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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

DEPARTMENT OF AGRICULTURE

Office of Procurement and Property Management

7 CFR Part 3201

RIN 0599–AA15

Designation of Product Categories for Federal Procurement

AGENCY: Office of Procurement and Property Management, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement, to add 12 sections to designate product categories within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as ''section 9002''). USDA is also establishing minimum biobased contents for each of these product categories.

DATES: This rule is effective December 19, 2012.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; email: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Discussion of Public Comments
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A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
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H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. E-Government Act
K. Congressional Review Act

I. Authority

These product categories are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

As part of the BioPreferred Program, USDA published, on June 5, 2012, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 12 product categories for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the ''preferred procurement program''). This proposed rule can be found at 77 FR 33270. This rulemaking is referred to in this preamble as Round 9 (RIN 0599–AA15).

In the proposed rule, USDA proposed designating the following 12 product categories for the preferred procurement program: Agricultural spray adjuvants; animal cleaning products; deodorants; dethatcher products; fuel conditioners; leather, vinyl, and rubber care products; lotions and moisturizers; shaving products; specialty precision cleaners and solvents; sun care products; wastewater systems coatings; and water clarifying agents.

Today's final rule designates the proposed product categories within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the product categories being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: to improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking a product category (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that product category, that meet the requirements to qualify for preferred procurement, can claim that status for their products. To qualify for preferred procurement, a product must be within a designated product category and must contain at least the minimum biobased content established for the designated item. With the designation of these specific product categories, USDA invites the manufacturers and vendors of qualifying products to provide information on the product, contacts, and performance testing for posting on its BioPreferred Web site, *http://www.biopreferred.gov.* Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated product category. Once USDA designates a product category, procuring agencies are required generally to purchase biobased products within the designated product category where the purchase price of the procurement product exceeds $10,000 or where the quantity of such products or of functionally equivalent products purchased over the preceding fiscal year equaled $10,000 or more.

Subcategorization. USDA has not created subcategories for any of the product categories designated in today's action. However, USDA will continue to gather additional data related to the categories designated today and subcategories may be created in a future rulemaking.

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are

based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples. USDA has, however, begun to receive additional biobased content data associated with manufacturer's applications for certification to use the USDA Certified Biobased Product label. These test results are also considered when determining the minimum biobased content levels for designated product categories. In today's final rule, none of the minimum biobased contents are based on a single tested product. USDA will continue to gather information on the product categories designated today and if additional data on the biobased contents for products within these designated product categories are obtained, USDA will evaluate whether the minimum biobased content should be revised.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. USDA does not believe that any of the product categories being designated for Federal preferred procurement in today's rulemaking overlap with an EPA-designated recovered content product. However, interested readers may obtain more information on EPA's CPG products by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: the BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (*www.abilityone.gov*) indicated that five of the product categories being designated today (deodorants; leather, vinyl, and rubber care products; lotions and moisturizers; specialty precision cleaners and solvents; and sun care products) are available through the AbilityOne Program. While there is no specific product within these product categories identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other product categories being designated today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of product categories. USDA requests stakeholder input in gathering information used in determining the order of product category designation and in identifying: Manufacturers producing and marketing products that fall within a product category proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within product categories. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new product categories for designation for preferred procurement.

USDA has developed a preliminary list of product categories for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of product categories for designation, USDA cannot identify with certainty which product categories will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those product categories that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, product categories with high biobased content and for which sufficient technical information can be obtained quickly may be added or moved up on the prioritization list.

III. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on August 6, 2012. USDA received two comments by that date. One of the comments was from a company that provides consulting services in critical and industrial product cleaning and the other was from an individual citizen. The comments are presented below, along with USDA's responses, and are shown under the product categories to which they apply. After consideration of the comments, USDA is finalizing the designation of the 12 product categories within which biobased products will be afforded Federal procurement preference, as proposed.

Specialty Precision Cleaners and Solvents

Comment: One commenter is opposed to the designation of the ''specialty precision cleaners and solvents'' product category. The commenter provided their rationale for opposing the designation of the product category under six headings, which are presented below.

1. Public Safety Concerns. The commenter stated that there are likely to be widespread performance issues related to the cleaning of many high-value products or where the consequences of inadequate cleaning and residual contamination are dire. The commenter gave as an example the cleaning of single use and reusable medical devices where leachable residue from cleaning agents is unacceptable, and may be dangerous for the patient.

2. Unestablished Performance, Need for Product Development. The commenter stated that the suitability of a cleaning agent for a given application includes many parameters (wettability, boiling point, rinseability, residue, compatibility with materials of construction, purity of biobased

ingredients) and that the selection of a particular cleaning agent is application-specific. Because of their role in evaluating and advising clients on the many biobased products offered for sale, the commenter stated that they have actively and repeatedly sought out other contributors on the subject and have been unable to obtain definitive, scientific contributions. Based on the lack of scientific information, the commenter believes that biobased products for precision cleaning require further development.

3. Conflict With Other Regulations. The commenter stated that the proposed requirement is in conflict with Federal, State, and regional mandates to improve air quality. The commenter explained that most of the biobased cleaning products would be subject to VOC regulations and restrictions. The commenter also stated that the definition of precision cleaners is not in harmony with that used for precision cleaners by the EPA Significant New Alternative Policy (SNAP) program. The commenter stated that the USDA definition seems to cross over the SNAP categories that include metals, electronics, and precision cleaning.

4. Costs to Industry and Government. The commenter stated that requiring or favoring biobased precision cleaners will put an undue burden on industry and is detrimental to U.S. economic recovery. The commenter further stated that adopting a new cleaning agent requires extensive testing, obtaining new cleaning equipment, and training of employees. According to the commenter, these activities involve high capital and ongoing costs as well as significant engineering effort. The commenter stated that the effort and costs of demonstrating efficacy of cleaning and lack of compatibility issues should be spearheaded by the producers and suppliers of biobased products. The commenter also stated that regulatory costs, such as in-use control of VOCs and the costs of waste management, can be prohibitive.

5. Comments, Process for Industry Investigation. The commenter stated that the background documentation on the BioPreferred Web site for this category is very difficult to find and contains numerous inaccuracies. The commenter believes that many of the products listed are not biobased products and many are intended for household or consumer use or for janitorial use. The commenter further stated that these products are not recommended for precision cleaning because of the presence of fragrance and lotions, the lack of product support for precision applications, and the potential for unexpected and undisclosed formulation changes.

6. Potential for Development. The commenter stated that biobased precision cleaners or cleaning agents for clinical cleaning could be developed. However, according to the commenter, it would be counterproductive to place the burden of such development on manufacturers of products and components who do hard-surface cleaning. The commenter stated that until such products have been developed and until cleaning efficacy and product safety has been demonstrated, their use should not be required.

Response: USDA agrees with the commenter's general position that biobased specialty precision cleaners and solvents have not been demonstrated to meet every performance need that may be encountered in precision cleaning operations. USDA recognizes that specialty precision cleaners and solvents is a product category with wide-ranging performance demands, depending on the type and end use of the product or surface on which the cleaner is being used. The commenter mentions single use and reusable medical devices as examples of applications where, according to the commenter, biobased specialty precision cleaners may not meet performance requirements. USDA points out that the intent of designating biobased specialty precision cleaners and solvents for Federal procurement preference is not to eliminate the use of traditional cleaners in cases such as those mentioned by the commenter. The intent of the designation is, rather, to require that Federal agencies give preference to biobased specialty precision cleaners and solvents in those cases where such biobased products meet the agency's performance requirements as well as availability and cost considerations. Federal agencies are not required to purchase and use biobased products if the available products are not capable of meeting reasonable performance expectations or are not priced competitively with non-biobased products. Section 9002 is very specific regarding these exceptions. However, USDA encourages Federal agencies to explore available biobased products and communicate with biobased product manufacturers regarding performance and cost issues. Reputable biobased product manufacturers should be willing to work with Federal agencies to resolve issues and they should also recognize that, even with the Federal procurement preference, they will not be successful if their products do not perform up to expectations.

USDA recognizes that performance is the key factor in making purchasing decisions among the various types of products within most product categories. However, USDA believes that many situations exist where biobased specialty precision cleaners and solvents may perform as well as, or better, than the more traditional petroleum based cleaners and solvents. Thus, USDA believes that the designation of biobased specialty precision cleaners and solvents is consistent with the goals and objectives of the BioPreferred program and has finalized the designation in today's rulemaking.

With regard to the commenter's statements about potential conflicts with EPA VOC rules, USDA has not attempted to address other regulatory requirements for the manufacture or use of biobased products that are alternatives for petroleum based products. Manufacturers and users of biobased alternative products must still be aware of, and comply with, applicable regulations related to environmental, safety, and health concerns. USDA statutory authority for the BioPreferred program allows only the consideration of biobased content, not such factors as ozone depletion, flammability, or exposure limits. Manufacturers of specialty precision cleaners and solvents, or any other biobased product, must address such issues with the agencies having the proper jurisdiction.

USDA agrees with the commenter's position that the primary costs of demonstrating efficacy of cleaning and lack of compatibility issues should be borne by the producers and suppliers of the biobased products. However, USDA believes that the statutory authority for the BioPreferred program addresses this issue. As discussed above, Section 9002 is very specific that Federal agencies are not required to purchase and use biobased products if the available products are not capable of meeting reasonable performance expectations or are not priced competitively with non-biobased products. Thus, the burden to demonstrate to Federal purchasing agents that biobased products are competitive in terms of performance and cost is on the producers and suppliers of the biobased products.

USDA appreciates the commenter's statements concerning the background documentation provided on the BioPreferred Web site. USDA points out that the goal of the ''industry investigation'' is not necessarily to create a definitive list of biobased

products and their manufacturers, but to confirm that a sufficient number of biobased products are available to support the designation of the product category. To identify available biobased products, USDA often searches for (and lists) all products within a product category, including those that are made from petroleum based ingredients. Also, in performing the background searches to document the availability of biobased products within a product category, USDA often uses search terms that may return products with names or functions that sound similar to the products being investigated but that are actually very different.

After the initial list of products is generated, USDA focuses on gathering specific information from the manufacturers of products that are found to be biobased products that potentially support the designation of the product category. Thus, while USDA acknowledges that the ''industry investigation'' results can be somewhat misleading, USDA believes that the information used to support the final decision to designate the product category is clearly provided in other background files. For example, the ''item designation report'' includes biobased content information and the BEES analysis results and the ''item summary'' lists those products for which USDA obtained product information from the manufacturers.

In response to the commenter's statement that the background documentation was hard to locate, USDA will consider possible clarifying revisions to the structure or the headings of the information posted on the BioPreferred Web site.

Water Clarifying Agents

Comment: One commenter stated that carbon and other biobased media should be considered as part of the water clarifying agents category. The commenter stated that any of these biobased media require consideration for the BioPreferred status, because of the fact that these are the most capable to achieve the desired end result—treated water.

Response: The primary criteria that must be met by products to qualify for the procurement preference under the BioPreferred program is the minimum biobased content established for the product category into which the products fall. Products within the water clarifying agents product category must have a minimum biobased content of at least 92 percent, based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The biobased content must be demonstrated by testing using ASTM D6866.[1] Thus, if the water clarifying agents mentioned by the commenter meet the minimum biobased content criteria, they would qualify for preferred procurement under the BioPreferred program.

IV. Regulatory Information

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

Executive Order 12866, as supplemented by Executive Order 13563, requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, 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 set forth in this Executive Order.''

Today's final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's final rule. As discussed in the preamble to the proposed rulemaking, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 12 designated product categories, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's final rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing biobased products within designated product categories if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's final rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

Today's final rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased product categories to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's final rule. The final rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Final Rule

The designation of these 12 product categories provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's final rule can result in expanding and strengthening markets for biobased materials used in these product categories.

3. Costs of the Final Rule

Like the benefits, the costs of today's final rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to

[1] ASTM D6866, ''Standard Test Methods for Determining the Biobased Content of Solid, Liquid, and Gaseous Samples Using Radiocarbon Analysis,'' is used to distinguish between carbon from fossil resources (non-biobased carbon) and carbon from renewable sources (biobased carbon). The biobased content is expressed as the percentage of total carbon that is biobased carbon.

Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its designation of these product categories to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, etc.) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of product categories for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the product categories designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers, large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the product categories being proposed for designation for Federal preferred procurement in this rule are expected to be included under the following NAICS codes: 325320 (pesticide and other agricultural chemicals manufacturing), 325411 (medicinal and botanical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325612 (polish and other sanitation goods manufacturing), and 325620 (toilet preparation manufacturing). USDA obtained information on these six NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 3,756 companies within these 6 NAICS categories and that these companies own a total of about 4,374 establishments. Thus, the average number of establishments per company is about 1.2. The Census data also reported that of the 4,374 individual establishments, about 4,258 (97.3 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 92 and that the pharmaceutical preparation manufacturing segment (with an average of about 250) is the only segment reporting an average of more than 100 employees per company. Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (less than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the product categories being designated, but believes that the impact will not be significant. Most of the product categories being designated in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the product categories being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this final rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased products when biobased products do not meet the availability, performance, or reasonable price criteria. This final rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this final rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the final rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this final rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and

responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's final rule does not significantly or uniquely affect ''one or more Indian tribes,* * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this final rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated product category. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

List of Subjects in 7 CFR Part 3201

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXXII as follows:

CHAPTER XXXII—OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT

PART 3201—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 3201 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 3201.88 through 3201.99 to subpart B to read as follows:

Sec.
3201.88 Agricultural spray adjuvants.
3201.89 Animal cleaning products.
3201.90 Deodorants.
3201.91 Dethatcher products.
3201.92 Fuel conditioners.
3201.93 Leather, vinyl, and rubber care products.
3201.94 Lotions and moisturizers.
3201.95 Shaving products.
3201.96 Specialty precision cleaners and solvents.
3201.97 Sun care products.
3201.98 Wastewater systems coatings.
3201.99 Water clarifying agents.

§ 3201.88 Agricultural spray adjuvants.

(a) *Definition.* Products mixed in the spray tank with the herbicide, pesticide, or fertilizer formulas that will improve the efficiency and the effectiveness of the chemicals, including sticking agents, wetting agents, etc.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 50 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased agricultural spray adjuvants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased agricultural spray adjuvants.

§ 3201.89 Animal cleaning products.

(a) *Definition.* Products designed to clean, condition, or remove substances from animal hair or other parts of an animal.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 57 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal cleaning products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased animal cleaning products.

§ 3201.90 Deodorants.

(a) *Definition.* Products that are designed for inhibiting or masking perspiration and other body odors and that are often combined with an antiperspirant.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 73 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased deodorants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased deodorants.

§ 3201.91 Dethatchers.

(a) *Definition.* Products used to remove non-decomposed plant material accumulated in grassy areas.

(b) *Minimum biobased content.* The Federal preferred procurement product

must have a minimum biobased content of at least 87 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dethatchers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased dethatchers.

§ 3201.92 Fuel conditioners.

(a) *Definition.* Products formulated to improve the performance and efficiency of engines by providing benefits such as removing accumulated deposits, increasing lubricity, removing moisture, increasing the cetane number, and/or preventing microbial growths within the fuel system.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 64 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased fuel conditioners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased fuel conditioners.

§ 3201.93 Leather, vinyl, and rubber care products.

(a) *Definition.* Products that help clean, nourish, protect, and restore leather, vinyl, and rubber surfaces, including cleaners, conditioners, protectants, polishes, waxes, etc.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 55 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased leather, vinyl, and rubber care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased leather, vinyl, and rubber care products.

§ 3201.94 Lotions and moisturizers.

(a) *Definition.* Creams and oils used to soften and treat damaged skin.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 59 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased lotions and moisturizers. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased lotions and moisturizers.

§ 3201.95 Shaving products.

(a) *Definition.* Products designed for every step of the shaving process, including shaving creams, gels, soaps, lotions, and aftershave balms.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased shaving products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased shaving products.

§ 3201.96 Specialty precision cleaners and solvents.

(a) *Definition.* Cleaners and solvents used in specialty applications. These materials may be used in neat solution, diluted with water, or in hand wiping applications.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 56 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased specialty precision cleaners and solvents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased specialty precision cleaners and solvents.

§ 3201.97 Sun care products.

(a) *Definition.* Products including sunscreens, sun blocks, and suntan lotions that are topical products that absorb or reflect the sun's ultraviolet radiation to protect the skin.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 53 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased sun care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased sun care products.

§ 3201.98 Wastewater systems coatings.

(a) *Definition.* Coatings that protect wastewater containment tanks, liners, roofing, flooring, joint caulking, manholes and related structures from corrosion. Protective coatings may cover the entire system or be used to fill cracks in systems.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 47 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased wastewater systems coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased wastewater systems coatings.

§ 3201.99 Water clarifying agents.

(a) *Definition.* Products designed to clarify and improve the quality of water by reducing contaminants such as excess nitrites, nitrates, phosphates, ammonia, and built-up sludge from decaying waste and other organic matter.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 92 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than November 19, 2013, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased water clarifying agents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for products to be procured shall ensure that the relevant specifications require the use of biobased water clarifying agents.

Dated: November 9, 2012.

Gregory L. Parham,

Acting Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2012–28045 Filed 11–16–12; 8:45 am]

BILLING CODE 3410–93–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2012–0518]

RIN 1625–AA00

Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard has established a temporary safety zone for a portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay, Santa Rosa Beach, FL. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main. Entry into or transiting in this zone will be prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port Mobile or a designated representative.

DATES: This rule is effective in the CFR on November 19, 2012 through November 30, 2012. This rule is effective with actual notice for purposes of enforcement on October 12, 2012. This rule will remain in effect through November 30, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0518. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH''. Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email LT Lenell J. Carson, Sector Mobile, Waterways Division, U.S. Coast Guard; telephone 251–441–5940, email *Lenell.J.Carson@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
GICW Gulf Intracoastal Waterway
COTP Captain of the Port
LLNR Light List Number
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard published a NPRM in the **Federal Register** on July 10, 2012 (77 FR 40541), providing proper notice and opportunity to comment on this rule. No comments were received nor were there any requests for a public meeting. The Coast Guard also published a TFR in the **Federal Register** on September 14, 2012 (77 FR 56772).

The Coast Guard is making this rule effective less than 30 days after publication in the **Federal Register** pursuant to authority the Administrative Procedure Act (APA) (5 U.S.C. 533(d)). This provision authorizes an agency to make a rule effective less than 30 days after publication in the **Federal Register** 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(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This action is necessary for the protection of persons and vessels, on navigable waters, during the construction of a subaqueous water main that begun in June 2012. It would be contrary to public interest to delay the effective date of the rule.

B. Basis and Purpose

A 36'' subaqueous water main is being constructed across the Choctawhatchee Bay to improve water system delivery. The water main will cross the GICW, a federally maintained navigable channel. Construction of the water main and the required use of turbidity silt curtains pose significant safety hazards to both vessels and mariners operating in or near the GICW. The COTP Mobile is establishing a temporary safety zone for a portion of GICW in Choctawhatchee Bay, Santa Rosa Beach, FL. This temporary safety zone is deemed necessary to protect persons and vessels during construction of the water main across the GICW. The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to propose, establish, and define regulatory safety zones.

The COTP anticipates some impact on vessel traffic due to this regulation. However, the temporary safety zone is deemed necessary for the protection of life and property within the COTP Mobile zone.

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

The regulatory text for this rule has been amended reflecting an updated effective period and anticipated closure times for the safety zone. The original effective date of September 14, 2012 to October 14, 2012 has been amended to read; October 12, 2012 to November 30, 2012. This amendment is necessary to reflect changes in the project's timeline due to delays caused by severe tropical weather.

The Coast Guard has established a temporary safety zone for a portion of the GICW in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy ''26'' (LLNR 31510), to include the entire width of the channel. This rule will protect the safety of life and property in this area. Entry into or transiting in this zone will be prohibited to all vessels, mariners, and persons unless specifically authorized by the COTP Mobile or a designated

representative. The COTP may be contacted by telephone at (251) 441–5976.

This rule will be effective and enforceable with actual notice from October 12, 2012 to November 30, 2012. The COTP Mobile anticipates that this rule will be enforced for approximately three (3) days, to include a complete Twenty-Four (24) hour closure of the GICW. The COTP Mobile or a designated representative will inform the public through Broadcast Notices to Mariners of the specific enforcement periods throughout the water main construction project as well as any changes in the safety zone.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

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

The temporary safety zone listed in this rule will only restrict vessel traffic from entering or transiting a small portion of the GICW. The effect of this regulation will not be significant for several reasons: (1) The COTP Mobile will issue maritime advisories widely available to users of the waterway; (2) this rule will only affect vessel traffic that are subject to transiting the GICW due to draft restrictions; and (3) the impacts on routine navigation are expected to be minimal. Notifications to the marine community will be made through Local Notices to Mariners and Broadcast Notices to Mariners. These notifications will allow the public to plan operations around the affected area.

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 0 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 transit the affected portion of the GICW during construction of the water main. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This safety zone is limited in size, is of short duration and shallow draft vessel traffic may pass safely around the temporary safety zone.

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 have determined that it does not have implications for federalism.

6. Protest Activities

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

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

This 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This rule is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That

Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone for a portion of the GICW in Choctawhatchee Bay, Santa Rosa Beach, FL, for the safety of the public and is not expected to result in any significant adverse environmental impact as described in NEPA. 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0518 to read as follows:

§ 165.T08–0518 Safety Zone; Water Main Crossing; Choctawhatchee Bay; Santa Rosa Beach, FL.

(a) *Location.* The following area is a temporary safety zone: A portion of the Gulf Intracoastal Waterway in Choctawhatchee Bay from the Highway 331 fixed bridge west to the Red Nun Buoy ''26'' (LLNR 31510), to include the entire width of the channel.

(b) *Effective dates.* This rule is effective from October 12, 2012 to November 30, 2012.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Mobile or a designated representative.

(2) Persons or vessels not restricted to navigation in the Gulf Intracoastal Waterway by draft and that can safely do so, may pass around the zone while maintaining a safe distance and transiting at slowest safe navigational speed.

(d) *Informational broadcasts.* The Captain of the Port or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

Dated: October 12, 2012.

D.J. Rose,

Captain, U.S. Coast Guard, Captain of the Port Mobile.

[FR Doc. 2012–28051 Filed 11–16–12; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 77, No. 223
Monday, November 19, 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–2012–1164; Directorate Identifier 2012–NM–075–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Airbus Model A310–204, –222, –304, –322, and –324 airplanes. This proposed AD was prompted by the manufacturer re-classifying slat extension eccentric bolts as principle structural elements (PSE) with replacement due at or before newly calculated fatigue life limits. This proposed AD would require replacing slat extension eccentric bolts, and associated washers with new slat extension eccentric bolts and washers. We are proposing this AD to prevent fatigue cracking, which could result in the loss of structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by January 3, 2013.

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

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

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–1164; Directorate Identifier 2012–NM–075–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the aviation authority for the Member States of the European Community, has issued EASA Airworthiness Directive 2012–0042, dated April 10, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Slat extension eccentric bolts have been reclassified as Principal Structural Elements (PSE). As a result, associated fatigue lives will be published in the Airbus A310 Airworthiness Limitation Section (ALS) Part 1 and bolts must be replaced at or before their calculated fatigue lives.
>
> Failure to replace the bolts within the new fatigue life limits constitutes an unsafe condition.
>
> For the reasons explained above, this [EASA] AD requires:
>
> —For A310–300 aeroplanes, the replacement of slat extension eccentric bolts, Part Number (P/N) A57844015200, with slat extension eccentric bolts P/N A57844015204 at the slat 2 tracks 4 and 7 and slat 3 track 8 positions on both Left Hand (LH) and Right Hand (RH) wings, and
>
> —For A310–300 and A310–200 aeroplanes that incorporate Airbus modification 04809, the replacement of slat extension eccentric bolts, P/N A57843624200 and associated washers P/N A57844016200, with slat extension eccentric bolts P/N A57843624202 and washers P/N A57844391200 at the slat 2 track 5 position, on both LH and RH wings.

