a serious adverse effect on vital U.S. interests, and sanctions need not be applied if the government with primary jurisdiction over the offender has taken effective steps to terminate the sanctions-triggering activities.

William J. Burns,

Deputy Secretary of State, Department of State.

[FR Doc. 2012–27642 Filed 11–9–12; 8:45 am]

BILLING CODE 4710–31–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending October 13, 2012

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order,

or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2012–0171.

Date Filed: October 11, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 1, 2012.

Description: Application of Fly Jamaica Airways Limited requesting a foreign air carrier permit and corresponding exemption authority entitling it to engage in scheduled air transportation between points on the following routes: (1) From points behind Jamaica via Jamaica and intermediate points to a point or points in the United States; (2) for all-cargo services between the United States and any point or points; (3) fifth freedom charter services pursuant to the prior approval requirements and; (4) such other, further, or different relief as may be proper.

Docket Number: DOT–OST–2012–0169.

Date Filed: October 9, 2012.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 30, 2012.

Description: Application of New Livingston S.p.A. requesting exemption authority and a foreign air carrier permit to engage in: (a) Foreign charter air transportation of persons, property, and mail from any point or points behind any Member State of the European Community via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property, and mail between any point or points in the United States and any point or points in any Member State of the European Common Aviation Area; (c) foreign charter cargo air transportation between any point or points in the United States and any other point or points; and (d) charter transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Community.

Barbara J. Hairston,

Acting Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2012–27500 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0150, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2009 Porsche Cayenne S Multipurpose Passenger Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that nonconforming 2009 Porsche Cayenne S multipurpose passenger vehicles (MPV) that were not originally manufactured to comply with all applicable Federal Motor Vehicle Safety Standards (FMVSS), are eligible for importation into the United States because they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified version of the 2009 Porsche Cayenne S MPV) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 13, 2012.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: 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. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov*. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: George Stevens, Office of Vehicle Safety Compliance, NHTSA (202–366–5308).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has

received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. (G&K), of Santa Ana, California (Registered Importer 90–007) has petitioned NHTSA to decide whether nonconforming 2009 Porsche Cayenne S MPV's are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 2009 Porsche Cayenne S MPV's that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it compared non-U.S. certified nonconforming 2009 Porsche Cayenne S MPV's to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2009 Porsche Cayenne S MPV's as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2009 Porsche Cayenne S MPV's are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 116 *Motor Vehicle Brake Fluids,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101—*Controls Telltales, and Indicators:* (a) Inscription of the word ''brake'' on the brake failure indicator lamp in place of the international ECE warning symbol; and (b) replacement of the speedometer with a unit reading in miles per hour, or modification of the existing speedometer so that it reads in miles per hour.

Standard No. 108—*Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model front and rear side marker assemblies.

Standard No. 110—*Tire Selection and Rims for Motor Vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or Less:* Installation of a tire information placard.

Standard No. 111—*Rearview Mirrors:* Replacement of the passenger side rearview mirror with a U.S.-model mirror, or inscription of the required warning statement on the face of the existing mirror.

Standard No. 114—*Theft Protection:* Reprogramming of the instrument cluster to activate the warning buzzer whenever the key is left in the ignition and the driver's door is opened.

Standard No. 118—*Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S.-model software to ensure that the power-operated window system meets the requirements of this standard.

Standard No. 138—*Tire Pressure Monitoring Systems:* Installation of U.S.-model components and software to ensure that the system meets the requirements of this standard.

Standard No. 208—*Occupant Crash Protection:* Petitioner claims that the passive restraint system hardware in the nonconforming 2009 Porsche Cayenne S is identical to that found on the U.S.-certified 2009 Porsche Cayenne S, and has included a comparison of the advanced air bag component part numbers in its petition as proof. The petitioner also states that the software and firmware associated with the occupant protection system must be verified and updated with U.S.-version software as necessary to ensure that the system conforms to the standard. This may require the replacement of system components.

The petitioner additionally states that it will provide any owner's manual inserts that are required by this standard but not present in the vehicle.

Standard No. 301—*Fuel System Integrity:* Inspection of all vehicles and replacement of any non U.S.-model fuel system components with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A), (a)(1)(B), and (b)(1); 49 CFR 593.7; delegation of authority at 49 CFR 1.95 and 501.8.

Issued on: November 5, 2012.

Claude H. Harris,

Director Office of Vehicle Safety Compliance.