The unsafe condition is fatigue cracking, which could result in the loss of structural integrity of the airplane. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 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 the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent

information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 9 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $25,250 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $26,015, or $26,015 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

3. Will not affect intrastate aviation in Alaska; and

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2012–1164; Directorate Identifier 2012–NM–075–AD.

(a) Comments Due Date

We must receive comments by January 3, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A310–204, –222, –304, –322, and –324 airplanes, certificated in any category, having received in production Airbus modification 04809 without Airbus modification 06243 or 13596.

(d) Subject

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

(e) Reason

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

(f) Compliance

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

(g) Compliance Times

At the applicable time specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Do the replacements specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable. For the purposes of this AD, to establish the average flight time (AFT), take the accumulated flight time (counted from the take-off up to the landing) and divide it by the number of accumulated flight cycles. This gives the AFT per flight cycle.

(1) For Model A310–304, –322, and –324 airplanes operated with an AFT of less than 4 hours: Before the accumulation of 66,000 total flight hours or 40,000 total flight cycles, whichever occurs first.

(2) For Model A310–304, –322, and –324 airplanes operated with an AFT of 4 hours or more: Before the accumulation of 66,000 total flight hours or 31,400 total flight cycles, whichever occurs first.

(3) For Model A310–204 and –222 airplanes with Airbus modification 04809: Before the accumulation of 71,800 total flight hours or 35,900 total flight cycles, whichever occurs first.

(h) Replacement of Slat Extension Eccentric Bolt and Hardware on Both Wings

(1) For Model A310–304, –322, and –324 airplanes: Replace the slat extension eccentric bolts, part number (P/N) A57844015200, at the slat 2 tracks 4 and 7 and slat 3 track 8 positions with new slat extension bolts, P/N A57844015204, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012.

(2) For Model A310–304, –322, and –324 airplanes, and Model A310–204 and –222 airplanes that have incorporated Airbus modification 04809: Replace the slat extension eccentric bolts, P/N A57843624200, at the slat 2 track 5 position with new slat extension bolts, P/N A57843624202; and replace the associated washers of eccentric bolts, P/N A57844016200, at slat 2 track 5 position with washers, P/N A57844391200; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012.

(i) Parts Installation Prohibition

After the modification of the airplane with the replacement of slat extension eccentric bolts and associated hardware required by paragraphs (g) and (h) of this AD, no person may install any slat extension eccentric bolt, P/N A57844015200 or P/N A57843624200, with associated washer P/N A57844016200, on that airplane.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as

appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

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

(k) Related Information

(1) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2012–0042, dated April 10, 2012; and Airbus Mandatory Service Bulletin A310–57–2100, Revision 01, dated February 3, 2012; for related information.

(2) For service information identified in this AD, contact Airbus SAS–EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on November 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–27999 Filed 11–16–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. FDA–2011–N–0090]

RIN 0910–AG31

Unique Device Identification System

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its July 10, 2012, proposed rule (77 FR 40736) to establish a unique device identification system as required by recent amendments to the Federal Food, Drug, and Cosmetic Act (the FD&C Act). On July 9, 2012, the Food and Drug Administration Safety and Innovation Act (FDASIA) was signed into law; section 614 of FDASIA amends the FD&C Act in ways that require modification of the timeframe for implementation of the proposed rule's requirements as they apply to devices that are implantable, life-saving (life-supporting), or life-sustaining.

DATES: Submit either electronic or written comments on the amendment to the Proposed Rule by December 19, 2012. See section VII for the proposed effective dates of a final rule based on the amended proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2011–N–0090 and/or RIN Number 0910–AG31, by any of the following methods.

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–827–6870.
- *Mail/Hand delivery/Courier (For paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name, Docket Number, and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jay Crowley, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–5995, email: *cdrhudi@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, FDASIA was signed into law (Pub. L. 112–144). On July 10, 2012, FDA published a proposed rule to establish a unique device identification system, as required by section 519(f) of the FD&C Act (21 U.S.C. 360i(f)). Section 614 of FDASIA amends section 519(f) of the FD&C Act in ways that require modification of the timeframe for implementation of the proposed rule's requirements as they apply to devices that are implantable, life-saving (life-supporting), or life-sustaining. This document explains how FDA is amending the July 10, 2012, proposed rule to meet the requirements of amended section 519(f) of the FD&C Act.

II. Description of the Proposed Rule

A. FDA's July 10, 2012, Proposed Rule

Our July 10, 2012, document provides a detailed description of the proposed rule. The proposed rule includes unique device identifier (UDI) labeling requirements (proposed for inclusion in 21 CFR part 801), requirements relating to issuing Agencies and submission of data to the Global Unique Device Identification Database (GUDID) (proposed new part 830), and conforming amendments to several existing FDA regulations. FDA proposed a phased implementation of the rule's requirements, with some requirements going into effect immediately after publication of a final rule, and other requirements going into effect 1 year, 3 years, 5 years, and 7 years after publication of a final rule. This phased implementation is summarized in the July 10, 2012, proposed rule by Table 7—Effective Dates of UDI Regulatory Requirements (77 FR 40736 at 40764).

B. Changes Required by the Enactment of FDASIA

Section 614 of FDASIA amends section 519(f) of the FD&C Act, the provision that requires FDA to establish a unique device identification system. Prior to the enactment of FDASIA, section 519(f) of the FD&C Act did not specify the date by which a proposed rule is required, did not identify any particular devices as requiring expedited implementation of UDI requirements, and did not specify timeframes for publication of a final rule. The FDASIA amendments to section 519(f) address each of those points. As amended by FDASIA, section

519(f) of the FD&C Act now requires that not later than December 31, 2012, the Secretary shall issue proposed regulations establishing a unique device identification system for medical devices requiring the label of devices to bear a unique identifier, unless the Secretary requires an alternative placement or provides an exception for a particular device or type of device. The unique identifier shall adequately identify the device through distribution and use, and may include information on the lot or serial number. Section 519(f) of the FD&C Act also requires that the Secretary shall finalize the proposed regulations not later than 6 months after the close of the comment period and shall implement the final regulations with respect to devices that are implantable, life-saving, and life sustaining not later than 2 years after the regulations are finalized, taking into account patient access to medical devices and therapies.

The change that has prompted amendment of FDA's proposed rule is the provision in the final sentence that requires ''final regulations with respect to devices that are implantable, life-saving, and life sustaining'' to be implemented within 2 years of finalization of the rule. (We refer to ''life-saving'' devices as ''life-supporting,'' as explained later in this document.). Thus we are amending our July 10, 2012, proposed rule by changing some of the proposed effective dates for requirements applicable to implantable, life-supporting, and life-sustaining devices, so that the requirements applicable to these devices will be effective no later than 2 years from finalization of the rule.

Under our July 10, 2012, proposed rule, all class III devices and all devices licensed under the Public Health Service Act (PHS Act) (42 U.S.C. 262) would be required to bear a UDI within 1 year of the date we publish a final rule; thus, this effective date does not need to be changed. Pursuant to amended section 519(f) of the FD&C Act, we are now proposing to require all other implantable, life-supporting, and life-sustaining devices (i.e., those that are not already subject to the 1-year effective date) to bear a UDI within 2 years following the publication of a final rule. (See proposed § 801.20(b)(2) as amended by this document.) Under our July 10, 2012, proposed rule, when a device is required to be labeled with a UDI, proposed § 830.300 would require the labeler of that device to submit information concerning the device to the GUDID. Consequently, the labelers of all implantable, life-supporting, and life-sustaining devices will be required to submit data to the GUDID within 2 years of the date we publish a final rule; see proposed § 801.20(b)(1) and (b)(2) as amended by this document.

Proposed § 801.50 would require direct marking of the UDI on the device itself for implantable devices, devices intended to be used more than once and that are intended to be sterilized before each use, and stand-alone software. We are now amending the proposed rule so that any such devices that fall into the categories specified by revised section 519(f) of the FD&C Act—devices that are implantable, life supporting, or life sustaining—would have to comply with § 801.50, establishing a system of unique device identification 2 years after publication of a final rule. FDA believes that the only devices subject to direct marking that fit within the device categories expressly referred to in revised section 519(f) of the FD&C Act are implantable devices and is assuming only implantable devices will be affected by the revised implementation date for the direct marking requirement. We welcome comments on whether any devices subject to the direct marking requirement under proposed § 801.50 other than implantable devices fit within the device categories in amended section 519(f) of the FD&C Act.

FDA interprets ''life-saving'' in section 519(f) of the FD&C Act, as amended by section 614 of FDASIA, to have the same meaning as ''life-supporting'' in other device provisions of the FD&C Act. Section 614 of FDASIA refers to devices that are ''implantable, life-saving, and life-sustaining.'' The device provisions of the FD&C Act do not use the term ''life-saving'' in any other instance, but in several instances refer to devices that are ''implantable, life sustaining, or life supporting.'' (See section 513(a) of the FD&C Act (21 U.S.C. 360c(a)) (definitions of class II and class III devices); section 519 (records and reports on devices, including adverse event reporting and device tracking); section 522 of the FD&C Act (21 U.S.C. 360l) (postmarket surveillance); and section 523 of the FD&C Act (21 U.S.C. 360m) (accredited persons).) In order for the language of our proposed UDI rule to be consistent with existing FDA regulations and the other provisions of the FD&C Act, in the amendments to the proposed regulations we use the term ''life-supporting'' instead of ''life-saving.'' FDA, the medical device industry, and the health care community are already familiar with the term ''life-supporting'' as applied to medical devices, which will facilitate FDA's implementation of the amended proposed rule.

A list of product codes for devices that FDA considers to be implantable, life-saving, and life-sustaining for purposes of section 614 of FDASIA, amending section 519(f) of the FD&C Act, is available in docket FDA–2011–N–0090 (Ref. 12).

FDA is not extending the comment period of the proposed rule, which closed on November 7, 2012. We do not believe that amending some of the proposed effective dates for certain categories of devices necessitates additional time to review the amended proposed rule and to submit comments to FDA.

C. How the Amendments Made by This Proposed Rule Will Affect the July 10, 2012, Proposed Rule

These amendments affect only implantable, life-supporting, or life-sustaining devices. With the exception of the change to the proposed effective date for the direct marking requirement, these amendments do not affect class III devices or devices licensed under the PHS Act because such devices would have to bear a UDI within 1 year of finalization under the July 10, 2012, proposed rule.

We are updating Table 7—Effective Dates of UDI Regulatory Requirements, of the July 10, 2012, proposed rule to reflect the revisions provided by this document; we have also corrected two citations within the table (citations to § 830.320 should have cited § 830.300). Updated table 7 appears in this document in section VI. Updated Proposed Effective Dates.

New table 8 of this document summarizes the effects of the amendments we are making to the July 10, 2012, proposed rule.

TABLE 8—EFFECTS OF THE AMENDMENTS TO THE JULY 10, 2012, PROPOSED RULE

Category of device	Effect of amendments to proposed rule
Class III implantable, life-supporting, and life-sustaining devices, and implantable, life-supporting, and life-sustaining devices licensed under the PHS Act.	No effect with respect to proposed requirement for device to bear UDI on the label and device package or proposed requirements for submission of data to the GUDID.

TABLE 8—EFFECTS OF THE AMENDMENTS TO THE JULY 10, 2012, PROPOSED RULE—Continued

Category of device	Effect of amendments to proposed rule
Class II implantable, life-supporting, and life-sustaining devices	Implantable devices would have to bear a UDI as a permanent marking on the device itself 1 year earlier than first proposed. Would have to bear a UDI on the label and device package and submit data to the GUDID 1 year earlier than first proposed.
Class I implantable, life-supporting, and life-sustaining devices, and implantable, life-supporting, and life-sustaining devices that have not been classified into class I, II, or III.	Implantable devices would have to bear a UDI as a permanent marking on the device itself 3 years earlier than first proposed. Would have to bear a UDI on the label and device package and submit data to the GUDID 3 years earlier than first proposed. Implantable devices would have to bear a UDI as a permanent marking on the device itself 5 years earlier than first proposed.

D. Request for Comments

This amendment announces changes to the proposed rule required by FDASIA. The comment period on the proposed rule closed on November 7, 2012. We request comments only on the changes discussed in this amendment to the proposed rule and may decline to consider other comments submitted to this docket.

III. Legal Authority for the Proposed Rule

Section 226 of the Food and Drug Administration Amendments Act (Pub. L. 110–85) (2007), amended the FD&C Act by adding a new section 519(f). This section provides for FDA to issue regulations establishing a unique device identification system for medical devices. In addition, section 510(e) of the FD&C Act (21 U.S.C. 360(e)) authorizes FDA to issue regulations to ''prescribe a uniform system for identification of devices'' and to require persons to ''list such devices in accordance with such system.'' Therefore, FDA is issuing the provisions of this proposed rule that would establish a unique device identification system under sections 510(e), 519(f), and 701(a) (21 U.S.C. 371(a)) of the FD&C Act (which provides FDA the authority to issue regulations for the efficient enforcement of the FD&C Act).

Devices for which there has been a failure or refusal to furnish any material or information required by or under section 519 of the FD&C Act respecting the device are misbranded under section 502(t)(2) of the FD&C Act (21 U.S.C. 352(t)(2)). The failure or refusal to furnish any material or information required by or under section 519 of the FD&C Act is a prohibited act under section 301(q)(1)(B) of the FD&C Act (21 U.S.C. 331(q)(1)(B)).

Section 701(a) of the FD&C Act gives FDA the authority to issue regulations for the efficient enforcement of the FD&C Act. By requiring a UDI to appear on the label of devices, and by establishing the GUDID, the proposed rule is designed to improve the accuracy and precision of adverse event reporting, as required by section 519(a) and (b) of the FD&C Act, which will enable FDA to more quickly and precisely identify device problems, such as safety and/or effectiveness concerns. Once a problem is identified, whether through improved reporting or otherwise, the presence of the UDI on the device label, packaging, in certain cases directly marked on the device itself, and in the GUDID will enable FDA to more efficiently and effectively respond, and protect the public health by addressing the problem using one or more of the regulatory tools that Congress has provided for this purpose, such as notification or mandatory recall under section 518 of the FD&C Act (21 U.S.C. 360h), tracking under section 519(e) of the FD&C Act, ensuring the adequacy of a voluntary recall with the assistance of reports of corrections and removals as required by section 519(g) of the FD&C Act, or seizing a device that is adulterated under section 501 of the FD&C Act (21 U.S.C. 351) and/or misbranded under section 502 of the FD&C Act. Thus, these provisions of the proposed rule are issued under the authority of these sections in addition to the broad authority of section 519(f) of the FD&C Act.

Section 510(j) of the FD&C Act requires listing information to be accompanied by, at minimum, the label, package insert, and a representative sampling of any other labeling for the device (see section 510(j)(1)(B)(ii)). For certain categories of devices, all labeling must be submitted (see section 510(j)(1)(A) and (j)(1)(B)(i) of the FD&C Act). We expect most of the information that would be required to be submitted to the GUDID (see proposed § 830.310), is information that appears on the device label or in the package insert, and is included in the information that is required to be submitted to FDA by section 510(j) of the FD&C Act.

The provisions of the proposed rule that would require UDIs to be included in various records and reports, allow the use of UDIs to identify devices subject to reports of corrections and removals and records of corrections of removals that are not required to be reported to FDA, and require reporting of UDIs in periodic reports for class III devices, are issued under the authority of sections 519 and 701(a) of the FD&C Act.

The provisions of the proposed rule that would amend the Quality System Regulation by requiring examination of the accuracy of the UDI as part of the scope of the labeling inspection, that the device history record include any UDI or universal product code (UPC), that complaint records include any UDI or UPC, and that the service report include an UDI or UPC, are issued under sections 520(f) (21 U.S.C. 360j(f)) and 701(a) of the FD&C Act.

The provisions of the proposed rule that would require the inclusion of UDIs on reports regarding tracked devices is authorized by sections 519(e) and 701(a) of the FD&C Act.

The provision of the proposed rule that would require that postmarket surveillance plans submitted to FDA include the device identifier of the devices involved is issued under sections 522 (21 U.S.C. 360*l*), and 701(a) of the FD&C Act.

Finally, the changes in proposed effective dates for devices that are implantable, life-saving, and life sustaining, are pursuant to the changes to section 519(f) of the FD&C Act made by section 614 of FDASIA.

IV. Analysis of Impacts

Our July 10, 2012, document summarizes the analysis of impacts of the proposed rule. The full analysis of impacts and findings that are presented in Preliminary Regulatory Impact Analysis (RIA) of the proposed rule remain unchanged (Ref. 10 of the July 10, 2012, proposed rule). However, we are amending our summary of costs to include the FDASIA requirement to

incorporate the revised implementation date of 2 years for devices that are implantable, life-supporting, and life-sustaining. The July 10, 2012, RIA and the Addendum to the RIA (new Ref. 13) are available at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/ucm309815.htm*.

We lack sufficient information to estimate the number of establishments that label life-supporting and life-sustaining devices and would be affected by the FDASIA requirement. Therefore, for this amended cost summary, we make a simplifying assumption that labelers of all class II devices would comply with the UDI requirements in year 2 instead of year 3 as initially specified under the proposed rule. Because the modified timeframe would advance the implementation date to directly mark implantable, life-supporting, and life-sustaining devices, we assume that labelers of class III devices that are implants would comply with the direct marking requirements in year 2 instead of year 3 as initially specified under the proposed rule. The effect of these simplifying assumptions might be to overstate the annualized costs for some labelers of class II devices that are not considered life-supporting or life-sustaining devices, and to underestimate the annualized costs for some labelers of class I devices that are considered life-supporting or life-sustaining devices.

The amended summary of the total costs of the proposed rule for all sectors is presented in the updated table 3 of this document. The total present value of domestic costs for all affected sectors would be about $554.8 million over 10 years with a 7 percent discount rate and $625.4 million at 3 percent. The total annualized costs over 10 years would be $73.8 million at 7 percent and $71.1 million at 3 percent. The total increase in annualized costs to domestic labelers compared to the proposed rule is about $5.4 million at 7 percent over 10 years.

UPDATED TABLE 3—SUMMARY OF THE ESTIMATED REGULATORY COSTS OF THE PROPOSED RULE

[2010 dollars] [1] [2]

Affected sectors	Total present value of cost over 10 years ($ million)		Total annualized costs over 10 years ($ million)	
	3 Percent	7 Percent	3 Percent	7 Percent
Domestic Labelers	$608.3	$540.2	$69.2	$71.9.
Issuing Agencies	$1.0	$0.9	$0.1	$0.1.
FDA	$16.1	$13.7	$1.8	$1.8.
Imports	Not quantified	Not quantified	Not quantified	Not quantified.
Total Domestic Cost of the Proposed Rule	$625.4	$554.8	$71.1	$73.8.

[1] Present value and annualized costs calculated at the beginning of the period.

[2] Domestic costs for labelers are revised to reflect FDASIA requirement that labelers of affected devices comply in year 2. However, FDA's revised estimate assumes that all class II devices would comply in year 2.

Updated table 1 (and identical updated table 4 of the proposed rule) presents the Regulatory Information Service Center (RISC) and Office of Information and Regulatory Affairs (OIRA) Combined Information System (ROCIS) accounting information under the assumption that labelers of all class II devices would comply with the UDI requirements in year 2 and that all labelers of class II implantable devices would comply with the direct marking requirements in year 2.

Updated Table 1.--Costs and Benefits, and Updated Table 4.--Economic Data: Costs and Benefits Accounting Statement (2010 dollars)

				Units			
Category	Primary Estimate	Low Estimate	High Estimate	Year Dollars	Discount Rate	Period Covered	Notes
Benefits							
Annualized Monetized $millions/year					7%		
					3%		
Annualized Quantified					7%		
					3%		
Qualitative	More accurate and prompt identification of device related adverse events would lead to more rapid action to reduce the incidence of the adverse events and to more effectively target and manage medical device recalls.						
Costs							
Annualized Monetized $millions/year	$73.8	$37.6	$110.0	2011	7%	10 years	Costs to foreign labelers are not included.
	$71.1	$36.3	$106.0	2011	3%	10 years	
Annualized Quantified					7%		
					3%		
Qualitative							
Transfers							
Federal Annualized Monetized $millions/year					7%		
					3%		
From/To	From:			To:			
Other Annualized Monetized $millions/year					7%		
					3%		
From/To	From:			To:			
Effects							
State, Local or Tribal Government: No effect							
Small Business: The proposed rule may have a significant economic impact on a substantial number of small entities that label medical devices.							
Wages: No effect							

V. Information Collection Requirements

The updates made by this proposed rule do not affect the estimate we previously provided regarding our July 10, 2012, proposed rule.

In accordance with section 3507(d) of the PRA (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to OMB. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain* (OMB Number 0910–0720) and is posted to the docket at *http://www.regulations.gov,* in docket FDA–2011–N–0090 (Ref. 11 of the proposed rule).

VI. Environmental Impact

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

VII. Updated Proposed Effective Dates

FDA updates Table 7—Effective Dates of UDI Regulatory Requirements, in our July 10, 2012, proposed rule as follows.

UPDATED TABLE 7—EFFECTIVE DATES OF UDI REGULATORY REQUIREMENTS

Effective date	Requirement
Immediately upon publication of a final rule.	Requests for an exception or alternative to UDI labeling requirements may be submitted pursuant to § 801.35.
	§§ 830.100–830.130 (subpart C of part 830, concerning accreditation of issuing Agencies) and § 830.10 (incorporation by reference of certain standards) go into effect. This will allow applications for accreditation as an issuing Agency to be submitted to FDA immediately.
One year after publication of a final rule.	Dates on medical device labels must be formatted as required by § 801.18.
	The label and package of class III medical devices and devices licensed under the PHS Act must bear a UDI. § 801.20(b)(1).
	Data for class III devices and devices licensed under the PHS Act that are required to be labeled with a UDI must be submitted to the GUDID data base. § 830.300.
Two years after publication of a final rule.	The label and package of implantable, life-supporting, and life-sustaining devices that are not class III devices or licensed under the PHS Act must bear a UDI. § 801.20(b)(2).
	Data for implantable, life-supporting, and life-sustaining devices that are not class III devices or licensed under the PHS Act and that are required to be labeled with a UDI, must be submitted to the GUDID data base. § 830.300.
	All implantable devices required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself. § 801.50.
Three years after publication of a final rule.	Class III devices required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is (1) a device intended to be used more than once and intended to be sterilized before each use, or (2) stand-alone software regulated as a medical device. § 801.50.
	The label and package of class II medical devices must bear a UDI. § 801.20(b)(3).
	Data for class II devices that are required to be labeled with a UDI, must be submitted to the GUDID data base. § 830.300.
Five years after publication of a final rule.	Class II devices required to be labeled with a UDI must bear a UDI as a permanent marking on the device itself if the device is (1) a device intended to be used more than once and intended to be sterilized before each use, or (2) stand-alone software regulated as a medical device. § 801.50.
	The label and package of class I medical devices and devices that have not been classified into class I, class II, or class III must bear a UDI. § 801.20(b)(4), (5).
	Data for class I devices and devices that have not been classified into class I, class II, or class III that are required to be labeled with a UDI must be submitted to the GUDID data base. § 830.300.
Seven years after publication of a final rule.	Class I devices and devices that have not been classified into class I, class II, or class III required to be labeled with a UDI must a bear UDI as a permanent marking on the device itself if the device is (1) a device intended to be used more than once and intended to be sterilized before each use, or (2) stand-alone software regulated as a medical device. § 801.50.
90 days after publication of a final rule.	All other provisions go into effect, although some will have no practical effect until other provisions listed in this table go into effect.