[FR Doc. 2012–27512 Filed 11–9–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Neville Peterson LLP on behalf of Trinity Industries, Inc. (WB605–9—11/02/12) for permission to use certain data from the Board's 2011 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Megan Conley, (202) 245–0348.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–27504 Filed 11–9–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated Terrorist Pursuant to Executive Order 12947

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of one of individual, whose property and

interests in property have been blocked pursuant to Executive Order 12947 of January 25, 1995, *Blocking Property and Prohibiting Transactions With Persons Who Threaten to Disrupt the Middle East Peace Process,* from the list of Specially Designated Nationals and Blocked Persons (''SDN List'').

DATES: The removal of this individual from the SDN List is effective as of Monday, November 5, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On January 25, 1995, the President issued Executive Order 12947 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, imposing economic sanctions on persons who threaten to disrupt the Middle East peace process. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretaries of State and of the Treasury, in coordination with each other and with and the Attorney General, to designate additional persons determined to meet certain criteria set forth in the Order.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following individual is removed from the SDN List:

SALAH, Mohammad Abd El-Hamid Khalil (a.k.a. SALAH, Mohammad Abdel Hamid Halil; a.k.a. SALAH, Muhammad A.; a.k.a. ''AHMAD, Abu''; a.k.a. ''AHMED, Abu''), 9229 South Thomas, Bridgeview, IL 60455; P.O. Box 2578, Bridgeview, IL 60455; P.O. Box 2616, Bridgeview, IL 60455–661; Israel; DOB 30 May 1953; Passport 024296248 (United States); SSN 342–52–7612 (individual) [SDT]

The removal of this individual from the SDN List is effective as of Monday, November 5, 2012. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: November 5, 2012 .

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–27553 Filed 11–9–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, December 3, 2012 and Tuesday, December 4, 2012.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Monday, December 3, 2012, from 1:00 p.m. to 4:30 p.m. and Tuesday, December 4, from 8:00 a.m. until 4:30 p.m. Eastern Time at Bennett Federal Building, 400 West Bay Street, Suite 310, Jacksonville, FL 32202. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27476 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, December 3, 2012 and Tuesday 4, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Monday, December 3, 2012 from 1:00 p.m. to 4:30 p.m. Pacific Time and Tuesday December 4th from 8:00 a.m. until 4:30 p.m. Pacific Time at Federal Building, 1301 Clay Street, Suite 700S, Oakland, Ca. 94612. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ms. Smiley or Ms. Robb. For more information please contact Ms. Smiley or Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27475 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, December 6, 2012 and Friday December 7, 2012.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Thursday, December 6, 2012, from 8:00 a.m. until 4:30 p.m., and on Friday December 7, 2012 from 8:00 a.m. until 12:00 p.m. Eastern Time at the Bennett Federal Building, 400 West Bay Street, 3rd Floor, Room 310, Jacksonville, FL 32202. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ms. Knispel. For more information please contact Ms. Knispel at 1–888–912–1227 or 718–488–3557, or write TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27477 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, December 3rd, and Tuesday, December 4th, 2012.

FOR FURTHER INFORMATION CONTACT: Marianne Dominguez at 1–888–912–1227 or 954–423–7978.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Monday, December 3rd, 2012, from 1:00 p.m. to 4:30 p.m. Eastern Time and Tuesday, December 4th, 2012 from 8:00 a.m. until 4:30 p.m. Eastern Time at the IRS Office, 7850 SW 6th Court, Room 250, Plantation, FL 33324. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Marianne Dominguez. For more information please contact Ms. Dominguez at 1–888–912–1227 or 954–423–7978, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include various IRS issues.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27479 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, December 6th, 2012 and Friday, December 7th, 2012.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Thursday, December 6th, 2012, from 8:00 a.m. to 4:30 p.m. Eastern Time and Friday, December 7th, 2012, from 8:00 a.m. to 12:00 p.m. Eastern Time at the IRS Office, 7850 SW. 6th Court, Room 250, Plantation, FL 33324. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Powers at 1–888–912–1227 or 954–423–7977, or write TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324, or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS Issues.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27481 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held, Thursday, December 6, 2012 and Friday, December 7, 2012.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, December 6, 2012, from 8:00 a.m. to 4:30 p.m. Pacific Time, and Friday, December 7, 2012, from 8:00 a.m. to 12:00 Pacific Time, at Federal Building, 1301 Clay Street, Suite 700S, Oakland, CA 94612. The public is invited to make oral comments or submit written statements for consideration. Due to limited time and structure of meeting, notification of intent to participate must be made with Ms. Smiley or Ms. Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27480 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of Meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, December 13, 2012.

FOR FURTHER INFORMATION CONTACT: Susan Gilbert at 1–888–912–1227 or (515) 564–6638.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Thursday, December 13, 2012, 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Susan Gilbert. For more information please contact Ms. Gilbert at 1–888–912–1227 or (515) 564–6638 or write: TAP Office, 210 Walnut Street, Stop 5115, Des Moines, IA 50309 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various IRS topics.