VIII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule, if finalized, would not contain policies that would have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the Agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov.* It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

X. References

We have not removed any references listed in the July 10, 2012, proposed rule. We are adding new references 12 and 13 to account for the additional costs attributable to the FDASIA amendment of section 519(f) of the FD&C Act, specifically the requirement that FDA must implement the regulation with respect to devices that are implantable, life-supporting, and life-sustaining not later than 2 years after we publish a final rule.

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.*

12. List of medical devices, by product code, that FDA considers to be implantable, life-saving, and life-sustaining for purposes of section 614 of FDASIA, amending section 519(f) of the FD&C Act, November 2012.

13. Addendum to the Preliminary Regulatory Impact Analysis of the Proposed Rule to Require a Unique Device Identification System, Docket No. FDA–2011–N–0090.

List of Subjects in 21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321 *et seq.,* as amended) and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 801, as proposed to be amended in the **Federal Register** of July 10, 2012 (77 FR 40736), be further amended as follows:

PART 801—LABELING

1. The authority citation for part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

Subpart B—[Amended]

2. Revise § 801.20(b) to read as follows:

§ 801.20 Label to bear a unique device identifier (UDI).

* * * * *

(b) *Effective dates.* The requirements of paragraph (a) of this section become effective:

(1) If the device is a class III medical device or is a device licensed under section 351 of the Public Health Service Act, as amended, 5 U.S.C. 262, [A DATE WILL BE ADDED THAT IS 1 YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(2) If the device is an implantable, life-supporting, or life-sustaining device, and is not a class III device or a device licensed under section 351 of the Public Health Service Act, as amended, 5 U.S.C. 262, [A DATE WILL BE ADDED THAT IS 2 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(3) If the device is a class II medical device not covered by paragraph (2), [A DATE WILL BE ADDED THAT IS 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(4) If the device is a class I medical device not covered by paragraph (2), [A DATE WILL BE ADDED THAT IS 5 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**];

(5) If the device is not classified into class I, II, or III, [A DATE WILL BE ADDED THAT IS 5 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

* * * * *

3. Revise § 801.50(d) to read as follows:

§ 801.50 Devices that must be directly marked with a unique device identifier.

* * * * *

(d) *Effective dates.* The requirements of this section apply to a device that is an implantable, life-supporting, or life-sustaining device [A DATE WILL BE ADDED THAT IS 2 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], and to any other device 2 years after the date that applies to the device under § 801.20(b).

* * * * *

Dated: November 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28015 Filed 11–16–12; 8:45 am]

BILLING CODE 4160–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0141; FRL–9752–8]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Attainment Plan for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware 1997 Fine Particulate Matter Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by Delaware on April 3, 2008, as amended on April 25, 2012. The SIP revision demonstrates attainment of the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) for the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware (PA–NJ–DE) nonattainment area (Philadelphia Area). This Delaware SIP revision (herein called the ''attainment plan'') includes the Philadelphia Area's attainment demonstration and motor vehicle emission budgets (MVEBs) used for transportation conformity purposes for New Castle County in Delaware. The attainment plan also includes an analysis of reasonably available control measures (RACM) and reasonably available control technology (RACT), a base year emissions inventory, and contingency measures. The April 25, 2012 submittal is a SIP revision that replaces the MVEBs in the April 3, 2008 submittal with a budget that is based on the Motor Vehicle Emissions Simulator (MOVES) model. In a separate and concurrent process, EPA is conducting a procedure to find adequate the MVEBs for New Castle County. Furthermore, EPA has determined that a reasonable further progress (RFP) plan is not required because Delaware projected that attainment of the 1997 annual $PM_{2.5}$ NAAQS occurred in the Philadelphia Area by the attainment date of April 2010. This action is being taken in accordance with the Clean Air Act (CAA) and the Clean Air Fine Particulate Implementation Rule ($PM_{2.5}$ Implementation Rule) published on April 25, 2007.

DATES: Written comments must be received on or before December 19, 2012.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0141 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: mastro.donna@epa.gov.*

C. *Mail:* EPA–R03–OAR–2010–0141, Donna Mastro, Acting Associate Director, Office of Air Planning Program, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2010–0141. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is

not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by email at *quinto.rose@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. The following is provided to aid in locating information in this preamble.

I. Summary of Action
II. Background
A. Designation History
B. Clean Air Fine Particle Implementation Rule
C. Determinations of Attainment
III. Description of the Delaware Attainment Plan
IV. EPA's Analysis
A. Attainment Demonstration
1. Pollutants Addressed
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VI. Statutory and Executive Order Reviews

I. Summary of Action

EPA is proposing to approve Delaware's SIP revision which was submitted by the State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) to EPA on April 3, 2008, as amended on April 25, 2012, which demonstrates attainment of the 1997 annual $PM_{2.5}$ NAAQS for the Philadelphia Area. This $PM_{2.5}$ attainment plan includes Delaware's attainment demonstration and MVEBs used for transportation conformity purposes for New Castle County in Delaware. The April 25, 2012 SIP revision submittal (1) replaced the onroad emissions budget in the April 3, 2008 submittal with a budget that is based on a new onroad mobile emissions model—MOVES model; (2) demonstrated that the MOVES based mobile source budget is consistent with attainment of the $PM_{2.5}$ NAAQS by 2010; and (3) demonstrated that the contingency requirements of the CAA are met. The April 25, 2012 submittal only impacts $PM_{2.5}$ and nitrogen oxide (NO_X) emissions and calculations.

The attainment plan also includes a base year emissions inventory, an analysis of RACM/RACT, and contingency measures. EPA has determined that a RFP plan is not required because Delaware demonstrated that attainment with the 1997 annual $PM_{2.5}$ NAAQS occurred in the Philadelphia Area by the attainment date of April 2010.

In a separate and concurrent process, EPA is conducting a process to find adequate the MVEBs for New Castle County which are associated with the Delaware attainment demonstration for the Philadelphia Area. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for New Castle County in the April 25, 2012 SIP revision's attainment demonstration for the Philadelphia Area. That notice will inform the public of the availability of the Delaware SIP revision on DNREC's Web site. Interested members of the public could access Delaware's April 25, 2012 SIP revision on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. Following EPA's public comment period, responses to any comments received will be addressed. EPA has reviewed the revised MVEBs developed with MOVES and found them consistent with the attainment demonstration and found that the budgets meet the criteria for adequacy and approval.

EPA has determined that Delaware's $PM_{2.5}$ attainment plan meets the applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule published on April 25, 2007 (72 FR 20586). EPA's analysis and findings are discussed in this proposed rulemaking. In addition, technical support documents (TSDs) for this proposal are available on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. These TSDs provide additional explanation of EPA's analysis supporting this proposal.

II. Background

A. Designation History

On July 16, 1997, EPA established the 1997 $PM_{2.5}$ NAAQS, including an annual standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations and a 24-hour (or daily) standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. *See* 62 FR 38652 (July 18, 1997). EPA established these standards based on significant evidence and numerous health studies demonstrating that serious health effects are associated with exposures to $PM_{2.5}$.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the United States as attaining or not attaining the NAAQS; this designation process is described in section 107(d)(1) of the CAA. In 1999, EPA and state air quality agencies initiated the monitoring process for the 1997 $PM_{2.5}$ NAAQS and by January 2001, established a complete set of air quality monitors. On January 5, 2005 (70 FR 944), EPA promulgated initial air quality designations for the 1997 $PM_{2.5}$ NAAQS, which became effective on April 5, 2005, based on air quality monitoring data for calendar years 2001–2003.

On April 14, 2005 (70 FR 19844), EPA promulgated a supplemental rule amending EPA's initial designations, with the same effective date (April 5, 2005) as 70 FR 944. As a result of this supplemental rule, $PM_{2.5}$ nonattainment designations are in effect for 39 areas, comprising 208 counties within 20 states (and the District of Columbia) nationwide, with a combined population of about 88 million. The Philadelphia Area which includes New Castle County in Delaware is in the list of areas not attaining the 1997 annual $PM_{2.5}$ NAAQS.

It should be noted that on November 13, 2009 (74 FR 58688), EPA relabeled the existing designation tables in 40 CFR 81.308 to clarify the 1997 designations for the 24-hour $PM_{2.5}$ NAAQS. The designation for New Castle County was clarified as unclassifiable/attainment for the 1997 24-hour $PM_{2.5}$ NAAQS.

B. Clean Air Fine Particle Implementation Rule

The $PM_{2.5}$ Implementation Rule describes the CAA framework and requirements for developing SIPs for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. An attainment plan must include a demonstration that a nonattainment area will meet the applicable NAAQS within the

timeframe provided in the statute. This demonstration must include modeling (40 CFR 51.1007) that is performed in accordance with EPA modeling guidance (EPA–454/B–07–002, April 2007). It must also include supporting technical analyses and descriptions of all relevant adopted Federal, state, and local regulations and control measures that have been adopted in order to provide attainment of the 1997 $PM_{2.5}$ NAAQS by the proposed attainment date.

For the 1997 $PM_{2.5}$ NAAQS, an attainment plan must show that a nonattainment area will attain the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable, but within five years of designation (i.e. attainment date of April 2010 based on air quality data for 2007–2009). If the area is not expected to meet the NAAQS by April 2010, a state may request to extend the attainment date by one to five years based upon the severity of the nonattainment problem or the feasibility of implementing control measures (section 172(a)(2) of the CAA) in the specific area.

For each nonattainment area, the state must demonstrate that it has adopted all RACM, including all RACT for the appropriate emissions sources, needed to provide for attainment of the $PM_{2.5}$ standards in the specific nonattainment area ''as expeditiously as practicable.'' The $PM_{2.5}$ Implementation Rule provided guidance for making these RACM/RACT determinations (*see* section IV.A.4 of this notice). Any measures that are necessary to meet these requirements that are not already Federally promulgated or in an EPA-approved part of the state's SIP must be submitted as part of a state's attainment plan. Any state measures must meet the applicable statutory and regulatory requirements, and in particular, must be enforceable.

The $PM_{2.5}$ Implementation Rule also included guidance on pollutants that states must address in their attainment plans. Section 302(g) of the CAA authorizes EPA to regulate criteria pollutants and their precursors. In the case of $PM_{2.5}$, the main chemical precursors are sulfur dioxide (SO_2), NO_X, ammonia (NH_3), and volatile organic compounds (VOCs). The effect of reducing emissions of precursor pollutants that contribute to $PM_{2.5}$ concentrations varies by area, however, depending on $PM_{2.5}$ composition, emission levels, and other area-specific factors. For this reason, the $PM_{2.5}$ Implementation Rule provided guidance recommending that states elect to control direct $PM_{2.5}$ emissions and the precursor or precursors that would be most effective for attaining the NAAQS within the specific area, based upon an appropriate technical demonstration.

In accordance with the $PM_{2.5}$ Implementation Rule, direct $PM_{2.5}$ emissions means ''solid particles emitted directly from an air emissions source or activity, or gaseous emissions or liquid droplets from an air emissions source or activity which condense to form particulate matter at ambient temperatures. Direct $PM_{2.5}$ emissions include elemental carbon, directly emitted organic carbon (OC), directly emitted sulfate (SO_4), directly emitted nitrate (NO_3), and other inorganic particles (including but not limited to crustal material, metals, and sea salt).''

The $PM_{2.5}$ Implementation Rule requires all states to address SO_2 as a $PM_{2.5}$ precursor and to evaluate SO_2 for possible control measures in all $PM_{2.5}$ nonattainment areas. States are required to address NO_X as a $PM_{2.5}$ precursor and evaluate reasonable controls for NO_X in all $PM_{2.5}$ attainment plans, unless the state and EPA make a finding that NO_X emissions from sources in the state do not significantly contribute to $PM_{2.5}$ concentrations in the relevant nonattainment area.

Although current scientific information shows that certain VOC emissions are precursors to the formation of secondary organic aerosol, and significant progress has been made in understanding the role of gaseous organic material in the formation of organic particulate matter (PM), this relationship remains complex. Further research and technical tools are needed to better characterize emissions inventories for specific VOC compounds and to determine the extent of the contribution of specific VOC compounds to organic PM mass. Because of these factors, the $PM_{2.5}$ Implementation Rule did not require states to address VOCs as $PM_{2.5}$ attainment plan precursors and evaluate them for control measures, unless the state or EPA made a finding that VOCs significantly contribute to a $PM_{2.5}$ nonattainment problem in the specific area or to other downwind air quality concerns.

The $PM_{2.5}$ Implementation Rule also describes the formation of particles related to NH_3 emissions, which is a complex, nonlinear process. Though recent studies have improved our understanding of the role of NH_3 in aerosol formation, ongoing research is needed to better describe the relationships between NH_3 emissions, PM concentrations, and related impacts. Also, area-specific data is needed to evaluate the effectiveness of reducing NH_3 emissions on reducing $PM_{2.5}$ concentrations in different areas, and to determine where NH_3 decreases may increase the acidity of particles and precipitation. For these reasons, in the $PM_{2.5}$ Implementation Rule, NH_3 is presumed not to be a $PM_{2.5}$ attainment plan precursor, meaning that the state is not required to address NH_3 in its attainment plan or evaluate sources of NH_3 emissions for reduction measures, unless the state or EPA makes a finding that NH_3 significantly contributes to a $PM_{2.5}$ nonattainment problem in the area or to other downwind air quality concerns.

The presumptive inclusion of NO_X and the presumptive exclusion of VOC and NH_3 as precursors can be reversed based on an acceptable technical demonstration for a particular nonattainment area by the state or EPA. Such a demonstration should include information from multiple sources, including results of speciation data analyses, air quality modeling studies, chemical tracer studies, emission inventories, or special intensive measurement studies to evaluate specific atmospheric chemistry in an area. *See* the $PM_{2.5}$ Implementation Rule for more information.

The $PM_{2.5}$ Implementation Rule also provided guidance for the other elements of a state's attainment plan, including, but not limited to, emission inventories, contingency measures, and MVEBs used for transportation conformity purposes. There are, however, three aspects of the $PM_{2.5}$ Implementation Rule for which EPA received petitions requesting reconsideration. These pertain to the presumption or advance determination that compliance with the requirements of the Clean Air Interstate Rule (CAIR) automatically satisfies the requirements for RACT or RACM for NO_X or SO_2 emissions from electric generating unit (EGU) sources participating in regional cap and trade programs; the suggestion in the preamble that the economic feasibility element of a RACT determination for EGUs should include consideration of whether the cost of a measure is reasonable in light of the benefits; and the policy described in the preamble of allowing certain emissions reductions from outside the nonattainment area to be credited as meeting the RFP requirement. EPA has granted these petitions. The Delaware attainment plan for the Philadelphia Area does not rely on any of these aspects of the rule.[1]

[1] While Delaware listed CAIR as a control measure in its discussion of RACM/RACT, Delaware's determination of RACM/RACT did not solely depend on CAIR as RACT. *See* Appendix 7–1 of Delaware's April 3, 2008 Attainment Plan.

With regard to CAIR, EPA published this rule on May 12, 2005 (70 FR 25162) to address the interstate transport requirements of the CAA with respect to the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. As originally promulgated, CAIR required significant reductions in emissions of SO_2 and NO_X to limit the interstate transport of these pollutants. In 2008, however, the Court of Appeals for the District of Columbia Circuit (''the Court'') remanded CAIR back to EPA. *See North Carolina* v. *EPA,* 550 F.3d 1176 (D.C. Cir. 2008). The Court had previously found CAIR to be inconsistent with the requirements of the CAA, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur because it found that ''allowing CAIR to remain in effect until it is replaced by a rule consistent with [the Court's] opinion would at least temporarily preserve the environmental values covered by CAIR.'' *See North Carolina* v. *EPA,* 550 F.3d at 1178. CAIR thus remained in place following the remand, and was in place and enforceable through the April 5, 2010 attainment date.

In response to the Court's decision, EPA issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (i.e., the Transport Rule, also known as the Cross-State Air Pollution Rule). *See* 76 FR 48208 (August 8, 2011). In the Transport Rule, EPA finalized regulatory changes to sunset (i.e., discontinue) CAIR and the CAIR Federal Implementation Plans (FIPs) for control periods in 2012 and beyond. *See* 76 FR 48322.

The recent Court decision on the Transport Rule, *EME Homer City Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir., August 21, 2012) [2] does not disturb EPA's determination that it is appropriate to move forward with this proposed action. This action proposes to approve an attainment plan that demonstrated that the Philadelphia Area would attain the 1997 annual $PM_{2.5}$ NAAQS by 2010, which it did, as discussed in section II.C of this notice. The air quality analysis conducted for the Transport Rule demonstrates that the Philadelphia Area would be able to attain the 1997 annual $PM_{2.5}$ NAAQS even in the absence of CAIR or the Transport Rule. *See* Appendix B to the Air Quality Modeling Final Rule Technical Support Document for the Transport Rule. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based. More importantly, the Transport Rule is not relevant to this action. The Transport Rule only addresses emissions in 2012 and beyond. As such, neither the Transport Rule itself, nor the vacatur of the Transport Rule, is relevant to the question addressed in this proposal notice. The purpose of this action is to determine whether the attainment plan submitted by Delaware is sufficient to bring the Philadelphia Area into attainment by the April 2010 attainment date, a date before the Transport Rule was even promulgated.

Similarly, the status of CAIR after the April 2010 attainment date is also not relevant to this action. While the air quality monitoring data that shows the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was impacted by CAIR, CAIR was in place and enforceable through the 2010 attainment date that is relevant to this attainment plan. CAIR was an enforceable control measure applicable to affected sources in the area, as well as sources throughout the Eastern United States. As such, the current status of CAIR is irrelevant to and does not impact our conclusion that the attainment plan should be approved. Moreover, in its August 2012 decision, the Court also ordered EPA to continue implementing CAIR. *See EME Homer City,* slip op. at 60. For these reasons, neither the current status of CAIR nor the current status of the Transport Rule affects any of the criteria for proposed approval of this SIP revision.

C. Determinations of Attainment

EPA makes two different types of attainment determinations for nonattainment areas. The first, a Determination of Attainment by the attainment date, is a determination of whether the area attained the NAAQS as of the area's applicable attainment deadline, which, for $PM_{2.5}$, is required by section 179(c) of the CAA. The second is a Determination of Attainment for purposes of suspending a state's obligation to submit certain attainment-related planning SIP requirements (i.e., the Clean Data Determinations for $PM_{2.5}$). *See* 40 CFR 51.1004(c). A Clean Data Determination and the suspension of the planning requirements continue for as long as the area continues to attain the NAAQS.

(1) Determination of Attainment by the Area's Attainment Date

In accordance with section 179(c) of the CAA, EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by its required attainment date of April 5, 2010. This determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for 2007–2009 as well as the 2008–2010 monitoring periods. *See* 40 CFR 51.1004(c).

(2) Clean Data Determination

On May 16, 2012 (77 FR 28782), EPA also determined that the Philadelphia Area has attained the 1997 annual $PM_{2.5}$ NAAQS and remains in attainment. The determination was based on complete, quality-assured, quality-controlled, and certified ambient air monitoring data for the 2007–2009 and the 2008–2010 monitoring periods. *See* 40 CFR 51.1004(c).

III. Description of the Delaware Attainment Plan

In accordance with section 172(c) of the CAA and the $PM_{2.5}$ Implementation Rule, the attainment plan submitted on April 3, 2008 and amended on April 25, 2012 by DNREC for the Philadelphia Area included Delaware's attainment demonstration, MVEBs used for transportation conformity purposes for New Castle County in Delaware, a base year emissions inventory, a RACM/RACT analysis and contingency measures.

To analyze future year emissions reductions and air quality improvements, Delaware used local, regional, and national modeling analyses that have been developed to support Federal and local emission reduction programs. This modeling was performed in accordance with EPA's ''*Guidance on the Use of Models and Other Analyses for Determining Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*'' (EPA–454/B–07–002, April 2007).

IV. EPA's Analysis

A. Attainment Demonstration

1. Pollutants Addressed

In accordance with policies described in the $PM_{2.5}$ Implementation Rule, Delaware's $PM_{2.5}$ attainment plan evaluates emissions of direct $PM_{2.5}$, SO_2, and NO_X in the Philadelphia Area. With regard to evaluation of $PM_{2.5}$ precursors, the $PM_{2.5}$ Implementation Rule requires that SO_2 be evaluated for controls in all nonattainment areas, and describes general presumptive policies for NO_X, NH_3, and VOCs. For NO_X, states are required to address NO_X as a $PM_{2.5}$ attainment plan precursor and evaluate reasonable controls for NO_X in $PM_{2.5}$ attainment plans, unless the state makes

[2] The Court's judgment is not final at this time as the mandate has not yet issued.

a finding that NO_X emissions in the state do not significantly contribute to $PM_{2.5}$ concentrations in the area. For NH_3, because of uncertainties regarding NH_3 emission inventories and the efficacy of ammonia control technologies, the final rule sets forth the presumption that NH_3 is not a $PM_{2.5}$ precursor and that states are not required to address NH_3 in their attainment plan. Similarly, VOC emissions are presumed not to be an attainment plan precursor because of uncertainties regarding the role of VOC in secondary organic aerosol formation. Delaware's attainment plan does not reverse any of these presumptions.

2. Emissions Inventory Requirements

States are required under section 172(c)(3) of the CAA to develop emissions inventories of point, area, onroad mobile, and nonroad mobile sources for their attainment demonstrations. These inventories provide a detailed accounting of all emissions and emission sources by precursor or pollutant. In addition, inventories are used to model air quality to demonstrate attainment of the 1997 $PM_{2.5}$ NAAQS as expeditiously as practicable, and, if an attainment extension beyond 2010 is needed, to support the need for such an extension. Emissions inventory guidance was provided in the April 1999 document ''*Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter NAAQS and Regional Haze Regulations,*'' (EPA–454/R–99–006), which was updated in November 2005 (EPA–454/R–05–001). Emissions reporting requirements were provided in the 2002 Consolidated Emissions Reporting Rule (CERR) (67 FR 39602). On December 17, 2008 (73 FR 76539), EPA promulgated the Air Emissions Reporting Requirements (AERR) to update emissions reporting requirements in the CERR, and to harmonize, consolidate and simplify data reporting by states. In accordance with the AERR and the November 2005 guidance, the $PM_{2.5}$ Implementation Rule required states to submit inventory information on directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors and any additional inventory information needed to support an attainment demonstration.

$PM_{2.5}$ is comprised of filterable and condensable emissions. Condensable particulate matter (CPM) can comprise a significant percentage of direct $PM_{2.5}$ emissions from certain sources, and are required to be included in national emission inventories based on emission factors. Test Methods 201A and 202 are available for source-specific measurement of condensable emissions. However, the $PM_{2.5}$ Implementation Rule acknowledged that there were issues and concerns related to availability and implementation of these test methods as well as uncertainties in existing data for condensable $PM_{2.5}$. In recognition of these concerns, EPA established a transition period during which EPA could assess possible revisions to available test methods and allow time for states to update emissions inventories as needed to address direct $PM_{2.5}$, including condensable emissions. Because of the time required for this assessment, EPA recognized that states would be limited in how to effectively address CPM emissions, and established a period of transition, up to January 1, 2011, during which state attainment demonstration submissions for $PM_{2.5}$ were not required to address CPM emissions. Amendments to these test methods were proposed on March 25, 2009 (74 FR 12970), and finalized on December 21, 2010 (75 FR 80118). The amendments to Method 201A added a particle-sizing device for $PM_{2.5}$ sampling, and the amendments to Method 202 revised the sample collection and recovery procedures of the method to reduce the formation of reaction artifacts that could lead to inaccurate measurements of CPM emissions.

The period of transition for establishing emissions limits for condensable direct $PM_{2.5}$ ended on January 1, 2011. Attainment demonstration $PM_{2.5}$ submissions made during the transition period are not required to address CPM emissions; however, states must address the control of direct $PM_{2.5}$ emissions, including condensable emissions, with any new action taken after January 1, 2011. Delaware submitted the attainment plan prior to January 1, 2011 and therefore, did not consider condensables.

On June 25, 2007, EarthJustice filed a petition requesting reconsideration of EPA's transition period for CPM emissions provided in the $PM_{2.5}$ Implementation Rule. On April 25, 2011, EPA denied EarthJustice's petition for reconsideration which allowed states to continue to exclude CPM for Prevention of Significant Deterioration (PSD) permitting during the transition period. Today's action reflects a review of Delaware's submittal based on applicable EPA guidance as described in the $PM_{2.5}$ Implementation Rule.

The SIP base year inventory is the primary inventory from which other inventories (3-year cycle inventories, RFP inventories, modeling inventories) are derived. The CAA calls for state, local, and tribal agencies to ensure that the base year inventory is comprehensive, accurate, and current for all actual emissions (EPA–454/R–05–001). The base year inventory includes emissions estimates from stationary point and nonpoint sources, onroad mobile sources, and nonroad mobile sources. For the $PM_{2.5}$ NAAQS, the pollutants to be inventoried are primary emissions (including condensables [3]) of PM_{10} and $PM_{2.5}$, and emissions of SO_2, NH_3, VOC, and NO_X, and are reported as actual annual emissions. DNREC defines 2002 as the base year inventory consistent with the $PM_{2.5}$ Implementation Rule. The pollutants inventoried for Delaware include PM_{10}, $PM_{2.5}$, SO_2, NH_3, VOC, and NO_X. Information on the manmade sources of direct PM and its potential precursors, SO_2, NH_3, VOC, and NO_X, was compiled for point, area, onroad and nonroad sources.

The stationary point source inventory represents facility-specific data for Delaware's larger stationary sources. Point sources typically include large industrial, commercial, and institutional facilities. Manufacturing facilities, within the industrial sector, comprise the majority of all reporting point sources. The institutional sector includes hospitals, universities, prisons, military bases, landfills, and wastewater treatment plants. Point source emissions data are submitted to DNREC by the facilities using Terminal Server Satellite *i*-STEPS software. *i*-STEPS is the point source emission inventory electronic data management system.

Area sources represent a large and diverse set of individual emission source categories. Emissions from area sources were estimated at the county level. For the area sources, DNREC has provided an inventory that contains estimations of emissions by multiplying an emission factor by some known indicator or activity level for each category at the county level. These emissions are calculated on an annual basis. Various sources of emission factors or methodologies were used, including EPA's AP–42; the Factor Information Retrieval System (FIRE); EPA's Emissions Inventory Improvement Program, Volume III; documented projects performed by the California Air Resource Board; and projects performed by the Mid-Atlantic Regional Air Management Association (MARAMA). Area source estimates were provided by source classification code (SCC).

[3] Although the $PM_{2.5}$ Implementation Rule established a transition period for including condensables for attainment demonstration controls, reporting of condensables in the emission inventories is still required.

Highway vehicles, which include passenger cars and light-duty trucks, other trucks, buses, and motorcycles, are represented by an onroad mobile source emissions inventory that was developed using the MOVES model and link-level vehicle miles traveled (VMT) data for each county from the Delaware Department of Transportation (DelDOT). The emission factors developed using MOVES were by month, using monthly temperature and fuel property data. DNREC provided MOVES input and output files for review. DNREC provided annual mobile emissions values in tons per year (tpy).

Nonroad sources, which encompass a diverse collection of engines, including, but not limited to, outdoor power equipment, recreational vehicles, farm and construction machinery, lawn and garden equipment, industrial equipment, recreational marine vessels, commercial marine vessels, locomotives, ships, and aircraft were estimated using the EPA NONROAD 2005 model. The emissions inventory for the base year, 2002, was developed in accordance with EPA guidance, *''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards and Regional Haze Regulations,''* EPA–454/R–05–001, August 2005, updated November 2005. Tables 1, 2 and 3 summarize the emissions for 2002.

TABLE 1—2002 ANNUAL EMISSIONS BY COUNTY (TPY)

County	PM_{10}	$PM_{2.5}$	SO_2	NO_X	NH_3	VOC
Kent	3991	1097	4062	10314	2841	5296
New Castle	8604	3430	50237	30748	1384	18062
Sussex	6758	2575	25552	16060	10057	10251
Total	19353	7102	79852	57122	14284	33610

TABLE 2—2002 STATEWIDE ANNUAL EMISSIONS (TPY)

Source sector	PM_{10}	$PM_{2.5}$	SO_2	NO_X	NH_3	VOC
Point	3859	3161	73708	16372	179	4773
Area	13870	2580	1330	2427	13194	10254
Onroad	581	415	584	21341	903	10564
Nonroad	1043	946	4230	16982	8	8019
Total	19353	7102	79852	57122	14284	33610

TABLE 3—2002 NEW CASTLE COUNTY ANNUAL EMISSIONS (TPY)

Source sector	PM_{10}	$PM_{2.5}$	SO_2	NO_X	NH_3	VOC
Point	2168	1733	47070	9157	118	2687
Area	5674	1073	780	1513	710	6198
Onroad	304	209	326	11799	552	5762
Nonroad	458	415	2061	8279	4	3415
Total	8604	3430	50237	30748	1384	18062

The review and evaluation of the methods used for the emissions inventory submitted by Delaware are found in the attainment plan submittal (section 3) and a TSD entitled ''Technical Support Document for Emissions Inventories for the Delaware Nonattainment Area $PM_{2.5}$ SIP Base Year Inventory,'' dated June 16, 2010, available on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. EPA is proposing to approve Delaware's 2002 base year emissions inventory for the Philadelphia Area as meeting the requirements of section 172(c)(3) of the CAA.

3. Modeling

All attainment demonstrations must include modeling that is performed in accordance with EPA's ''*Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze*'' (EPA–454/B–07–002, April 2007). This includes the photochemical modeling guidance which is divided into two parts. One part describes how to use a photochemical grid model for ozone and $PM_{2.5}$, to assess whether an area will come into attainment of the air quality standard. A second part describes how the user should perform supplemental analyses, using various analytical methods, to determine if the model over predicts, under predicts, or accurately predicts the air quality improvement projected to occur by the attainment date. The guidance indicates that states should review these supplemental analyses, in combination with the modeling analysis, in a ''weight of evidence'' assessment to determine whether each area is likely to achieve timely attainment.

A description of how the attainment demonstration from the April 3, 2008 SIP revision addresses this EPA modeling guidance for a modeled attainment demonstration can be found in the TSD entitled, ''Technical Support Document for the Modeling and Weight of Evidence Potions of the Delaware SIP for Attainment of the $PM_{2.5}$ Annual NAAQS,'' dated June 15, 2010 (Attainment TSD), available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2010–0141 and section 6 of the April 3, 2008 SIP revision submittal.

In the April 3, 2008 SIP revision submittal, the photochemical grid model used projected emissions for 2009, including emission changes due to regulations Delaware and its neighboring states were planning to

implement and expected growth by 2009. Meteorological conditions from 2002, the same as the base year modeling, were used in the projection modeling for 2009. Using the base case meteorology allows the effect of changes in states' emissions to be determined without being influenced by yearly fluctuations in meteorology and is consistent with EPA guidance.

The conceptual model (describes how weather patterns affect the formation and transport of $PM_{2.5}$, accounting for emissions and photochemistry) for Delaware's attainment plan is described in a document prepared by the Northeast States for Coordinated Air-Use Management (NESCAUM) final report entitled, ''The Nature of the Fine Particle and Regional Haze Air Quality Problems in the MANE–VU Region: A Conceptual Description (2006).'' This document is consistent with EPA's guidance and was prepared for use by the Ozone Transport Commission (OTC) member states which provides the conceptual description of $PM_{2.5}$ issues in the OTC states. The OTC is a multi-state organization consisting of the States of Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont and Northern Virginia. *See* section 184 of the CAA. By agreement of OTC, the New York State Department of Environmental Conversation (NYSEC) ran the Community Multi-scale Air Quality Model (CMAQ) for the states in the northeast Ozone Transport Region (OTR) which includes Delaware. The inputs of the model are described in section 6 of the April 3, 2008 SIP revision submittal.

The attainment test for $PM_{2.5}$ is referred to as the Speciated Modeled Attainment Test (SMAT). In the Delaware's April 3, 2008 SIP revision submittal, the SMAT results demonstrated that the projected annual arithmetic mean $PM_{2.5}$ concentration calculated at each Federal Reference Method (FRM) monitor attained the annual $PM_{2.5}$ NAAQS in 2009. Specifically, all calculations are less than 15μg/m³.

In summary, the basic photochemical grid modeling, presented in the Delaware attainment plan, used the methods recommended in EPA's modeling guidance. When EPA's attainment test is applied to the modeling results, the 2009 annual-average $PM_{2.5}$ design value is predicted to be 13.3μg/m³ in the Philadelphia Area. Therefore, based on EPA's modeled attainment test, the Philadelphia Area reached attainment of the annual average $PM_{2.5}$ standard in 2009 before the attainment date of April 5, 2010.

4. Reasonably Available Control Measures/Reasonably Available Control Technology

a. Requirements for RACM/RACT

CAA section 172(c)(1) requires that each attainment plan ''provide for the implementation of all RACM as expeditiously as practicable, including such reductions in emissions from the existing sources in the area as may be obtained through the adoption, at a minimum, of RACT, and shall provide for attainment of the national primary ambient air quality standards.'' EPA interprets RACM including RACT under section 172 as measures that a state finds are both reasonably available and contribute to attainment as expeditiously as practicable in the nonattainment area. Thus, what constitutes RACM or RACT in a $PM_{2.5}$ nonattainment area is closely tied to the expeditious attainment demonstration of the plan. *See* 40 CFR 51.1010; 72 FR 20586 at 20612.

States are required to evaluate RACM/RACT for direct $PM_{2.5}$ emissions and all of the area's attainment plan precursors. *See* 40 CFR 51.1002(c); 72 FR 20586 at 20589–97. Consistent with the guidance provided for the $PM_{2.5}$ Implementation Rule, a state initially must evaluate RACM/RACT for sources that emit direct $PM_{2.5}$, SO_2, and NO_X. A state may establish with an appropriate demonstration that it should not regulate NO_X in the specific nonattainment area, so it could thereby forgo evaluation of RACM/RACT for NO_X. Because EPA concluded that VOC and NH_3 are presumptively not regulatory precursors for $PM_{2.5}$, unless the state or EPA determines that it is necessary to regulate them in a specific nonattainment area, the state is not required to evaluate RACM/RACT for sources of VOC or NH_3 unless there is a determination supported by an appropriate demonstration that such emissions need to be regulated for expeditious attainment of the NAAQS in the specific area.

For $PM_{2.5}$ attainment plans, the $PM_{2.5}$ Implementation Rule requires a combined approach to RACM and RACT under subpart 1 of part D of the CAA. Subpart 1, unlike subparts 2 and 4, does not identify specific source categories for which EPA must issue control technique documents or guidelines, or identify specific source categories for state and EPA evaluation during attainment plan development. *See* 72 FR 20586 at 20610. Rather, under subpart 1, EPA considers RACT to be part of an area's overall RACM obligation consistent with the section 172 definition. Because of the variable nature of the $PM_{2.5}$ problem in different nonattainment areas which may require states to develop attainment plans that address widely disparate circumstances, EPA determined not only that states should have flexibility with respect to RACM/RACT controls, but also that in areas needing significant emission reductions, RACM/RACT controls on smaller sources may be necessary to reach attainment as expeditiously as practicable. *See* 72 FR 20586 at 20612, 20615. Thus, under the $PM_{2.5}$ Implementation Rule, RACM and RACT are those reasonably available measures that contribute to attainment as expeditiously as practicable in the specific nonattainment area. *See* 40 CFR 51.1010; 72 FR 20586 at 20612.

Specifically, the $PM_{2.5}$ Implementation Rule requires that attainment plans include the list of measures that a state considered and information sufficient to show that the state met all requirements for the determination of what constitutes RACM/RACT in a specific nonattainment area. *See* 40 CFR 51.1010(a). In addition, the $PM_{2.5}$ Implementation Rule requires that the state, in determining whether a particular emissions reduction measure or set of measures must be adopted as RACM/RACT, consider the cumulative impact of implementing the available measures and adopt as RACM/RACT any potential measures that are reasonably available considering technological and economic feasibility if, considered collectively, they would advance the attainment date by one year or more. If a measure or measures is not necessary for expeditious attainment of the NAAQS in the area, then by definition that measure is not RACM/RACT for purposes of the 1997 $PM_{2.5}$ NAAQS in that area. Any measures that are necessary to meet these requirements which are not already either Federally promulgated, part of the state's SIP, or otherwise creditable in SIPs must be submitted in enforceable form as part of a state's attainment plan for the area. *See* 72 FR 20586 at 20614.

Guidance provided in the $PM_{2.5}$ Implementation Rule for evaluating RACM/RACT level controls for an area also indicated that there could be flexibility with respect to those areas that were predicted to attain the 1997 $PM_{2.5}$ NAAQS within five years of designation as a result of existing national or local measures. *See* 72 FR 20586 at 20612. In such circumstances, EPA indicated that the state may

conduct a more limited RACM/RACT analysis that does not involve additional air quality modeling. Moreover, the RACM/RACT analysis for such area would focus on a review of reasonably available measures, the estimation of potential emissions reductions, and the evaluation of the time needed to implement the measures. Thus, the $PM_{2.5}$ Implementation Rule guidance recommended that not all areas would need to conduct as rigorous an analysis, and suggested that a less rigorous analysis would be needed for those areas expected to attain within the initial five years from designation as a nonattainment area for the 1997 $PM_{2.5}$ NAAQS. A more comprehensive discussion of the RACM/RACT requirement for $PM_{2.5}$ attainment plans and EPA's guidance for it can be found in the $PM_{2.5}$ Implementation Rule preamble. *See* 72 FR 20586 at 20609–20633.

b. Delaware's Analysis of Pollutants and Sources for the Delaware Portion of the Philadelphia Area

Based upon the emissions inventory for the area, Delaware determined that it would be appropriate to evaluate sources of $PM_{2.5}$, SO_2, and NO_X located in the nonattainment area for potential control as RACM/RACT. Delaware determined that controls of sources of VOC or NH_3 would not be necessary for expeditious attainment of the NAAQS in this area, nor does EPA believe that there is a need to do so. Delaware's determination with respect to which pollutants the plan should evaluate is found in Section 1.4 of the attainment plan submittal.

After evaluating which pollutants should be addressed in the attainment plan, Delaware identified all source categories of those emissions located within the nonattainment area to determine available controls that could advance the attainment date by one year or more. *See* Section 7 of the attainment plan submittal. For the primary $PM_{2.5}$ RACM, DNREC evaluated measures that are limited to the boundaries of the nonattainment area, i.e. New Castle County. However, because SO_2 and NO_X can be transported over considerable distances to form $PM_{2.5}$, SO_2 and NO_X were assessed on a statewide basis. *See* Appendix 7–1 of Delaware's attainment plan for ''EPA's List of Potential Control Measures.'' Although VOC is not a regulated $PM_{2.5}$ precursor for the Delaware portion of the Philadelphia area, VOC control measures approved by EPA are included in the modeling associated with this attainment plan.

In accordance with 40 CFR 51.1010, a SIP revision for a $PM_{2.5}$ nonattainment area is required to demonstrate that all RACM, including RACT for stationary sources, necessary to demonstrate attainment as expeditiously as practicable, have been adopted. The cumulative impact of implementing available measures must be considered in determining whether a particular emission reduction measure or set of measures is required to be adopted as RACM. Potential measures that are reasonably available considering technical and economic feasibility must be adopted as RACM if, considered collectively, they would advance the attainment date by one year or more. Since the Philadelphia Area attained at the end of 2009, any RACM measures needed to be in effect in 2008. Delaware determined that there were no additional control measures that could be adopted by January 1, 2008. In addition, existing measures and measures planned for implementation by 2009 enabled the Philadelphia Area to attain the 1997 annual $PM_{2.5}$ NAAQS. Therefore, Delaware determined no further actions on RACM or RACT were warranted.

c. Delaware's Evaluation of RACM/RACT Control Measures for the Delaware Portion of the Philadelphia Area

In accordance with section 172 of the CAA, Delaware determined it adopted all RACM, including RACT, needed to attain the standards ''as expeditiously as practicable.'' Delaware's demonstration for attaining the 1997 $PM_{2.5}$ NAAQS in the Philadelphia Area is based on the following Federally enforceable measures in Section 7 of the state's submittal and listed below. From the control measures listed below, EPA is proposing not to approve CAIR as RACM/RACT for EGUs in Delaware for the 1997 $PM_{2.5}$ NAAQS but proposes to approve as RACM/RACT the other control measures identified in Delaware's April 3, 2008 SIP submittal which were approved by EPA previously into the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable.

Section 7.2.1 Point Sources:

- 40 CFR parts 51, 72, et al. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)
- ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule'' 71 FR 25288 (April 28, 2006)
- Consent Decree, Premcor Refinery, Delaware City (formerly Motiva Enterprises) New Castle County. Control of SO_2, and NO_X Emission from Boilers and Heaters
- Regulation 1146, EGUs, Electric Generating Unit (EGU) Multi-Pollutant Regulation, SO_2 and NO_X emission control (effective December 11, 2006)
- Regulation 1148, Control of Stationary Combustion Turbine Electric Generating Unit Emissions, NO_X emission control
- Regulation 1144, Control of Stationary Generator Emissions, SO_2, PM, VOC and NO_X emission control
- Regulation 1142, Section 1.0, Control of NO_X Emissions from Industrial Boilers, NO_X emission control
- Regulation 1142, Section 2.0, Control of NO_X Emissions from Industrial Boilers and Process Heaters at Petroleum Refineries, NO_X emission control, New Castle County
- Regulation 1124, Section 46.0, Crude Oil Lightering Operations, VOC emission control
- Facility and Unit shutdowns (*see* Table 4–3 in the Delaware submittal)

Section 7.2.2 Non-Point Sources:

- Regulation 1124, Section 33.0, Solvent Cleaning and Drying, VOC emission control
- Regulation 1124, Section 11.0, Mobile Equipment Repair and Refinishing, VOC emission control
- Regulation 1141, Section 3.0, Portable Fuel Containers, VOC emission control
- Regulation 1141, Section 2.0, Consumer Products, VOC emission control
- Regulation 1141, Section 1.0, Architectural and Industrial Maintenance Coatings, VOC emission control
- Regulation 1124, Section 36.0, Stage II Vapor Recovery, VOC emission control
- Controls on Residential Woodstoves, 40 CFR Part 60 Subpart AAA—New Source Performance Standards (''NSPS'') for PM, VOC and NO_X emission control
- Regulation 1113, Open Burning Controls, PM, VOC and NO_X emission control

Section 7.2.3 Non-Road Sources:

- Phase I and Phase II Emissions Standards for Gasoline-Powered Non-Road Utility Engines, Federal Rule
- Emissions Standards for Diesel-Powered Non-Road Utility Engines of 50 or More Horsepower, Federal Rule
- Emissions Standards for Spark Ignition (SI) Marine Engines, Federal Rule
- Emissions Standards for Large Spark Ignition Engines, Federal Rule

- Reformulated Gasoline Use in Non-Road Motor Vehicles and Equipment, Federal Rule
- ''Control of Emissions from New Marine Compression-Ignition Engines at or above 30 liters per Cylinder; Final Rule,'' 68 FR 9746 (February 28, 2003), at pp. 9755–56 (hereinafter EPA C3 Rule)

Section 7.2.4 On-Road Mobile Sources:

- Regulation No. 31, Low Enhanced Inspection and Maintenance Program
- Regulation 1132, Transportation Conformity Regulation
- 40 CFR Parts 80, 85, and 86—Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements; Final Rule
- 40 CFR parts 69, 80, and 86 Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Final Rule
- Regulation 1145, Controls on Excessive Idling of Heavy Duty Vehicles
- Regulation 1140, National Low Emission Vehicle (NLEV) Program

Delaware has implemented other control measures for SO_2, NO_X, VOC, and $PM_{2.5}$ including mandatory episodic prohibition of lightering on ozone action days, and reduction of emissions from high electric demand day electric generation.

The above measures have been adopted by Delaware and approved by EPA as Federally enforceable measures in the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable.

In addition, other voluntary measures that are effective in 2010 include:

- Brandywine School District Bus Retrofits
- Delaware Ride Share
- Ozone Action Days (voluntary curtailment of activities that contribute to air pollution)
- Use of Biodiesel (B20) in state-run equipment
- Best Workplaces for Commuters and SmartWay Transport programs
- Implement anti-idling outreach programs for schools and school districts
- Clean State Program—focusing on greater use of alternative transportation fuels
- Installation of an E85 fueling station in Delaware
- Delaware continues to identify and implement energy efficiency programs for the residential and commercial sectors. Energy efficiency programs include:

—Energy efficiency/conservation education, outreach, technical assistance
—Energy An$wers Program
—Home Appliances
—Business
—Home Performance
—Energy Star Program
—Sustainable Energy Utility (SEU)

d. Proposed Action on RACM/RACT Demonstration and Control Strategy

EPA is proposing to approve Delaware's evaluation of RACM/RACT control measures for the Philadelphia Area, except for the reference to CAIR for EGUs which EPA is not proposing to approve as RACM/RACT. The monitoring data for this area indicates that it has attained the 1997 annual $PM_{2.5}$ NAAQS by its applicable date, and EPA made a determination of attainment on May 16, 2012 (77 FR 28782). EPA's guidance for the $PM_{2.5}$ Implementation Rule recommended that if an area was predicted through the attainment plan to attain the standard within five years after designation, then the state could submit a more limited RACM/RACT analysis and the state could elect not to do additional modeling.

Because the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the applicable attainment date, and because EPA agrees with Delaware that no additional measures could be adopted that would advance the attainment date by one year, EPA proposes to determine that the Delaware attainment plan (except for CAIR for EGUs) meets the RACM/RACT requirements of the $PM_{2.5}$ Implementation Rule and that the Federally enforceable control measures identified in the Delaware attainment plan (other than CAIR for EGUs) constitute RACM/RACT for purposes of the 1997 annual $PM_{2.5}$ NAAQS. Because the $PM_{2.5}$ Implementation Rule defines RACM/RACT as that level of control that is necessary to bring the area into timely attainment, and because no additional measures could achieve attainment one year earlier, the level of Federally enforceable controls on sources located within the Philadelphia Area as of the end of the calendar year 2009 constitutes RACM/RACT for the Philadelphia Area for this purpose. EPA is proposing not to approve CAIR as RACM/RACT in Delaware for the 1997 $PM_{2.5}$ NAAQS for EGUs but proposes to approve as RACM/RACT the other control measures, including state controls on EGUs, identified in Delaware's April 3, 2008 SIP submittal, which were previously approved by EPA as part of the Delaware SIP (*see* 40 CFR 52.420(c)) or are otherwise Federally enforceable, because the Philadelphia Area has attained the 1997 $PM_{2.5}$ NAAQS by the attainment date.