Dated: November 6, 2012.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2012–27478 Filed 11–9–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee; Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee November 27, 2012, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for November 27, 2012.

Date: November 27, 2012.

Time: 9:30 a.m. to 4:00 p.m.

Location: Conference Room A, United States Mint, 801 9th Street NW., Washington, DC 20220.

Subject: Review and consideration of candidate reverse designs for the 2014 America the Beautiful Quarters® Program Coins honoring Great Smoky Mountains National Park, Shenandoah National Park, Arches National Park, Great Sand Dunes National Park, and Everglades National Park; review and consideration of candidate reverse designs for the 2013 American Eagle Platinum Coin Program; review and consideration of additional tribal candidate designs for the Code Talkers Recognition Congressional Gold Medals; and discussion of the 2012 Annual Report.

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

■ Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.

■ Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

■ Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: November 6, 2012.

Beverly Ortega Babers,

Chief Administrative Officer, United States Mint.

[FR Doc. 2012–27472 Filed 11–9–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0176]

Proposed Information Collection (Monthly Record of Training and Wages) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA) is announcing an opportunity for public comment on the proposed collection of information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to monitor claimants' training progress towards their rehabilitation goals.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0176'' in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Record of Training and Wages, VA Form 28–1905c.

OMB Control Number: 2900–0176.

Type of Review: Extension of a currently approved collection.

Abstract: On-the-job training establishments and trainers in certain special programs use VA Form 28–1905c to maintain accurate records on a trainee's progress toward rehabilitation goals as well as recording the trainee's on-the-job training monthly wages. Trainers report these wages on the form at the beginning of the program and at any time the trainee's wage rate changes. Following a trainee's completion of a vocational rehabilitation program, the form is submitted to the trainee's case manager to monitor the trainee's training and to ensure that the trainee is progressing and learning the skills necessary to carry out the duties of his or her occupational goal.

Affected Public: Individuals or Households.

Estimated Annual Burden: 3,600 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 14,400.

Dated: November 6, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–27467 Filed 11–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Proposed Information Collection (Student Verification of Enrollment) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0465'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8979 contains a student's certification of actual attendance and verification of the student's continued enrollment in courses leading to a standard college degree or in non-college degree programs. VA uses the data collected to determine the student's continued entitlement to benefits. Students are required to submit verification on a monthly basis to allow for a frequent, periodic release of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 42,313 hours.

Estimated Average Burden per Respondent: 1 minute.

Frequency of Response: On occasion.

Estimated Number of Respondents: 362,684.

Estimated Number of Responses: 2,538,788.

Dated: November 6, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–27468 Filed 11–9–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0737]

Proposed Information Collection (eBenefits Portal) Activity: Comment Request

AGENCY: Office of Information and Technology, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Information and Technology (OI&T), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to access the eBenefits portal.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 14, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0737'' in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OI&T invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OI&T's functions, including whether the information will have practical utility; (2) the accuracy of OI&T's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: eBenefits Portal.

OMB Control Number: 2900–0737.

Type of Review: Extension of a currently approved collection.

Abstract: The eBenefits portal, a joint project between the VA and DoD, is intended to serve as a single point of entry for benefits information. Users include members of the armed forces, veterans, wounded warriors, family members, delegates, and caregivers. Users wishing to access the full functionality of the eBenefits portal will register for a single sign-on credential that will ultimately be shared by other VA and DoD portals. The eBenefits portal allows authenticated users to create profiles for themselves so they can see a customized view of their homepage, receive personalized alerts, view a calendar of appointments, view content related to their benefits, and opt into other individualized features. Profiles will initially be populated with data from the existing Defense Enrollment Eligibility Reporting database, but will also offer users the option to indicate preferences and individual details that will enable the portal to deliver personalized information.

Affected Public: Individuals or households.

Estimated Annual Burden: 55,000 hours.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,650,000.

Dated: November 6, 2012.

By direction of the Secretary.

Robert C. McFetridge,

Director, Office of Regulations Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2012–27469 Filed 11–9–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Tuesday,
No. 219 November 13, 2012

Part II

The President

Notice of November 9, 2012—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 77, No. 219
Tuesday, November 13, 2012

Presidential Documents

Title 3—

The President

Notice of November 9, 2012

Continuation of the National Emergency With Respect to Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran and, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), took related steps to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the agreements with Iran, dated January 19, 1981, is still under way, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2012. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
Washington, November 9, 2012.

[FR Doc. 2012–27742
Filed 11–9–12; 2:15 pm]
Billing code 3295–F3

Reader Aids

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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