5. Reasonable Further Progress

Section 172(c)(2) of the CAA requires that attainment plans include RFP to achieve steady progress toward meeting air quality standards by showing generally linear progress toward attainment. The $PM_{2.5}$ Implementation Rule set forth that an area that demonstrates attainment by 2010 will be considered to have satisfied the RFP requirement and need not submit any additional material to satisfy the RFP requirement. EPA views the attainment demonstration as also demonstrating that the area is making reasonable further progress toward attainment. A state is required to submit a separate RFP plan for any area for which the state seeks an extension of the attainment date beyond 2010. The RFP plan is required to provide emission reductions such that emissions in 2009 represent generally linear progress from the 2002 baseline year to the attainment year. The Philadelphia Area attained by 2010, and has therefore met the RFP requirements under the $PM_{2.5}$ Implementation Rule.

6. Contingency Measures

In accordance with section 172(c)(9) of the CAA, the $PM_{2.5}$ Implementation Rule requires that $PM_{2.5}$ attainment demonstrations include contingency measures. *See* 40 CFR 51.1012 and 72 FR at 20642–20646, April 25, 2007. Contingency measures are additional measures to be implemented in the event an area fails to meet RFP or fails to attain a standard by its attainment date. These measures must be fully adopted rules or control measures that can be implemented quickly and without significant further EPA or state action if the area fails to meet RFP or fails to attain by its attainment date, and should contain trigger mechanisms and an implementation schedule. In addition, they should be measures not already included in the SIP control strategy and should provide for emission reductions equivalent to one year of RFP.

Delaware submitted contingency measures as required by the $PM_{2.5}$ Implementation Rule that were fully adopted rules or control measures that were ready to be implemented quickly upon failure of the area to attain and were at the level of reductions equal to at least one's year worth of reductions

needed for attainment in the area. In accordance with section 110(k)(2) of the CAA, EPA must take action on the contingency measures that were submitted by Delaware. However, as noted in section II.C of this proposed rulemaking action, the Philadelphia Area, which consists of New Castle County in Delaware, has attained the 1997 annual $PM_{2.5}$ NAAQS and meets the attainment date of April 5, 2010, and continues to attain based on the most recent data available. Because EPA has determined that the area attained by its required attainment date, in accordance with section 179(c)(9), no contingency measures for failure to attain by this date need be implemented, and further EPA action is unnecessary. Furthermore, as set forth in the $PM_{2.5}$ Implementation Rule, areas that attained the NAAQS by the attainment date are considered to have satisfied the requirement to show RFP, and as such do not need to implement contingency measures to make further progress to attainment. EPA has determined that the Philadelphia Area has attained by the attainment date, therefore the contingency measures submitted by Delaware are no longer necessary for the Philadelphia Area to meet RFP requirements or attain the 1997 annual $PM_{2.5}$ NAAQS by the attainment date. Although the Philadelphia Area met the attainment date of April 5, 2010 and thus is not required to implement contingency measures, by relying on those contingency measures that were already in place, Delaware has effectively implemented its control measures in advance.

7. Attainment Date

Delaware provided a demonstration of attainment of the 1997 annual $PM_{2.5}$ NAAQS in the Philadelphia Area by 2010.

B. Motor Vehicle Emissions Budgets (MVEBs)

Section 176(c) of the CAA requires Federal actions in nonattainment and maintenance areas to ''conform to'' the goals of SIPs. This means that such actions will not cause or contribute to violations of a NAAQS, worsen the severity of an existing violation, or delay timely attainment of any NAAQS or any interim milestone. Actions involving Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) funding or approval are subject to the transportation conformity rule (40 CFR Part 93, subpart A). Under this rule, metropolitan planning organizations (MPOs) in nonattainment and maintenance areas coordinate with state air quality and transportation agencies, EPA, and the FHWA and FTA to demonstrate that their long range transportation plans and transportation improvement programs (TIP) conform to applicable SIPs. This is typically determined by showing that estimated emissions from existing and planned highway and transit systems are less than or equal to the MVEBs contained in the SIP.

On April 25, 2012, Delaware submitted a SIP revision that is related to the $PM_{2.5}$ and NOx onroad mobile source budgets that were established in the April 3, 2008 submittal. The April 25, 2012 submittal replaces the MVEBs in the April 3, 2008 submittal with budgets based on the MOVES model.

In a separate and concurrent process, EPA is conducting a process to find adequate the MVEBs for New Castle County which are associated with the Delaware attainment demonstration for the Philadelphia Area. Concurrently with EPA's proposal to approve the SIP, a notice will be posted on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm* for the purpose of opening a 30-day public comment period on the adequacy of the MVEBs for New Castle County in the April 25, 2012 SIP revision's attainment demonstration for the Philadelphia Area. That notice will inform the public of the availability of the Delaware SIP revision on DNREC's Web site. Interested members of the public could access Delaware's April 25, 2012 SIP revision on line at *www.regulations.gov,* Docket No. EPA–R03–OAR–2010–0141. Following EPA's public comment period, responses to any comments received will be addressed. EPA has reviewed the revised MVEBs developed and found them consistent with the attainment demonstration and that the budgets meet the criteria for adequacy and approval.

V. Proposed Action

EPA is proposing to approve the Delaware 1997 annual $PM_{2.5}$ NAAQS attainment plan for the Philadelphia Area that was submitted on April 3, 2008. EPA is also proposing to find adequate and approve the MVEBs revised with MOVES that were submitted on April 25, 2012 as a SIP revision. The attainment plan includes Delaware's attainment demonstration, an analysis of RACM/RACT, the 2002 base year emissions inventory, and contingency measures. EPA has determined that Delaware's attainment demonstration meets the applicable requirements of the CAA, as described in the $PM_{2.5}$ Implementation Rule. Specifically, EPA has determined that the Delaware SIP revision includes an attainment demonstration and adopted state regulations and programs needed to support a determination that the Philadelphia Area attained the 1997 annual $PM_{2.5}$ NAAQS by the April 2010 deadline. EPA is specifically proposing however not to approve CAIR as RACM/RACT for Delaware's attainment plan for the Philadelphia Area. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

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

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

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the Delaware 1997 annual $PM_{2.5}$ attainment plan for the Philadelphia Area, 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, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: October 31, 2012.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2012–28091 Filed 11–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R04–OAR–2012–0751; FRL–9751–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Kentucky; Redesignation of the Kentucky Portion of the Huntington-Ashland 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 12, 2012, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request to redesignate the Kentucky portion of the tri-state Huntington-Ashland, West Virginia-Kentucky-Ohio fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as the ''Huntington-Ashland Area'' or ''Area'') to attainment for the 1997 Annual $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) and to approve a State Implementation Plan (SIP) revision containing a maintenance plan for the Kentucky portion of the Huntington-Ashland Area. The Huntington-Ashland Area is comprised of Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. EPA is proposing to approve the redesignation request and the related SIP revision for Boyd and Lawrence Counties in Kentucky, including the Commonwealth's plan for maintaining attainment of the $PM_{2.5}$ standard in the Kentucky portion of the Huntington-Ashland Area. EPA is also proposing to approve the on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and nitrogen oxides (NO_X) for the Kentucky portion of the Huntington-Ashland Area. On May 4, 2011, and June 30, 2011, respectively, Ohio and West Virginia submitted requests to redesignate their portions of the Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. EPA is taking action on the requests from Ohio and West Virginia separately from these proposed actions.

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

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0751, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–RDS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0751, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2012–0751. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Joel Huey of the Regulatory Development Section, in the Air Planning Branch,

Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Joel Huey may be reached by phone at (404) 562–9104, or via electronic mail at *huey.joel@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. What are the actions EPA is proposing to take?

In this action, EPA is proposing to make a determination that Huntington-Ashland Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS [1] and to take additional actions related to Kentucky's request to redesignate the Kentucky portion of the Area, which are summarized as follows and described in greater detail throughout this notice of proposed rulemaking: (1) to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS; and (2) to approve, under section 175A of the CAA, Kentucky's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Commonwealth's portion of the Huntington-Ashland Area into the Kentucky SIP.

First, EPA proposes to determine that the Kentucky portion of the Huntington-Ashland Area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. In this action, EPA is proposing to approve a request to change the legal designation of Boyd County and a portion of Lawrence County from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS.

Second, EPA is proposing to approve Kentucky's 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Kentucky portion of the Huntington-Ashland Area (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Kentucky portion of the Huntington-Ashland Area in attainment of the 1997 Annual $PM_{2.5}$ NAAQS through 2022. As explained in Section V, EPA is also proposing to approve that attainment can be maintained through 2023. The maintenance plan that EPA is proposing to approve today includes an insignificance determination for the on-road motor vehicle contribution of direct $PM_{2.5}$ and NO_X to ambient $PM_{2.5}$ levels in the Kentucky portion of Huntington-Ashland Area for transportation conformity purposes. EPA is proposing to approve (into the Kentucky SIP) the on-road motor vehicle insignificance finding that is included as part of Kentucky's maintenance plan for the 1997 Annual $PM_{2.5}$ NAAQS.

Further, EPA proposes to make the determination that the Huntington-Ashland Area is continuing to attain the 1997 Annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Kentucky portion of the Huntington-Ashland Area. The bases for EPA's determination for the Area are discussed in greater detail below.

EPA is also providing the public with an update on the status of EPA's adequacy process for the on-road motor vehicle insignificance determination for the Kentucky portion of the Huntington-Ashland Area. Please see section VII of this proposed rulemaking for further explanation of this process and for details.

Today's notice of proposed rulemaking is in response to Kentucky's February 12, 2012, SIP revision, which requests redesignation of the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS and addresses the specific issues summarized above and the necessary elements for redesignation described in section 107(d)(3)(E) of the CAA.

II. What is the background for EPA's proposed actions?

Fine particle pollution can be emitted directly or formed secondarily in the atmosphere. The main precursors of secondary $PM_{2.5}$ are sulfur dioxide (SO_2), NO_X, ammonia and volatile organic compounds (VOC). Unless otherwise noted by the state or EPA, ammonia and VOC are presumed to be insignificant contributors to $PM_{2.5}$ formation, whereas SO_2 and NO_X are presumed to be significant contributors to $PM_{2.5}$ formation. Sulfates are a type of secondary particle formed from SO_2 emissions of power plants and industrial facilities. Nitrates, another common type of secondary particle, are formed from NO_X emissions of power plants, automobiles, and other combustion sources.

On July 18, 1997, EPA promulgated the first air quality standards for $PM_{2.5}$. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. In the same rulemaking, EPA promulgated a 24-hour standard of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour concentrations. On October 17, 2006, at 71 FR 61144, EPA retained the annual average NAAQS at 15 $\mu g/m^3$ but revised the 24-hour NAAQS to 35 $\mu g/m^3$, based again on the 3-year average of the 98th percentile of 24-hour concentrations.[2] Under EPA regulations at 40 CFR part 50, the primary and secondary 1997 Annual $PM_{2.5}$ NAAQS are attained when the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period.

On January 5, 2005, at 70 FR 944, and supplemented on April 14, 2005, at 70 FR 19844, EPA designated the Huntington-Ashland Area as nonattainment for the 1997 $PM_{2.5}$ NAAQS. In that action, EPA defined the 1997 $PM_{2.5}$ Huntington-Ashland Area to include Boyd County and a portion of Lawrence County in Kentucky; Lawrence and Scioto Counties and portions of Adams and Gallia Counties in Ohio; and Cabell and Wayne Counties and a portion of Mason County in West Virginia. On November 13, 2009, at 74 FR 58688, EPA promulgated designations for the 24-hour standard established in 2006, designating the Huntington-Ashland Area as attainment for this NAAQS. That action clarified that the Huntington-Ashland Area was classified unclassifiable/attainment for the 24-hour NAAQS promulgated in

[1] On September 7, 2011, at 76 FR 55542, EPA determined that the Huntington-Ashland Area attained the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2010, and that the Area was continuing to attain the $PM_{2.5}$ standard with monitoring data that was currently available.

[2] In response to legal challenges of the annual standard promulgated in 2006, the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) remanded this NAAQS to EPA for further consideration. *See American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (D.C. Cir. 2009). However, given that the 1997 and 2006 Annual NAAQS are essentially identical, attainment of the 1997 Annual NAAQS would also indicate attainment of the remanded 2006 Annual NAAQS.

1997. EPA did not promulgate designations for the annual $PM_{2.5}$ NAAQS promulgated in 2006 since that NAAQS was essentially identical to the annual $PM_{2.5}$ NAAQS promulgated in 1997. Therefore, the Huntington-Ashland Area is designated nonattainment for the annual $PM_{2.5}$ NAAQS promulgated in 1997, and today's action only addresses this designation.

All 1997 $PM_{2.5}$ NAAQS areas were designated under subpart 1 of title I, part D, of the CAA. Subpart 1 contains the general requirements for nonattainment areas for any pollutant governed by a NAAQS and is less prescriptive than the other subparts of title I, part D. On April 25, 2007, at 72 FR 20664, EPA promulgated its $PM_{2.5}$ Implementation Rule, codified at 40 CFR part 51, subpart Z, in which the Agency provided guidance for state and tribal plans to implement the 1997 $PM_{2.5}$ NAAQS. That rule, at 40 CFR 51.1004(c), specifies some of the regulatory results of attaining the NAAQS, as discussed below.

The 3-year ambient air quality data for 2008–2010 indicated no violations of the 1997 Annual $PM_{2.5}$ NAAQS for the Huntington-Ashland Area. As a result, on February 12, 2012, Kentucky requested redesignation of the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. The redesignation request includes three years of complete, quality-assured ambient air quality data for the 1997 Annual $PM_{2.5}$ NAAQS for 2008–2010, indicating that this NAAQS had been achieved for the entire Huntington-Ashland Area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E). From 2007 through the present, the annual $PM_{2.5}$ design values for the Huntington-Ashland Area have declined. While annual $PM_{2.5}$ concentrations are dependent on a variety of conditions, the overall downtrend in annual $PM_{2.5}$ concentrations in the Huntington-Ashland Area can be attributed to the reduction of pollutant emissions, as will be discussed in more detail in section V of this proposed rulemaking.

III. What are the criteria for redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) of the CAA allows for redesignation provided the following criteria are met: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator 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 pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D of title I of the CAA.

EPA has provided guidance on redesignation in the General Preamble for the Implementation of title I of the CAA Amendments of 1990 (April 16, 1992, 57 FR 13498, and supplemented on April 28, 1992, 57 FR 18070) and has provided further guidance on processing redesignation requests in the following documents:

1. ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992 (hereafter referred to as the ''Calcagni Memorandum'');

2. ''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and

3. ''Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

IV. Why is EPA proposing these actions?

On February 12, 2012, the Commonwealth of Kentucky, through DAQ, requested the redesignation of the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. The Huntington-Ashland Area has attained the 1997 Annual $PM_{2.5}$ NAAQS, and EPA's preliminary evaluation indicates that the Area has met the requirements for redesignation set forth in section 107(d)(3)(E), including the maintenance plan requirements under section 175A of the CAA. EPA is also announcing the status of its adequacy determination for both the NO_X and direct $PM_{2.5}$.

V. What is EPA's analysis of the request?

As stated above, in accordance with the CAA, EPA proposes in today's action to: (1) Redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS; and (2) approve into the Kentucky SIP the 1997 Annual $PM_{2.5}$ NAAQS maintenance plan for the Kentucky portion of the Huntington-Ashland Area. These actions are based upon EPA's determination that the Huntington-Ashland Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS and that all other redesignation criteria have been met for the Kentucky portion of the Huntington-Ashland Area. The five redesignation criteria provided under CAA section 107(d)(3)(E) are discussed in greater detail for the Area in the following paragraphs of this section.

Criteria (1)—The Huntington-Ashland Area Has Attained the 1997 Annual $PM_{2.5}$ NAAQS

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has attained the applicable NAAQS (CAA section 107(d)(3)(E)(i)). EPA is proposing to determine that the Huntington-Ashland Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. For $PM_{2.5}$, an area may be considered to be attaining the 1997 Annual $PM_{2.5}$ NAAQS if it meets the 1997 Annual $PM_{2.5}$ NAAQS, as determined in accordance with 40 CFR 50.13 and Appendix N of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain these NAAQS, the 3-year average of the annual arithmetic mean concentration, as determined in accordance with 40 CFR part 50, Appendix N, is less than or equal to 15.0 $\mu g/m^3$ at all relevant monitoring sites in the subject area over a 3-year period. The relevant data must be collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

On September 7, 2011, at 76 FR 55542, EPA finalized a determination that the Huntington-Ashland Area was attaining the 1997 $PM_{2.5}$ NAAQS and that this Area attained the 1997 $PM_{2.5}$ NAAQS by its applicable attainment date of April 5, 2011. For that action, EPA reviewed $PM_{2.5}$ monitoring data from monitoring stations in the Huntington-Ashland Area for the 1997

Annual $PM_{2.5}$ NAAQS for 2007–2009. The public was provided a 30-day comment period to review and provide comment to EPA on the analysis of this data. EPA did not receive any comments, adverse or otherwise, on the Agency's determination that the Area had attaining data for the period of 2007–2009 and continued to have attaining data through the finalization of EPA's proposal. As such, EPA is not seeking additional comment in today's action regarding this data. As noted in EPA's September 7, 2011, action these data were quality-assured and recorded in AQS. As summarized in Table 1 below, the 3-year averages (i.e., design values) of the $PM_{2.5}$ concentrations for the years 2009, 2010, and 2011 show steady declines in ambient $PM_{2.5}$ concentrations in the Huntington-Ashland Area.

TABLE 1—DESIGN VALUE CONCENTRATIONS FOR THE HUNTINGTON-ASHLAND AREA FOR THE 1997 ANNUAL $PM_{2.5}$ NAAQS (μG/M³)

Location	County, state	Monitor ID	3-Year design values		
			2007–2009	2008–2010	2009–2011
Huntington	Cabell, WV	54–011–0006	14.3	13.1	12.1
Ashland Primary (FIVCO)	Boyd, KY	21–019–0017	12.4	11.4	10.8
Lawrence County Hospital (LCH) [3]	Lawrence, OH	39–087–0010	13.3	NA	NA
Ironton Department of Transportation (DOT) [4].	Lawrence, OH	39–087–0012	12.2	12.2	11.4
Portsmouth	Scioto, OH	39–145–0013	12.3	11.6	10.9

As discussed above, the design value for an area is the highest average annual mean concentration recorded at any monitor in the area for a 3-year period. Therefore, the 3-year annual design value submitted by Kentucky for redesignation of the Huntington-Ashland Area, for the period 2008–2010, is 13.1 μg/m³, which meets the NAAQS as described above. Additional details can be found in EPA's final clean data determination for the Huntington-Ashland Area (76 FR 55542, September 7, 2011). The most recent complete, quality-assured and certified ambient monitoring data result in an annual design value for the Huntington-Ashland Area of 12.1 μg/m³, which also meets the NAAQS, for the period 2009–2011. In addition, EPA has reviewed more recent preliminary data that are available in AQS for the year 2012, although not yet complete and certified, and notes that this data also indicates the Huntington-Ashland Area continues to attain the 1997 $PM_{2.5}$ NAAQS beyond the submitted 3-year attainment period of 2008–2010. If the Area does not continue to attain before EPA finalizes the redesignation, EPA will not go forward with the redesignation. As discussed in more detail below, the Commonwealth of Kentucky has committed to continue monitoring in this Area in accordance with 40 CFR part 58.

[3] The Lawrence County Hospital Site was shut down in February 2008. The Ironton DOT site began operation on the same day the Lawrence County Hospital Site ceased monitoring.

[4] The Ironton DOT site did not begin operation until February 2008.

Criteria (5)—Kentucky Has Met All Applicable Requirements Under Section 110 and Part D of the CAA; and Criteria (2)—Kentucky Has a Fully Approved SIP Under Section 110(k) for the Kentucky Portion of the Huntington-Ashland Area

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the state has met all applicable requirements under section 110 and part D of title I of the CAA (CAA section 107(d)(3)(E)(v)) and that the state has a fully approved SIP under section 110(k) for the area (CAA section 107(d)(3)(E)(ii)). EPA proposes to find that Kentucky has met all applicable SIP requirements for the Kentucky portion of the Huntington-Ashland Area under section 110 of the CAA (general SIP requirements) for purposes of redesignation. Additionally, EPA proposes to find that the Kentucky SIP satisfies the criterion that it meet applicable SIP requirements for purposes of redesignation under part D of title I of the CAA (requirements specific to 1997 Annual $PM_{2.5}$ nonattainment areas) in accordance with section 107(d)(3)(E)(v). Further, EPA proposes to determine that the SIP is fully approved with respect to all requirements applicable for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the Area and, if applicable, that they are fully approved under section 110(k). SIPs must be fully approved only with respect to requirements that were applicable prior to submittal of the complete redesignation request.

a. The Kentucky Portion of the Huntington-Ashland Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

General SIP requirements. Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques; provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality; and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirements (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

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. To implement this provision, EPA has required certain states to establish programs to address the interstate transport of air pollutants. 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 classifications 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, EPA does not believe that the CAA's interstate transport requirements should be construed to be applicable requirements for purposes of redesignation. However, as discussed later in this notice, addressing pollutant transport from other states is an important part of an area's maintenance demonstration.

In addition, EPA believes other section 110 elements that are neither connected with nonattainment plan submissions nor linked with an area's attainment status are applicable requirements for purposes of redesignation. The area will still be subject to these requirements after the 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 approach is consistent with EPA's existing policy on applicability (i.e., for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See the Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174, October 10, 1996), (62 FR 24826, May 7, 1997); the Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and the Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio, redesignation (65 FR 37879, June 19, 2000), and in the Pittsburgh, Pennsylvania, redesignation (66 FR 50399, October 19, 2001).

EPA completed rulemaking on a submittal from Kentucky dated August 26, 2008, addressing ''infrastructure SIP'' elements required under the Clean Air Act (CAA or ''the Act'') section 110(a)(2) for the 1997 $PM_{2.5}$ NAAQS on October 3, 2012. *See* 77 FR 60307. However, these are statewide requirements that are not a consequence of the nonattainment status of the Huntington-Ashland Area. As stated above, EPA believes that section 110 elements not linked to an area's nonattainment status are not applicable for purposes of redesignation. Therefore, EPA believes it has approved all SIP elements under section 110 that must be approved as a prerequisite for redesignating the Huntington-Ashland Area to attainment.

Title I, Part D, subpart 1 applicable SIP requirements. EPA proposes to determine that the Kentucky SIP meets the applicable SIP requirements for the Kentucky portion of the Huntington-Ashland Area for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. All areas that were designated nonattainment for the 1997 Annual $PM_{2.5}$ NAAQS were designated under subpart 1 of the CAA. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9) and in section 176. A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of title I (57 FR 13498, April 16, 1992).

Subpart 1 Section 172 Requirements. Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable and to provide for attainment of the NAAQS. EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in each area as components of the area's attainment demonstration. Under section 172, states with nonattainment areas must submit plans providing for timely attainment and meeting a variety of other requirements. However, pursuant to 40 CFR 51.1004(c), EPA's final determination that the Huntington-Ashland Area was attaining the $PM_{2.5}$ standard suspended Kentucky's obligation to submit most of the attainment planning requirements that would otherwise apply. Specifically, the determination of attainment suspended Kentucky's obligation to submit an attainment demonstration and planning SIPs to provide for reasonable further progress (RFP), RACM, and contingency measures under section 172(c)(9).

The General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992) also discusses the evaluation of these requirements in the context of EPA's consideration of a redesignation request. The General Preamble sets forth EPA's view of applicable requirements for purposes of evaluating redesignation requests when an area is attaining a standard (General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992)).

Because attainment has been reached in the Huntington-Ashland Area, no additional measures are needed to provide for attainment, and the section 172(c)(1) requirements for an attainment demonstration and RACM are no longer considered to be applicable for purposes of redesignation as long as the Area continues to attain the standard. *See* also 40 CFR 51.1004(c).

The RFP plan requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant for purposes of redesignation because EPA has determined that the Huntington-Ashland Area, which includes the Kentucky portion of the Huntington-Ashland Area, has monitored attainment of the 1997 Annual $PM_{2.5}$ NAAQS. *See* General Preamble, 57 FR 13564. *See also* 40 CFR 51.1004(c). In addition, because the Huntington-Ashland Area has attained the 1997 Annual $PM_{2.5}$ NAAQS and is no longer subject to a RFP requirement, the requirement to submit the section 172(c)(9) contingency measures is not applicable for purposes of redesignation. *Id.*

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. On April 11, 2012, EPA approved Kentucky's 2002 base-year emissions inventory for the Huntington-Ashland Area as part of the SIP revision submitted by the Commonwealth to provide for attainment of the 1997 $PM_{2.5}$ NAAQS in the Area. *See* 77 FR 21663.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D 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, entitled, ''Part D New Source Review Requirements for Areas Requesting

Redesignation to Attainment.'' Kentucky has demonstrated that the Kentucky portion of the Huntington-Ashland Area will be able to maintain the NAAQS without part D NSR in effect; therefore, Kentucky need not have fully approved part D NSR programs prior to approval of the redesignation request. Kentucky's PSD program will become effective in the Kentucky portion of the Huntington-Ashland Area upon redesignation to attainment.

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the NAAQS. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, EPA believes the Kentucky SIP meets the requirements of section 110(a)(2) applicable for purposes of redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects that are developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally-supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with federal conformity regulations relating to consultation, enforcement and enforceability that EPA promulgated pursuant to its authority under the CAA.

EPA believes it is reasonable to interpret the conformity SIP requirements [5] as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA,* 265 F.3d 426 (upholding this interpretation) (6th Cir. 2001); see also 60 FR 62748 (December 7, 1995, Tampa, Florida). Thus, the Kentucky portion of the Huntington-Ashland Area has satisfied all applicable requirements for purposes of redesignation under section 110 and part D of the CAA. Nonetheless, EPA approved the Kentucky Conformity SIP on April 21, 2010. *See* 75 FR 20780.

b. The Kentucky Portion of the Huntington-Ashland Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

EPA has fully approved the applicable Kentucky SIP for the Kentucky portion of the Huntington-Ashland Area for the 1997 Annual $PM_{2.5}$ nonattainment area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (see Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426) plus any additional measures it may approve in conjunction with a redesignation action (see 68 FR 25426 (May 12, 2003) and citations therein). Following passage of the CAA of 1970, Kentucky has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various SIP elements applicable for the 1997 Annual $PM_{2.5}$ NAAQS in the Kentucky portion of the Huntington-Ashland Area (77 FR 60307, October 3, 2012).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. In addition, EPA believes that since the part D subpart 1 requirements did not become due prior to submission of the redesignation request, they are also not applicable requirements for purposes of redesignation. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis-East St. Louis Area to attainment of the 1-hour ozone NAAQS). EPA has approved all Part D subpart 1 requirements applicable for purposes of this redesignation.

Criteria (3)—The Air Quality Improvement in the Kentucky Portion of the Huntington-Ashland 1997 Annual $PM_{2.5}$ NAAQS Nonattainment Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions (CAA section 107(d)(3)(E)(iii)). EPA believes that Kentucky has demonstrated that the observed air quality improvement in the Kentucky portion of the Huntington-Ashland Area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, federal measures, and other state adopted measures.

Fine particulate matter, or $PM_{2.5}$, refers to airborne particles less than or equal to 2.5 micrometers in diameter. Although treated as a single pollutant, fine particles come from many different sources and are composed of many different compounds. One of the largest components of $PM_{2.5}$ is sulfate, which is formed through various chemical reactions from the precursor SO_2. The other major component of $PM_{2.5}$ is organic carbon, which originates predominantly from biogenic emission sources. Nitrate, which is formed from the precursor NO_X, is also a component of $PM_{2.5}$. Crustal materials from windblown dust and elemental carbon from combustion sources are less significant contributors to total $PM_{2.5}$.

State and federal measures enacted in recent years have resulted in permanent emission reductions. Most of these emission reductions are enforceable through regulations. A few non-regulatory measures also result in emission reductions. The federal measures that have been implemented include:

Tier 2 vehicle standards. In addition to requiring NO_X controls, the Tier 2 rule reduced the allowable sulfur content of gasoline to 30 parts per million (ppm) starting in January of 2006. Most gasoline sold prior to this had a sulfur content of approximately 300 ppm.

Heavy-duty gasoline and diesel highway vehicle standards. The second phase of the standards and testing procedures, which began in 2007, reduces particulate matter (PM) and NO_X from heavy-duty highway engines and also reduces highway diesel fuel sulfur content to 15 ppm. The total program is expected to achieve a 90 and 95 percent reduction in PM and NO_X emissions from heavy-duty highway engines, respectively.

Nonroad spark-ignition engines and recreational engines standards. Tier 1 of this standard, implemented in 2004, and Tier 2, implemented in 2007, have reduced and will continue to reduce PM emissions.

[5] CAA Section 176(c)(4)(E) requires states to submit revisions to their SIPs to reflect certain federal criteria and procedures for determining transportation conformity. Transportation conformity SIPs are different from the motor vehicle emission budgets that are established in control strategy SIPs and maintenance plans.

Large nonroad diesel engine standards. Promulgated in 2004, this rule is being phased in between 2008 and 2014. This rule will reduce sulfur content in nonroad diesel fuel and, when fully implemented, will reduce NO_X and direct $PM_{2.5}$ emissions by over 90 percent from these engines.

Reciprocating Internal Combustion Engine Standard. Promulgated in 2010, this rule regulates emissions of air toxics from existing diesel powered stationary reciprocating internal combustion engines that meet specific site rating, age, and size criteria. When all of the reciprocating internal combustion engine standards are fully implemented in 2013, EPA estimates that annual $PM_{2.5}$ emissions from these engines will be reduced by approximately 2,800 tons.

Category 3 Marine Diesel Engine Standards. Promulgated in 2010, this rule establishes more stringent exhaust emission standards for new large marine diesel engines with per cylinder displacement at or above 30 liters (commonly referred to as Category 3 compression-ignition marine engines) as part of a coordinated strategy to address emissions from all ships that effect U.S. air quality. Near-term standards for newly built engines will apply beginning in 2011, and long-term standards requiring an 80 percent reduction in NO_X emissions will begin in 2016.

NO_X SIP Call. On October 27, 1998 (63 FR 57356), EPA issued the NO_X SIP Call requiring the District of Columbia and 22 states to reduce emissions of NO_X. Affected states were required to comply with Phase I of the SIP Call beginning in 2004, and Phase II beginning in 2007. Emission reductions resulting from regulations developed in response to the NO_X SIP Call are permanent and enforceable.

CAIR and the Transport Rule. On May 12, 2005, EPA published the Clean Air Interstate Rule (CAIR), which requires significant reductions in emissions of SO_2 and NO_X from electric generating units to limit the interstate transport of these pollutants and the ozone and fine particulate matter they form in the atmosphere. *See* 76 FR 25162. The D.C. Circuit initially vacated CAIR, *North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008), but ultimately remanded the rule to EPA without vacatur to preserve the environmental benefits provided by CAIR, *North Carolina* v. *EPA,* 550 F.3d 1176, 1178 (D.C. Cir. 2008). In response to the Court's decision, EPA issued the Transport Rule, also known as the Cross-State Air Pollution Rule, to address interstate transport of SO_2 and NO_X in the eastern United States. *See* 76 FR 48208 (August 8, 2011). On August 21, 2012, the D.C. Circuit issued a decision to vacate the Transport Rule. In that decision, the Court also ordered EPA to continue administering CAIR ''pending the promulgation of a valid replacement.'' *EME Homer Generation, L.P.* v. *EPA,* No. 11–1302 (D.C. Cir., August 21, 2012).[6]

In light of the these unique circumstances and for the reasons explained below, EPA proposes to approve the redesignation request and the related SIP revision for Boyd County and a portion of Lawrence County in Kentucky, including Kentucky's plan for maintaining attainment of the standard in the Kentucky portion of the Huntington-Ashland Area. The air quality modeling analysis conducted for the Transport Rule demonstrates that the Huntington-Ashland Area would be able to attain the 1997 Annual $PM_{2.5}$ NAAQS even in the absence of either CAIR or the Transport Rule. *See* ''Air Quality Modeling Final Rule Technical Support Document,'' App. B, B–44, B–55—56, and B–62. This modeling is available in the docket for this proposed redesignation action. Nothing in the D.C. Circuit's August 2012 decision disturbs or calls into question that conclusion or the validity of the air quality analysis on which it is based.

In addition, CAIR remains in place and enforceable until substituted by a ''valid'' replacement rule. Kentucky's SIP revision lists CAIR as a control measure that became state-effective February 2, 2007, and was approved by EPA on October 4, 2007, for the purpose of reducing SO_2 and NO_X emissions. The monitoring data used to demonstrate the area's attainment of the 1997 Annual $PM_{2.5}$ NAAQS by the April 2010 attainment deadline was also impacted by CAIR. To the extent that Kentucky is relying on CAIR in its maintenance plan, the recent directive from the D.C. Circuit in *EME Homer* ensures that the reductions associated with CAIR will be permanent and enforceable for the necessary time period. EPA has been ordered by the Court to develop a new rule, and the opinion makes clear that after promulgating that new rule EPA must provide states an opportunity to draft and submit SIPs to implement that rule. CAIR thus cannot be replaced until EPA has promulgated a final rule through a notice-and-comment rulemaking process, states have had an opportunity to draft and submit SIPs, EPA has reviewed the SIPs to determine whether they can be approved, and EPA has taken action on the SIPs, including promulgation of a federal implementation plan, if appropriate. These steps alone will take many years, even with EPA and the states acting expeditiously. The Court's clear instruction to EPA that it must continue to administer CAIR until a ''valid replacement'' exists provides an additional backstop; by definition, any rule that replaces CAIR and meets the Court's direction would require upwind states to eliminate significant downwind contributions to downwind nonattainment and prevent interference with maintenance in downwind areas.

Further, in vacating the Transport Rule and requiring EPA to continue administering CAIR, the D.C. Circuit emphasized that the consequences of vacating CAIR ''might be more severe now in light of the reliance interests accumulated over the intervening four years.'' *EME Homer,* slip op. at 60. The accumulated reliance interests include the interests of states who reasonably assumed they could rely on reductions associated with CAIR, which brought certain nonattainment areas into attainment with the NAAQS. If EPA were prevented from relying on reductions associated with CAIR in redesignation action, states would be forced to impose additional, redundant reductions on top of those achieved by CAIR. EPA believes this is precisely the type of irrational result the Court sought to avoid by ordering EPA to continue administering CAIR. For these reasons also, EPA believes it is appropriate to allow states to rely on CAIR, and the existing emission reductions achieved by CAIR, as sufficiently permanent and enforceable for purposes such as redesignation. Following promulgation of the replacement rule, EPA will review SIPs as appropriate to identify whether there are any issues that need to be addressed.

Other measures. There are also other actions, independent of CAIR, which have led to permanent and enforceable emission reductions at EGUs located within the Huntington-Ashland Area. For example, in the Kentucky portion of the Huntington-Ashland Area, the Big Sandy Power Station was required by a federally enforceable consent decree[7] and 2007 settlement agreement to install and continuously operate selective catalytic reduction (SCR) to reduce NO_X emissions from Unit 2 beginning January 1, 2009. The plant is also

[6] The Court's judgment is not final, as of November 7, 2012, as the mandate has not yet been issued.

[7] Entered with the United States District Court for the Southern District of Ohio Eastern Division (*United States of America and State of New York, et al.,* v. *American Electric Power Service Corp., et al.,* No. C2–99–1250 and 1182 (consolidated)).

required to install and continuously operate flue gas desulfurization (FGD) to reduce SO_2 emissions from Unit 2 beginning December 31, 2015. Operation of FGD controls has a co-benefit of reducing direct $PM_{2.5}$ emissions as well. In the Ohio and West Virginia portions of the Area, a federally enforceable consent decree [8] and 2007 settlement agreement require the General James M. Gavin Power Plant (Ohio) and Mountaineer Power Plant (West Virginia) to install and continuously operate SCR and FGD on specified units and the Philip Sporn Plant (West Virginia) to retire, retrofit, or re-power one unit. Another consent decree,[9] to which EPA was not a party, requires the J.M. Stuart Power Plant (Ohio) to install and continuously operate SCR on all of its units. To the extent that power plant emission reductions contributed to attainment in the Huntington-Ashland Area, these reductions are permanent and enforceable.

In addition to the consent decrees for power plants, Kentucky provided information in its submittal regarding other consent decrees in and near the Huntington-Ashland Area. In Greenup County, which is adjacent to the Huntington-Ashland $PM_{2.5}$ nonattainment area, E.I. Dupont will reduce SO_2 emissions at four sulfuric acid units with measures equivalent to best available control technology (BACT) [10] and will continue to implement best work practices. AK Steel—Ashland Works, located in Boyd County, ceased all coke plant operations by June 23, 2011, as confirmed through a shutdown notification letter to DAQ. EPA notes that although Kentucky did not take credit for these consent decrees and shutdowns in their projection inventories, they are permanent and enforceable reductions that will contribute to further SO_2 and NO_X emission reductions in the Huntington-Ashland Area.

The state measures that have been implemented to date and relied upon by Kentucky to demonstrate attainment and/or maintenance include the Commonwealth of Kentucky NO_X SIP Call regulations, open burning bans, and fugitive emission standards.

EPA believes that reductions in emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors in and around the Huntington-Ashland Area have contributed to improved air quality. The majority of the improvement in ambient $PM_{2.5}$ concentrations has resulted from reductions in emissions from coal fired power plants that were prompted by the NO_X SIP Call and CAIR. A summary of the emission reductions from 2005 to 2009 for the entire Huntington-Ashland Area is provided in Table 2 below. EPA's analysis shows that the reductions of SO_2 and NO_X emissions, in tons per year (tpy), were greater than decreases in emissions that could be attributed to any decrease in electrical demand in the Huntington-Ashland Area. While the average SO_2 and NO_X emission reductions from coal fired utilities in the Huntington-Ashland Area for the period 2005–2009 were 47 percent and 68 percent, respectively, the average facility power production in terms of heat input decreased by only about 5 percent during the same period. Furthermore, as discussed below, Kentucky's maintenance plan provides for verification of continued attainment by performing future reviews of triennial emissions inventories and also for contingency measures to ensure that the NAAQS is maintained into the future if monitored increases in ambient $PM_{2.5}$ concentrations occur.

TABLE 2—ACTUAL EMISSION REDUCTIONS FROM COAL FIRED UTILITIES IN THE HUNTINGTON-ASHLAND AREA FOR THE PERIOD 2005–2009 [11]

Facility—County	Emission differences from 2005 to 2009 (tpy)			
	SO_2	Percent reduction	NO_X	Percent reduction
Kentucky:				
Big Sandy—Lawrence County	9,873	20	7,621	61
West Virginia:				
Mountaineer—Mason County	40,214	94	10,073	79
Philip Sporn—Mason County	22,433	57	5,020	56
Ohio:				
J.M. Stuart—Adams County	42,224	40	16,124	66
Killen Station—Adams County	17,592	90	3,083	52
Gen J.M. Gavin—Gallia County	1,701	6	31,800	82
Kyger Creek—Gallia County	16,032	22	15,209	82

Criteria (4)—The Kentucky Portion of the Huntington-Ashland Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

For redesignating a nonattainment area to attainment, the CAA requires EPA to determine that the area has a fully approved maintenance plan pursuant to section 175A of the CAA (CAA section 107(d)(3)(E)(iv)). In conjunction with its request to redesignate the Kentucky portion of the Huntington-Ashland Area to attainment for the 1997 Annual $PM_{2.5}$ NAAQS, DAQ submitted a SIP revision to provide for the maintenance of the 1997 Annual $PM_{2.5}$ NAAQS for at least 10 years after the effective date of redesignation to attainment. EPA believes this maintenance plan meets the requirements for approval under section 175A of the CAA.

a. What is required in a maintenance plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years

[8] *Id.*

[9] Entered with the United States District Court for the Southern District of Ohio, Eastern Division (*Sierra Club and Marilyn Wall* v. *The Dayton Power and Light Company, Duke Energy Ohio, Inc., and Columbus Southern Power Co.,* Civil Action No. 2: 04–cv–905).

[10] BACT is a source emissions limitation that is based on the maximum degree of control that can be achieved and is generally implemented through the prevention of significant deterioration (PSD) permitting program.

[11] Data reflects reported actual emissions from the Clean Air Markets Division Database at *http://ampd.epa.gov/ampd/.*

after the redesignation, the Commonwealth of Kentucky must submit a revised maintenance plan, which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, as EPA deems necessary, to assure prompt correction of any future 1997 Annual $PM_{2.5}$ violations. The Calcagni Memorandum provides further guidance on the content of a maintenance plan, explaining that a maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. As is discussed more fully below, EPA finds that the Commonwealth's maintenance plan includes all the necessary components and is thus proposing to approve it as a revision to the Kentucky SIP.

b. Attainment Emissions Inventory

The Huntington-Ashland Area attained the 1997 Annual $PM_{2.5}$ NAAQS based on monitoring data for the 3-year period from 2007–2009. The Commonwealth selected 2008 as the attainment emission inventory year. The attainment inventory identifies a level of emissions in the Area that is sufficient to attain the 1997 Annual $PM_{2.5}$ NAAQS. The Commonwealth began development of the attainment inventory by first generating a baseline emissions inventory for the Huntington-Ashland Area. As noted above, the year 2008 was chosen as the base year for developing a comprehensive emissions inventory for the primary $PM_{2.5}$ precursors, SO_2 and NO_X, for which projected emissions could be developed for 2015 and 2022. The projected inventory included with the maintenance plan estimates emissions forward to 2022, which is at the 10-year interval required in section 175A of the CAA. In addition to comparing the final year of the plan, Kentucky compared an interim year to the 2008 baseline to demonstrate that these years are also expected to show continued maintenance of the annual fine particulate matter standard.

The emissions inventories are composed of four major types of sources: Point, area, on-road mobile and non-road mobile. The attainment and future year emissions inventories were projected by the Visibility Improvement State and Tribal Association of the Southeast and the Lake Michigan Air Directors Consortium using the 2005 base year inventory methodology as provided in the Appendix D of Kentucky's Submittal. The future year emissions inventories have been estimated using projected rates of growth in population, traffic, economic activity, expected control programs, and other parameters. Non-road mobile emissions estimates were based on the EPA's NONROAD model, with the exception of the railroad locomotives, commercial marine, and aircraft engine. These emissions are estimated by taking activity data, such as landings and takeoffs, and multiplying by an Economic Growth Analysis System emission factor. On-road mobile source emissions were calculated using EPA's MOVES2010 mobile emission factors model. The 2008 SO_2, NO_X and $PM_{2.5}$ emissions for the Huntington-Ashland Area, as well as the emissions for other years, were developed consistent with EPA guidance and are summarized in Table 6 of the following subsection discussing the maintenance demonstration.

Section 175A requires a state seeking redesignation to attainment to submit a SIP revision to provide for the maintenance of the NAAQS in the Area ''for at least 10 years after the redesignation.'' EPA has interpreted this as a showing of maintenance ''for a period of ten years following redesignation.'' Calcagni Memorandum, p. 9. Where the emissions inventory method of showing maintenance is used, the purpose is to show that emissions during the maintenance period will not increase over the attainment year inventory. Calcagni Memorandum, pp. 9–10.

As discussed in detail in the subsection below, Kentucky's maintenance plan submission expressly documents that the Area's emissions inventories will remain below the attainment year inventories through 2022. Projected emissions inventory levels in 2022 are well below the attainment year inventory levels, and it is highly improbable that they will suddenly increase and exceed attainment year inventory levels in 2023. In addition, for the reasons set forth below, EPA believes that the Commonwealth's submission, in conjunction with additional supporting information, further demonstrates that the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS at least through 2023. Thus, if EPA finalizes its proposed approval of the redesignation request and maintenance plans in 2013, the approval will be based upon this showing, in accordance with section 175A, and EPA's analysis described herein, that the Commonwealth's maintenance plan provides for maintenance for at least ten years after redesignation.

c. Maintenance Demonstration

The February 12, 2012, final submittal includes a maintenance plan for the Kentucky portion of the Huntington-Ashland Area. This demonstration:

(i) Shows compliance with and maintenance of the annual $PM_{2.5}$ standard by providing information to support the demonstration that current and future emissions of SO_2, NO_X and $PM_{2.5}$ remain at or below 2008 emissions levels.

(ii) Uses 2008 as the attainment year and includes future emission inventory projections for 2015 and 2022.

(iii) Identifies an ''out year'' at least 10 years after EPA review and potential approval of the maintenance plan. Per 40 CFR part 93, NO_X and $PM_{2.5}$ MVEB were considered for the last year (2022) of the maintenance plan.[12]

(iv) Provides, as shown in Tables 3, 4, and 5 below, the actual and projected emissions inventories, in tpy, for the Kentucky portion of the Huntington-Ashland Area. Kentucky incorporated the expected CAIR reductions into the projected SO_2 and NO_X inventories. The projected direct $PM_{2.5}$ inventories do not include any reductions achieved as a co-benefit of CAIR implementation. Table 6 shows the 2008 actual and 2015 and 2022 projected emissions inventories for the entire Huntington-Ashland Area.

[12] $PM_{2.5}$ and NO_X MVEB are not required for the Kentucky portion of the Huntington-Ashland Area due to the insignificance finding for the mobile sources.

TABLE 3—ACTUAL (2008) AND PROJECTED DIRECT $PM_{2.5}$ EMISSIONS FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA (tpy)

Sector	2008	2015	2022
Point	12,329.81	7,374.04	4,191.06
Area	124.25	120.60	117.98
Non-road	756.77	798.60	841.16
On-road	104.18	54.28	30.77
Total	13,315.01	8,347.52	5,180.97

TABLE 4—ACTUAL (2008) AND PROJECTED NO_X EMISSIONS FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA (tpy)

Sector	2008	2015	2022
Point	17,952.52	19,919.31	21,886.10
Area	3,182.45	2,963.14	2,743.37
Non-road	50.84	58.01	63.68
On-road	2,311.75	1,225.13	685.60
Total	23,497.56	24,165.59	25,378.75

TABLE 5—ACTUAL (2008) AND PROJECTED SO_2 EMISSIONS FOR THE KENTUCKY PORTION OF THE HUNTINGTON-ASHLAND AREA (tpy)

Sector	2008	2015	2022
Point	46,835.66	17,880.04	23,873.83
Area	398.09	378.52	373.13
Non-road	579.92	606.63	626.51
On-road	12.36	12.62	12.83
Total	47,826.03	18,877.81	24,886.30

TABLE 6—ACTUAL (2008) AND PROJECTED TOTAL EMISSION ESTIMATES FOR THE ENTIRE HUNTINGTON-ASHLAND AREA (tpy)

Year	$PM_{2.5}$ (tpy)	NO_X (tpy)	SO_2 (tpy)
2008	20,990.20	152,377.14	230,690.12
2015	15,907.51	104,680.23	135,946.22
2022	12,601.44	83,700.01	113,779.08
Decrease from 2008 to 2022	8,388.76	68,677.13	116,911.04

In situations where local emissions are the primary contributor to nonattainment, if the future projected emissions in the nonattainment area remain at or below the baseline emissions in the nonattainment area, then the ambient air quality standard should not be violated in the future. As reflected in Table 6, future emissions of all the relevant pollutants in the Huntington-Ashland Area are expected to be well below the 2008 ''attainment level'' emissions, thus illustrating that the Huntington-Ashland Area is expected to continue to attain the 1997 Annual $PM_{2.5}$ NAAQS through 2022. Further, as reflected in Tables 3 through 5, future emissions direct $PM_{2.5}$ and SO_2 in the Kentucky portion of the Huntington-Ashland Area are expected to be well below the 2008 ''attainment level'' emissions, while future emissions NO_X are expected to be slightly above the 2008 ''attainment level'' emissions. Because the SO_2 and direct PM components are more significant to ambient $PM_{2.5}$ levels than the nitrate contribution,[13] the significant projected reductions in these pollutants indicate that future emissions in the Kentucky portion of the Huntington-Ashland Area are expected to support continued maintenance of the 1997 Annual $PM_{2.5}$ NAAQS through 2022.

A maintenance plan requires the state to show that projected future year emissions will not exceed the level of emissions which led the area to attain the NAAQS. Kentucky has demonstrated maintenance by projecting emissions in 2022, as described previously, that will remain below those in the 2008 attainment year.

As noted above, EPA believes that several pertinent factors demonstrate that the Huntington-Ashland Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS at least through the year 2023. These include the circumstances that (1) all of the state and federal regulatory requirements that enabled the Area to attain the NAAQS will continue to be in effect and enforceable after the 10-year maintenance period; (2) the

[13] In Kentucky, speciation data shows that the sulfate (SO_4) component accounts for approximately one-third of the total ambient $PM_{2.5}$ mass; the direct PM (organic carbon) component accounts for approximately one-fourth of the total ambient $PM_{2.5}$ mass; and the nitrate (NH_4 and NO_3) component accounts for approximately one tenth of the total ambient $PM_{2.5}$ mass. *See* Figure 1.3–4 of ''The Kentucky Fine Particulate Matter ($PM_{2.5}$) Attainment Demonstration for the Louisville, KY-IN, Cincinnati-Middletown, OH–KY–IN, and Huntington-Ashland, WV-KY-OH $PM_{2.5}$ Nonattainment Areas,'' November 2008.

most recent complete, quality-assured and certified annual $PM_{2.5}$ design value (for the period 2009 to 2011) for the Area of 12.1 μg/m³ is well below the standard of 15.0 μg/m³; (3) as discussed in detail below, EPA is proposing in this action to approve Kentucky's determination that the direct $PM_{2.5}$ and NO_X contribution from motor vehicle emissions is insignificant for the Area and thus does not expect such emissions to contribute significantly to future ambient $PM_{2.5}$ levels; and (4) as noted above, several of the largest sources in the Area have been required by permanent and enforceable consent decrees to install controls that achieve reductions in SO_2 and NO_X emissions as well as reductions in direct $PM_{2.5}$ emissions. Therefore, EPA expects the projected downward trend in pollutant emissions in the Huntington-Ashland Area from the 2008 attainment year through the 2022 maintenance year, as shown in Table 6 above, to continue for at least the one additional year past 2022.

d. Monitoring Network

There are currently four monitors measuring $PM_{2.5}$ in the Huntington-Ashland Area (one in the Kentucky portion of the Area, one in the West Virginia portion of the Area, and two in the Ohio portion of the Area). The Commonwealth of Kentucky, through DAQ, has committed to continue operation of the monitors in the Kentucky portion of the Huntington-Ashland Area in compliance with 40 CFR part 58 and have thus addressed the requirement for monitoring. EPA approved Kentucky's 2011 monitoring plan on October 20, 2011. Ohio and West Virginia have made similar commitments in their redesignation and maintenance plan submissions to EPA for this Area.

e. Verification of Continued Attainment

The Commonwealth of Kentucky, through DAQ, has the legal authority to enforce and implement the requirements of the Kentucky portion of the Huntington-Ashland Area 1997 Annual $PM_{2.5}$ maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future $PM_{2.5}$ attainment problems.

DAQ will track the progress of the maintenance plan by performing future reviews of triennial emission inventories for the Kentucky portion of the Huntington-Ashland Area as required in the Air Emissions Reporting Rule (AERR) and Consolidated Emissions Reporting Rule (CERR). For these periodic inventories, DAQ will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, then DAQ will re-project emissions for the Kentucky portion of the Huntington-Ashland Area.

f. Contingency Measures in the Maintenance Plan.

The contingency measures are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the February 12, 2012, revision, Kentucky affirms that all programs instituted by the Commonwealth and EPA will remain enforceable and that sources are prohibited from reducing emissions controls following the redesignation of the Area. The contingency plan included in the submittal includes a 2-step triggering mechanism to determine when contingency measures are needed and a process of developing and implementing appropriate control measures. The Commonwealth will use actual ambient monitoring data as the triggering event to determine when contingency measures should be implemented. The secondary trigger is a pre-violation trigger, and thus activation does not necessarily mean a violation of the annual $PM_{2.5}$ NAAQS has occurred or will occur. This pre-violation trigger allows the Commonwealth to begin evaluating the causes of increased ambient $PM_{2.5}$ concentrations and take corrective action to prevent a future violation. In the contingency plan, Kentucky has committed to taking action on the activation of a primary or secondary trigger. These triggers and the actions resulting from them are discussed more fully below.

Kentucky has identified a primary trigger as occurring when the 3-year average of annual mean $PM_{2.5}$ concentrations in the Huntington-Ashland Area is greater than the 1997 Annual $PM_{2.5}$ NAAQS of 15.0 μg/m³. In the event of a monitored violation of the 1997 Annual NAAQS, the Commonwealth commits to adopting one or more of the following control measures within nine months in order to bring the Area into compliance. All regulatory programs will be implemented within 18 months of the triggering monitored violation:

- Implementation of a program to require additional emissions reductions on stationary sources;
- Implementation of fuel programs, including incentives for alternative fuels;
- Restriction of certain roads or lanes, or construction of such lanes for use by passenger buses or high-occupancy vehicles;
- Trip-reduction ordinances;
- Employer-based transportation management plans, including incentives;
- Programs to limit or restrict vehicle use in downtown areas, or other areas of emission concentration, particularly during periods of peak use;
- Programs for new construction and major reconstruction of paths or tracks for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest;
- Diesel reduction emissions strategies, including diesel retrofit programs;
- Any other control program that is developed and deemed to be more advantageous for the area.

A secondary trigger will occur in the event that a measured value of the weighted annual mean is 15.5 μg/m³ or greater in a single calendar year in any portion of the maintenance area. In such a case, the Commonwealth will evaluate existing control measures and determine whether any further emission reduction measures should be implemented. In addition to the triggers indicated above, Kentucky will monitor regional emissions through the CERR and AERR and compare them to the projected inventories and the attainment year inventory.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, monitoring network, verification of continued attainment, and a contingency plan. Therefore, the maintenance plan SIP revision submitted by the Commonwealth of Kentucky for the Kentucky portion of

the Huntington-Ashland Area meets the requirements of section 175A of the CAA and is approvable.

VI. What is EPA's analysis of Kentucky's proposed regional on-road motor vehicle insignificance determination for the Kentucky portion of the Huntington-Ashland area?

Under section 176(c) of the CAA, new transportation plans, programs, and projects, such as the construction of new highways, must ''conform'' to (i.e., be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS or any interim milestones. If a transportation plan does not conform, most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP. The regional emissions analysis is one, but not the only, requirement for implementing transportation conformity. Transportation conformity is a requirement for nonattainment and maintenance areas. Maintenance areas are areas that were previously nonattainment for a particular NAAQS but have since been redesignated to attainment with an approved maintenance plan for that NAAQS.

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in nonattainment areas. These control strategy SIPs (including RFP and attainment demonstration) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. A state may adopt MVEBs for other years as well. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. *See* 40 CFR 93.101. The MVEB serves as a ceiling on emissions 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 also describes how to establish the MVEB in the SIP and how to revise the MVEB.

Today's action addresses the element regarding on-road motor vehicle emissions and the requirement to establish MVEB. EPA is proposing to find that the direct $PM_{2.5}$ and NO_X emission contribution from motor vehicles to the air pollution in the Kentucky portion of the Huntington-Ashland Area are insignificant. The result of this determination, if finalized, is that Kentucky will not need to develop MVEB for direct $PM_{2.5}$ and NO_X for the Kentucky portion of the Area and the MPO will not need to perform a regional emissions analysis for either pollutant when it demonstrates conformity. See below for further information on the insignificance determination.

Regional on-road motor vehicle insignificance. For motor vehicle emissions budgets to be approvable, they must meet, at a minimum, EPA's adequacy criteria (40 CFR 93.118(e)(4)). In certain instances, the Transportation Conformity Rule allows areas to forgo establishment of a MVEB where it is demonstrated that the regional motor vehicle emissions for a particular pollutant or precursor are an insignificant contributor to the air quality problem in an area. The general criteria for insignificance determinations can be found in 40 CFR 93.109(f). Insignificance determinations are based on a number of factors, including (1) the percentage of motor vehicle emissions in context of the total SIP inventory; (2) the current state of air quality as determined by monitoring data for that NAAQS; (3) the absence of SIP motor vehicle control measures; and (4) historical trends and future projections of the growth of motor vehicle emissions. EPA's rationale for providing for insignificance determinations is described in the July 1, 2004, revision to the Transportation Conformity Rule at 69 FR 40004.[14] Specifically, the rationale is explained on page 40061 under the subsection entitled ''XXIII.B. Areas With Insignificant Motor Vehicle Emissions.'' Any insignificance determination under review by EPA is subject to the adequacy and approval process for EPA's action on the SIP.

Through the adequacy and SIP approval process, EPA may find that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for the pollutant or precursor at issue. Upon the effective date of EPA's adequacy determination, federal regulations no longer require a regional emissions analysis (for the purpose of transportation conformity implementation) for the relevant pollutant or precursor. Areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant conformity requirements. Additionally, such areas are required to satisfy the regional emissions analysis requirements for pollutants or precursors for which EPA has not made a determination of insignificance.

The maintenance plan for the Kentucky portion of the Huntington-Ashland Area, included as part of the SIP revision, contains a regional on-road motor vehicle insignificance determination for the direct $PM_{2.5}$ and NO_X contribution of motor vehicles to the air quality problem in the Kentucky portion of the Huntington-Ashland Area. As part of the preparation for its redesignation request, Kentucky consulted with the interagency consultation group for the Huntington-Ashland Area regarding the insignificance determination. The information provided by Kentucky supports EPA's proposal to determine that the direct $PM_{2.5}$ and NO_X contribution from on-road vehicles to $PM_{2.5}$ air pollution in the Kentucky portion of the Huntington-Ashland Area are insignificant. The information provided by Kentucky to EPA, as part of the SIP revision, addresses each of the factors listed in 40 CFR 93.109(f) and is summarized below. The 2008 on-road $PM_{2.5}$ emissions and NO_X emissions account for less than one percent of the total direct $PM_{2.5}$ emissions and less than three percent of total NO_X emissions from all sources in the SIP inventory for the Kentucky portion of the Huntington-Ashland Area. As shown in Tables 3 and 4 above, Kentucky's maintenance plan demonstrates that on-road direct $PM_{2.5}$ emissions and NO_X emissions will continue to decrease through 2022, the end of the maintenance plan for the Huntington-Ashland Area. In addition, since 2007, the $PM_{2.5}$ design value concentration has decreased by 27 percent such that the Area is now attaining the Annual $PM_{2.5}$ NAAQS with a 2009–2011 design value of 12.1 $\mu g/m^3$, well below the standard of 15.0 $\mu g/m^3$. According to information provided by Kentucky, point sources contributed nearly 98 percent of the emissions in future years in the Huntington-Ashland Area. The maintenance plan does not contain any control measures that apply to on-road motor vehicles.

[14] In the March 24, 2010, final rule (75 FR 14260), provisions for insignificance determinations were outlined in 40 CFR 93.109(m). EPA revised 40 CFR 93.109 in its March 14, 2012, final rule (77 FR 14979), and the provisions for insignificance determinations are now located at 40 CFR 93.109(f).

After evaluating the information provided by Kentucky and weighing the factors for the insignificance determination outlined in 40 CFR 93.109(f), EPA is now proposing to approve Kentucky's determination that the direct $PM_{2.5}$ and NO_X contribution from motor vehicle emissions to the pollution problem in the Kentucky portion of the Huntington-Ashland Area is insignificant. EPA's insignificance determination should be considered and specifically noted in the transportation conformity documentation that is prepared for the Area. In addition, as discussed in Section V above, EPA is proposing that if this approval is finalized in 2013 the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS through at least 2023. EPA is also proposing that the submitted insignificance finding is consistent with maintenance of the 1997 Annual $PM_{2.5}$ NAAQS through 2023.

VII. What is the status of EPA's adequacy determination for the on-road motor vehicle insignificance determination for the Kentucky portion of the Huntington-Ashland area?

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEB and/or insignificance determinations, EPA may affirmatively find the MVEB and/or insignificance determination contained therein adequate for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB must be used by state and federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. Further, once EPA affirmatively finds the submitted insignificance determination is adequate for transportation conformity purposes, the transportation partners are relieved of performing a regional emissions analysis of that pollutant or precursor but must document the insignificance determination in its conformity determination.

EPA's substantive criteria for determining adequacy of an MVEB and/or insignificance determination are set out in 40 CFR 93.118(e)(4). The process for determining adequacy consists of three basic steps: Public notification of a SIP submission, a public comment period, and EPA's adequacy determination. This process for determining the adequacy of submitted MVEB for transportation conformity purposes was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' EPA adopted regulations to codify the adequacy process in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for transportation conformity purposes is available in the proposed rule entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes,'' 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Kentucky's maintenance plan submission includes an insignificance determination that direct $PM_{2.5}$ and NO_X emissions from on-road motor vehicles are an insignificant contributor to the air quality problem in the Kentucky portion of the Huntington-Ashland area. On January 3, 2012, the Kentucky SIP submission, including the on-road motor vehicle insignificance finding, was open for public comment on EPA's adequacy Web site found at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period closed on February 2, 2012. EPA did not receive any comments on the adequacy of the insignificance determination, nor did EPA receive any requests for the SIP revision.

EPA intends to make its determination on the adequacy of the insignificance finding for the Kentucky portion of the Huntington-Ashland Area for transportation conformity purposes in the near future by completing the adequacy process that was started on January 3, 2012. Section 93.109(f) states that a regional emissions analysis is no longer necessary if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor. A finding of insignificance does not change the requirement for a regional analysis for other pollutants and precursors and does not change the requirement for hot-spot analysis. After EPA finds the insignificance determination adequate or approves it, this on-road motor vehicle insignificance finding for direct $PM_{2.5}$ and NO_X applies to future transportation conformity determinations.[15]

VIII. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revision for the Kentucky Portion of the Huntington-Ashland Area

EPA determined that the Huntington-Ashland Area was attaining the 1997 Annual $PM_{2.5}$ NAAQS on September 7, 2011. *See* 76 FR 55542. EPA is now taking two separate but related actions regarding the Area's redesignation and maintenance of the 1997 Annual $PM_{2.5}$ NAAQS.

First, EPA is proposing to determine, based on complete, quality-assured and certified monitoring data for the 2008–2010 monitoring period and review of data in AQS for 2011 and 2012, that the Huntington-Ashland Area continues to attain the 1997 Annual $PM_{2.5}$ NAAQS. EPA is also proposing to determine that the Kentucky portion of the Huntington-Ashland Area has met the criteria under CAA section 107(d)(3)(E) for redesignation from nonattainment to attainment for the 1997 Annual $PM_{2.5}$ NAAQS. On this basis, EPA is proposing to approve Kentucky's redesignation request for the Kentucky portion of the Huntington-Ashland Area.

Second, EPA is proposing to approve the maintenance plan for the Kentucky portion of the Huntington-Ashland Area as meeting the requirements of section 175A of the CAA. The maintenance plan demonstrates that the Area will continue to maintain the 1997 Annual $PM_{2.5}$ NAAQS.

If finalized, approval of the redesignation request would change the official designation of Boyd County and a portion of Lawrence County in the Kentucky portion of the Huntington-Ashland Area for the 1997 Annual $PM_{2.5}$ NAAQS, found at 40 CFR part 81 from nonattainment to attainment. EPA is also proposing to approve, into the Kentucky SIP, the maintenance plan for the Kentucky portion of the Huntington-Ashland Area.

IX. What is the effect of EPA's proposed actions?

EPA's proposed actions establish the basis upon which EPA may take final action on the issues being proposed for approval today. Approval of Kentucky's redesignation request would change the legal designation of Boyd County and a portion of Lawrence County in Kentucky for the 1997 Annual $PM_{2.5}$

[15] The Huntington-Ashland Area already has an adequate insignificance finding for its submitted attainment demonstration.

NAAQS, found at 40 CFR part 81, from nonattainment to attainment. Approval of the Commonwealth's request would also incorporate a plan for maintaining the 1997 Annual $PM_{2.5}$ NAAQS in the Kentucky portion of the Huntington-Ashland Area through 2021 into the Kentucky SIP. This maintenance plan includes contingency measures to remedy any future violations of the 1997 Annual $PM_{2.5}$ NAAQS and procedures for evaluation of potential violations. Additionally, EPA is notifying the public of the status of its adequacy determination for the NO_X and $PM_{2.5}$ pursuant to 40 CFR 93.118(f)(1).

X. 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. A 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 CAA. Accordingly, these proposed actions merely approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- Are not ''significant regulatory action[s]'' 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 economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions 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, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control.

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

Dated: November 6, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–28090 Filed 11–16–12; 8:45 am]

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Revision of the Exemption From Cost Accounting Standards for Contracts and Subcontracts for the Acquisition of Commercial Items

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board.

ACTION: Proposed rule.

SUMMARY: The OFPP and CAS Board invite public comments concerning this proposed rule to clarify the exemption for contracts or subcontracts for the acquisition of commercial items (hereafter referred to as the ''(b)(6) commercial item exemption'') so that the regulatory text is more consistent with the statutory text. Specifically, the proposed rule clarification will eliminate the detailed listing of permissible contract and subcontract types, and instead the revised provision will contain more generalized language that reads ''contracts and subcontracts for the acquisition of commercial items,'' which reflects the statutory text.

DATES: *Comment Date:* Comments must be in writing and must be received by January 18, 2013.

ADDRESSES: All comments to this proposed rule must be in writing. Electronic comments may be submitted in any one of three ways:

1. *Federal eRulemaking Portal:* Comments may be directly sent via *http://www.regulations.gov*—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type ''(b)(6) commercial item exemption'' (without quotation marks) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;
2. *Email:* Comments may be included in an email message sent to *casb2@omb.eop.gov*. The comments may be submitted in the text of the email message or as an attachment;
3. *Facsimile:* Comments may also be submitted via facsimile to (202) 395–5105; or
4. *Mail:* If you choose to submit your responses via regular mail, please mail them to: Office of Federal Procurement Policy, 725 17th Street NW., Room 9013, Washington, DC 20503, ATTN: Raymond J. M. Wong. Due to delays caused by the screening and processing of mail, respondents are strongly encouraged to submit responses electronically.

Be sure to include your name, title, organization, postal address, telephone number, and email address in the text of your public comment and reference ''(b)(6) commercial item exemption'' in the subject line irrespective of how you submit your comments. Comments received by the date specified above will be included as part of the official record. Comments delayed due to use of regular mail may not be considered.

Please note that all public comments received will be available in their entirety at *http://www.whitehouse.gov/omb/casb_index_public_comments/* and *http://www.regulations.gov* after the close of the comment period. Accordingly, you should not include any information that you would object to being disclosed.

FOR FURTHER INFORMATION CONTACT: Raymond J. M. Wong, Director, Cost Accounting Standards Board (telephone: 202–395–6805; email: *Raymond_wong@omb.eop.gov*).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process—Changes to 48 CFR Part 9903

Rules, regulations, and standards issued by the CAS Board are codified at 48 CFR Chapter 99. This proposed rule concerns the amendment of a CAS Board regulation other than a Standard, and as such is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) [formerly, 41 U.S.C. 422(g)].

B. Background and Summary

The regulations implementing the statutory exemption from CAS requirements for the acquisition of commercial items are found at 48 CFR 9903.201–1(b)(6), which provide for an exemption from CAS for certain specified permissible contract types for the acquisition of commercial items, the ''(b)(6) commercial item exemption.'' Over the years, the wording of this implementing regulatory exemption has evolved as the permissible contract types for the acquisition of commercial items under the applicable statutory framework (*i.e.,* Federal Acquisition Streamlining Act of 1994 (FASA), Federal Acquisition Reform Act of 1996 (FARA), Services Acquisition Reform Act of 2003 (SARA)) and corresponding regulations have changed. The CAS Board now believes that there is an inconsistency in the regulatory text of the (b)(6) commercial item exemption, as found in 48 CFR 9903.201–1(b)(6), compared to the description of this exemption and contract types as defined under other applicable statutory and regulatory provisions. To correct this inconsistency, the CAS Board believes that the wording of section 4205 of the FARA, which amended the CAS authorizing statute to state CAS are not applicable to ''[c]ontracts or subcontracts for the acquisition of commercial items,'' might now be more appropriate to use in the regulatory text to define the permissible contract types for the acquisition of commercial items subject to the (b)(6) commercial item exemption. As described further below, the simplification and clarification of the regulatory text would eliminate the detailed listing of permissible contract and subcontract types subject to the commercial item exemption, for the more generalized phrase ''contracts and subcontracts for the acquisition of commercial items,'' which reflects the statutory text.

Historical Background

Below is a brief description of the applicable statutory provisions.

1994—Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103–355)

Section 8301(d) of the FASA contained a provision that exempted the following contracts from the CAS: (1) Contracts or subcontracts where the price negotiated is based on established catalog or market prices of commercial items sold in substantial quantities to the general public; (2) contracts or subcontracts where the price negotiated is based on prices set by law or regulation; or (3) any other firm fixed-price (FFP) contract or subcontract (without cost incentives) for commercial items.

1996—Federal Acquisition Reform Act (FARA) of 1996 (Pub. L. 104–106)

The FASA CAS exemptions were subsequently revised in section 4205 of the FARA. The FARA revised FASA's CAS exemptions by eliminating the FASA's third exemption (for FFP contracts without cost incentives) and revising the language of FASA's first exemption (for FFP contract based on catalog pricing) to read ''[c]ontracts or subcontracts for the acquisition of commercial items.'' FARA did not make any changes to the second FASA exemption (for contracts based on prices set by law or regulation) (see 48 CFR 9903.201–1(b)(5)). The CAS Board had decided not to issue any rulemaking to implement the CAS exemptions as provided in the FASA because of it was certain that the FASA provisions would be superseded by these FARA provisions. The CAS Board implemented the CAS exemptions as provided in the FARA, as an interim rule on July 29, 1996 (61 FR 39360), and as a final rule on June 6, 1997 (62 FR 31294).

1996 CAS Board Rulemaking

The CAS Board's 1996 interim rule for the (b)(6) commercial item exemption largely reflected the FARA section 4205 statutory text, except for two differences. First, the draft regulatory text used ''and'' rather than ''or'' as stated in the statute, so the regulatory text read as ''[c]ontracts and subcontracts for the acquisition of commercial items.'' Secondly, the CAS Board added the term ''firm fixed-price'' to the text so that the interim regulatory text, in its entirety, read as ''[f]irm fixed-price contracts and subcontractors for the acquisition of commercial items'' in the 1996 interim rule. To explain these additional terms in the preamble to its 1996 interim rule, the CAS Board referred to 48 CFR Part 12, where section 12.207 of the Federal Acquisition Regulation (FAR) used ''firm-fixed-price [FFP] contracts or fixed-price contracts with economic price adjustment [FPEPA] * * * [and i]ndefinite-delivery contracts * * * based on [FFP or FPEPA]'' to describe the only contract types to be used for the acquisition of commercial items. This section of the FAR was written to implement FASA (60 FR 48231, September 18, 1995). Thus, while the intent of the CAS Board's 1996 interim rule as expressed in the **Federal Register** preamble was to implement the FARA exemption for the acquisition for the acquisition of commercial items, the text of the interim rule reflected the more limited permissible contract types, as found in FAR 12.207, which had implemented the FASA permissible contract types for the acquisition of commercial items.

This was further complicated because FAR 12.207 implemented FASA with a slightly different definition of permissible contract types for the acquisition of commercial items than what was called for in that statute. Section 8002(d) of the FASA stated that, when acquiring commercial items, the ''FAR shall include * * * a requirement that firm, fixed-price [(FFP)] contracts or fixed price with economic price adjustment [(FPEPA)] contracts be used to the maximum extent practicable'' and cost type contracts were prohibited. FAR 12.207, as amended by FASA, however, provided that: ''[a]gencies shall use firm-fixed-price [(FFP)] contracts or fixed-price contracts with economic price adjustment [(FPEPA contracts)] for the acquisition of commercial items [the FASA text]. Indefinite-delivery contracts * * * may be used where the prices are established based on a firm-fixed-price or fixed-price with economic price adjustment. Use of any other contract type to acquire commercial items is prohibited.'' This FAR implementation of FASA is more limiting than FASA itself because FFP and FPEPA contracts, as well as indefinite-delivery contracts containing FFP and FPEPA provisions, could only

be used, rather than be used to the maximum extent practicable per FASA (FAR Acquisition of Commercial Items, 60 FR 48231, September 18, 1995). Consequently, while the intent of the CAS Board's 1996 interim was to implement the FARA exemption from CAS for the acquisition of commercial items, the regulatory text reflected the more restricted interpretation of FAR 12.207, which in turn had implemented FASA and had done so in a more restrictive manner than required by that statute.

1997 CAS Board Rulemaking

When developing the 1997 final rule, the CAS Board decided to add FPEPA contracts as one of the permissible contract types for the acquisition of commercial items subject to the (b)(6) commercial item exemption. The CAS Board did so to address public comments that recommended the inclusion of the FPEPA contract as a permissible contract type for the acquisition of commercial items subject to the (b)(6) commercial item exemption; the CAS Board had received the public comments in response to the interim rule, which did not include FPEPA contracts in the listing of permissible contract types for the acquisition of commercial items exempted from CAS. While the CAS Board added the FPEPA contract type to the list in the final rule, however, it specifically excluded FPEPA contracts with economic price adjustments based on actual incurred costs for labor and materials. As explained in the preamble to the 1997 final rule, ''[t]he [CAS] Board believes that this approach to [FPEPA] contracts comports with both the intent of the [FARA] statute and the [FARA] Conference Report by expanding the CAS [(b)(6)] commercial item exemption to [FPEPA] contracts in a manner that will avoid the allocation of costs to cost objectives based on actual contractor incurred costs.'' The FARA Conference Report stated that the CAS Board should issue guidance, consistent with commercial accounting systems and practices, to ensure that contractors assigned costs appropriately to commercial item contracts, other than FFP commercial item contracts. In promulgating the final rule, however, the CAS Board chose not to issue this guidance, thinking that it was unnecessary as commercial item contracts are limited by regulation to the FFP and FPEPA contract varieties. Even while excluding FPEPA contracts with price adjustments based on actual costs incurred from the list of permissible contract types subject to the (b)(6) commercial item exemption, the CAS Board observed in the preamble to the 1997 final rule that Federal procuring agencies had stated that FPEPA contracts using actual costs incurred were rarely, if ever, used. The CAS Board noted that it would reconsider the need for guidance when other contract types for the acquisition of commercial items are authorized, or until another need for such guidance arises in the future.

2003 FAR Rulemaking

Subsequently, there have been changes in the applicable statutes and regulations on acquiring commercial items, which have broadened the scope of permissible contract types. First, FAR 12.207 was revised on March 18, 2003 (68 FR 13201), to allow the use of FFP contracts in conjunction with award fee incentives or performance or delivery incentives, when the award fee or incentive is based solely on factors other than cost. That is, permissible contract types could include certain fixed-price-incentive (FPI) contracts described in FAR Subparts 16.4 when the award fee or incentive is based solely on factors other than cost. The CAS Board notes that this FAR expansion was consistent with FASA's section 8301(d), which had exempted ''any other firm fixed-price contract or subcontract (without cost incentives) for commercial items.'' However, despite the expansion in the FAR of permissible contract types for the acquisition of commercial items, the CAS Board did not revise, and has not revised, the (b)(6) commercial item exemption to reflect these additional FAR permissible contract types for the acquisition of commercial items.

2003 Services Acquisition Reform Act (SARA) of 2003 (Pub. L. 108–136)

Also, the SARA permitted the use of time-and-materials (T&M) contracts or labor-hour (LH) contracts for acquiring commercial services, subject to certain limitations. Accordingly, FAR 12.207 was revised to implement SARA on December 12, 2006 (71 FR 74667).

The CAS Board issued a final rule implementing SARA on July 3, 2007 (72 FR 36367), by incorporating T&M and LH contracts and subcontracts as additional contract types for the acquisition of commercial items subject to the (b)(6) commercial items exemption. During the public comment process leading up to the CAS Board's 2007 final rule, a possible discrepancy between the (b)(6) commercial item exemption and the permissible contract types specified at FAR 12.207 was noted. In particular, it was noted that there appeared to be permissible contract types within FAR 12.207 that might possibly be excluded under a literal reading of the (b)(6) commercial item exemption. For example, a literal reading of the term ''FFP'' contracts in the context of the (b)(6) commercial item exemption might exclude permissible FPI contracts (described in FAR Subpart 16.4) from the coverage of the (b)(6) commercial item exemption when the award fee or incentive is based solely on factors other than cost. Such a literal reading of the term ''FFP'' contracts to exclude FPI contracts as permissible contract types covered by the (b)(6) commercial item exemption for the acquisition of commercial items was not the CAS Board's intent. In the preamble to the 2007 final rule in response to the public comment, the CAS Board stated that it ''did not deliberate this recommendation because it was outside of the scope of the proposed rule to provide an exemption for T&M/LH contracts'' and that the recommendation will be considered in the formulation of future agenda items. In fact, the CAS Board had indicated in the preamble to its FR notice for the 1997 final rule which implemented FARA (62 FR 31294, June 6, 1997) that it would reconsider the need for guidance if additional contract types for the acquisition of commercial items were authorized in the future.

2012 CAS Rulemaking

Accordingly, the evolution and expansion of the scope of the permissible contract types for acquiring commercial items has resulted in an inconsistency between the wording of the (b)(6) commercial item exemption, as found in 48 CFR 9903.201–1(b)(6), and the permissible contract types as described in the applicable statutes (*i.e.,* FASA, FARA, SARA) and their implementing regulations. To correct this confusion, the CAS Board believes the wording of FARA's section 4205, ''[c]ontracts or subcontracts for the acquisition of commercial items,'' might now be more appropriate for the text of the (b)(6) commercial item exemption, as provided at 48 CFR 9903.201–1(b)(6). Using the generalized phrase ''contracts and subcontracts for the acquisition of commercial items,'' obviates the continuing need to update and keep current a detailed listing of permissible contract types for the acquisition of commercial items, which continues to evolve with the passage of time. Furthermore, the CAS Board notes that this FARA text is the plural version of the statutory commercial item exemption outlined in the CAS Board's authorizing statute at 41 U.S.C. 1502(b)(1)(C)(i) (a result from the 2011 recodification of Title 41 of the U.S.

Code), and is identical to the text in that section's predecessor, 41 U.S.C. 422(f)(2)B)(i), prior to the Title 41 recodification.

Additionally, this proposed rule would result in the removal of the exclusion of FPEPA contracts with economic price adjustments based on actual incurred costs for labor and material from the permissible contract types for the acquisition of commercial items subject to the (b)(6) commercial item exemption. The proposed elimination of the exclusion for such FPEPA contracts from the list of permissible contract types for the acquisition of commercial items to which the (b)(6) commercial item exemption is applicable means that such FPEPA contracts will be exempted from CAS under the proposed (b)(6) commercial item exemption. The CAS Board believes this change is supported by several factors. First, it is not certain that this contract type can be used for acquiring commercial items in light of the FASA prohibition on the use of cost type contracts. Second, even if FPEPA contracts are used, FAR 16.203 contains restrictions and procedural controls that significantly limit the government's risk even if CAS is not applicable. For example, FAR 16.203–4(c) requires that the contracting officer specify within the contract, in a clause substantially the same as at FAR 52.216–4 Economic Price Adjustment—Labor and Material: (i) The types of labor and materials subject to adjustment under the clause; (ii) the labor rates (including fringe benefits, if any) and unit prices of materials that may be increased or decreased; (iii) the quantities of the specified labor and materials allocable to each unit to be delivered under the contract; and (iv) not include any indirect cost (except for fringe benefits specified in the contract Schedule) or profit in any price adjustment. In view of these limitations and controls, the CAS Board does not presently find any substantive benefit from applying CAS to FPEPA contracts with economic price adjustments based on actual incurred costs for labor and material. While proposing to eliminate this exclusion of such FPEPA contracts from the list of permissible contract types for the acquisition of commercial items covered by the (b)(6) commercial item exemption, and thereby making such FPEPA contracts covered by the CAS exemption, the CAS Board nonetheless reserves the right to reinstate the exclusion of certain FPEPA contracts from the list of permissible contract types for the acquisition of commercial items covered by the (b)(6) commercial item exemption from CAS should circumstances warrant.

In sum, the CAS Board believes that, as a general rule, the government benefits from CAS on those contracts whose price is based on actual incurred costs. At the present time, under the present framework of statutes and regulations governing the acquisition of commercial items, contracts based on actual incurred costs cannot be used (except for T&M and LH contracts and, as previously noted, possibly a certain type of FPEPA contract). If the legal framework was expanded to include additional permissible contract types, the CAS Board will reconsider the scope of the (b)(6) commercial item exemption, in accordance with its authority to apply CAS, in whole or in part, in such circumstances as it deems appropriate.

C. Conclusion

Therefore, in order to clarify the exemption found at 48 CFR 9903.201–1(b)(6) for contracts or subcontracts used for the acquisition of commercial items, the CAS Board proposes changing the wording of this regulatory text from ''[f]irm fixed-priced, fixed-priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items'' to read: ''[c]ontracts and subcontracts for the acquisition of commercial items,'' thereby eliminating the detailed listing of permissible contract types for the acquisition of commercial items exempted from CAS, as well as the current exception to the list of permissible contract types for the (b)(6) commercial item exemption from CAS for the FPEPA contract type with the price adjustments based on actual costs incurred.

D. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this proposed rule. As detailed in the Background and Summary part of this proposed rule, the CAS Board is proposing to clarify and simplify the (b)(6) commercial item exemption from CAS to read as ''[c]ontracts and subcontracts for the acquisition of commercial items.'' Doing so would eliminate the current listing of permissible contract types for the (b)(6) commercial item exemption, as well as the exception to that exemption for the FPEPA contract type with price adjustments based on actual incurred costs. The proposed elimination of the exception to the (b)(6) commercial item exemption would mean that the FPEPA contract type with price adjustments based on actual incurred costs would be exempted from CAS under the proposed (b)(6) commercial item exemption. With regard to the proposal to exempt from CAS coverage FPEPA contracts with economic price adjustments based on actual incurred costs for labor and material, the CAS Board notes that this proposal is made based on the assumption that this particular FPEPA contract type is not used for acquiring commercial items. Contract information, however, was not readily available to validate this assumption. As part of the public comment process, the CAS Board specifically requests comments on this usage assumption and any information on the use of this particular FPEPA type contract for acquiring commercial items.

E. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. Chapter 35, Subchapter I) does not apply to this rulemaking, because this proposed rule will impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The purpose of this rule is to clarify the exemption at 48 CFR 9903.201–1(b)(6) for contracts or subcontracts for the acquisition of commercial items by eliminating the detailed listing of permissible contract types so that it is more consistent with the statutory text at section 4205 of the Federal Acquisition Reform Act of 1996 which amended the CAS authorizing statute to state CAS is not applicable to ''[c]ontracts or subcontracts for the acquisition of commercial items.'' In addition, this proposal is consistent with the intent of the objectives of the ''Streamlined Applicability of Cost Accounting Standards'' set forth in Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65).

E. Executive Order 12866, the Congressional Review Act, and the Regulatory Flexibility Act

This proposed rule will serve to clarify the elimination of certain administrative requirements associated with the application and administration of the Cost Accounting Standards by covered Government contractors and subcontractors, consistent with the provisions of Section 4205 of the Federal Acquisition Reform Act of 1996. The economic impact on contractors and subcontractors is, therefore, expected to be minor. As a result, the Board has determined that this proposed rule will not result in the promulgation of an ''economically

significant rule'' under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. For the same reason, the Administrator of the Office of Information and Regulatory Affairs has determined that this proposed rule is not a ''major rule'' under the Congressional Review Act, 5 U.S.C. Chapter 8. Finally, this rule does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980, 5 U.S.C. Chapter 6.

List of Subjects in 48 CFR Part 9903

Cost accounting standards, Government procurement.

Joseph G. Jordan,

Chair, Cost Accounting Standards Board.

For the reasons set forth in this preamble, chapter 99 of Title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9903—CONTRACT COVERAGE

1. The authority citation for Part 9903 continues to read as follows:

Authority: Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

2. Section 9903.201–1 is amended by revising paragraph (b)(6) to read as follows:

9903.201–1 CAS applicability.

* * * * *

(b) * * *

(6) Contracts and subcontracts for the acquisition of commercial items.

* * * * *

[FR Doc. 2012–27992 Filed 11–16–12; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 120731291–2522–01]

RIN 0648–BC40

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Specifications and Management Measures

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

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes 2013–2015 specifications and management measures for Atlantic mackerel, and 2013 specifications for butterfish. Specifications for longfin squid and *Illex* squid were set for 3 years in 2012 (2012–2014) and therefore will not be included in this year's specification rulemaking. The proposed specifications would make regulatory changes to the longfin squid fishery, as well as the butterfish mortality cap to avoid 1–2 week closures at the end of a Trimester. Compared to 2012, this proposed action would increase the butterfish quota by 236 percent (recommended 2013 quota of 2,570 mt), and increase the butterfish mortality cap by 184 percent (recommended 2013 quota of 4,500 mt). Due to the increase in the proposed butterfish quota, this action also proposes a variety of management measures for controlling effort in the directed butterfish fishery, including changes to trip limits, the closure threshold for the directed fishery, and post-closure trip limits. Finally, this rule proposes minor corrections to existing regulatory text, to clarify the intent of the regulations. These proposed specifications and management measures promote the utilization and conservation of the Atlantic mackerel, squid, and butterfish resource.

DATES: Public comments must be received no later than 5 p.m., eastern standard time, on December 10, 2012.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2012–0184, 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–2012–0184 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 to NOAA Fisheries, Northeast Regional Office, 55 Great Republic Dr, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on 2013 MSB Specifications.''
- 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, etc.) 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: Lindsey Feldman, Fishery Management Specialist, 978–675–2179, fax 978–281–9135.

SUPPLEMENTARY INFORMATION:

Background

This rule proposes specifications, which are the combined suite of commercial and recreational catch levels established for one or more fishing years. The specification process also allows for the modification of a select number of management measures, such as closure thresholds, gear restrictions, and possession limits. The Council's process for establishing specifications relies on provisions within the Atlantic Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan (FMP) and its implementing regulations, as well as requirements established by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Specifically, section 302(g)(1)(B) of the Magnuson-Stevens Act states that the Scientific and Statistical Committee (SSC) for each Regional Fishery Management Council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, maximum sustainable yield, and achieving

rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL). The Council's SSC met on May 23 and 24, 2012, confirming 2013 specifications for *Illex* and longfin squid and recommending ABCs for the 2013 Atlantic mackerel (mackerel) and butterfish specifications.

The MSB FMP's implementing regulations require the involvement of a monitoring committee in the specification process for each species. Since the Magnuson-Stevens Act requirements for the SSC to recommend ABC became effective, the monitoring committees' role has largely been to recommend any reduction in catch limits from the SSC-recommended ABCs to offset management uncertainty, and to recommend other management measures (e.g., gear and/or possession restrictions) needed for the efficient management of the fisheries. The MSB Monitoring Committee met on May 31, 2012, to discuss specification related recommendations for the 2013–2015 mackerel fishery, 2013 butterfish fishery, and changes in management measures for the longfin squid fishery and butterfish mortality cap.

Following the SSC and MSB Monitoring Committee meetings described above, the Council considered the committees' recommendations and public comments at its June 12–14, 2012, meeting in New York, NY, and made their specification recommendations. The Council submitted these recommendations, along with the required analyses, for agency review on July 31, 2012, with final submission on September 30, 2012. NMFS must review the Council's recommendations to ensure that they comply with the FMP and applicable law, and conduct notice-and-comment rulemaking to propose and implement the final recommendations.

The MSB regulations require the specification of annual catch limits (ACL) and accountability measure (AM) provisions for mackerel and butterfish (both squid species are exempt form the ACL/AM requirements because they have a life cycle of less than 1 year). In addition, the regulations require the specification of domestic annual harvest (DAH), domestic annual processing (DAP), and total allowable level of foreign fishing (TALFF), along with joint venture processing for (JVP) and commercial and recreational annual catch totals (ACT) for mackerel, the butterfish mortality cap in the longfin squid fishery, and initial optimum yield (IOY) for both squid species.

TABLE 1—PROPOSED SPECIFICATIONS, IN METRIC TONS (MT), FOR MACKEREL FOR 2013–2015, AND BUTTERFISH FOR THE 2013 FISHING YEAR

Specifications	Mackerel	Butterfish
OFL	Unknown	Unknown
ABC	43,781	8,400
ACL	43,781	7,560
Commercial ACT	34,907	7,560
Recreational ACT/RHL	2,443	N/A
IOY	N/A	N/A
DAH/DAP	33,821	2,570
JVP	0	N/A
TALFF	0	0

Research Set-Aside

The Mid-Atlantic Research Set-Aside (RSA) Program allows research projects to be funded through the sale of fish that has been set aside from the total annual quota. The RSA may vary between 0 and 3 percent of the overall quota for each species. The Council has recommended that up to 3 percent of the total ACL for mackerel, up to 3 percent of the IOY for *Illex* and longfin squid, and up to 2 percent of the butterfish ACT for research, where 59 mt would be set aside for butterfish discard on longfin squid research trips, and 151 mt would be set aside for directed butterfish landings, may be set aside to fund projects selected under the 2013 Mid-Atlantic RSA Program. NMFS solicited research proposals under the 2013 Mid-Atlantic RSA Program through a Federal Funding Opportunity announcement that published on February 17, 2012 (Funding Opportunity Number NOAA–NMFS–NEFSC–2013–2003258 on grants.gov). The project selection and award process for the 2013 Mid-Atlantic RSA Program has not concluded. Awards are expected to be made by the end of 2012 in time for the 2013 fishing year. If any portion of the MSB RSA is not awarded, NMFS will return it to the general fishery either through the final 2013 MSB specification rulemaking process or through the publication of a separate notice in the **Federal Register** notifying the public of a quota adjustment.

These proposed specifications include a brief description of the applicable MSB exemptions that will likely be required to conduct the compensation fishing to harvest set-aside quota. The Magnuson-Stevens Act requires that interested parties be provided an opportunity to comment on all proposed exempted fishing permits (EFPs).

Vessels harvesting RSA quota in support of approved research projects would be issued EFPs authorizing them to exceed Federal possession limits and to fish during Federal quota closures. With respect to the MSB FMP, such regulations include closure regulations at § 648.24 and possession restrictions at § 648.26. These exemptions are necessary to allow project investigators to recover research expenses, as well as adequately compensate fishing industry participants harvesting RSA quota. Vessels harvesting RSA quota would operate within all other regulations that govern the commercial fishery, unless otherwise exempted through a separate EFP. Vessels conducting compensation fishing would harvest RSA quota during the fishing year from January 1–December 31, 2013.

2013–2015 Proposed Specifications and Management Measures for Mackerel

The status of the mackerel stock was assessed by the Transboundary Resources Assessment Committee (TRAC) in March 2010. The 2010 TRAC Status Report indicated reduced productivity in the stock and a lack of older fish in both the survey and catch data. However, the status of the mackerel stock is unknown because biomass reference points could not be determined. Due to uncertainty in the assessment, the TRAC recommended that total annual catches not exceed 80,000 mt (average total U.S. and Canadian landings from 2006–2008) until new information is available. The

mackerel stock-wide ABC was set at 80,000 mt for 2012, consistent with the TRAC recommendation. Since a new mackerel assessment is not expected for several years, the SSC recommended maintaining the 2012 mackerel specification and specifying the stock-wide ABC for 3 years (2013–2015) at 80,000 mt. The Council recommended a U.S. ABC of 43,781 mt (80,000 mt − 36,219 mt (2010 actual Canadian catch)). Due to the variability in recent Canadian catch, and the inability to predict Canadian catch for 2013, the SSC recommended the use of Canadian catch from 2010 (the same amount used for setting 2012 specifications).

Consistent with MSB Amendment 11, the Council recommended a recreational allocation of 2,714 mt (6.2 percent of the U.S. ABC). The proposed Recreational ACT of 2,443 mt (90 percent of 2,714 mt) is reduced to account for low precision and time lag of recreational catch estimates, as well as lack of recreational discard estimates. The Recreational ACT is equal to the Recreational Harvest Limit (RHL), which would be the effective cap on recreational catch.

For the commercial mackerel fishery, the Council recommended a commercial fishery allocation of 41,067 mt (93.8 percent of the U.S. ABC, the portion of the ACL that was not allocated to the recreational fishery). The recommended Commercial ACT of 34,907 mt (85 percent of 41,067) is reduced to address uncertainty in estimated 2013 Canadian landings, uncertainty in discard estimates, and possible misreporting. The Commercial ACT would be further reduced by a discard rate of 3.11 percent (mean plus one standard deviation of discards from 1999–2008), to arrive at the proposed DAH of 33,821 mt. The DAH would be the effective cap on commercial catch, as it has been in past specifications.

Consistent with the Council's recommendation, NMFS proposes mackerel specifications that would set the U.S. ABC/ACL at 43,781 mt, the Commercial ACT at 34,907 mt, the DAH and DAP at 33,821 mt, and the Recreational ACT at 2,443 mt.

Additionally, as recommended by the Council, NMFS proposes to maintain JVP at zero (the most recent allocation was 5,000 mt of JVP in 2004). In the past, the Council recommended a JVP greater than zero because it believed U.S. processors lacked the ability to process the total amount of mackerel that U.S. harvesters could land. However, for the past 9 years, the Council has recommended zero JVP because U.S. shoreside processing capacity for mackerel has expanded. The Council concluded that processing capacity was no longer a limiting factor relative to domestic production of mackerel.

The Magnuson-Stevens Act provides that the specification of TALFF, if any, shall be the portion of the optimum yield (OY) of a fishery that will not be harvested by U.S. vessels. TALFF would allow foreign vessels to harvest U.S. fish and sell their product on the world market, in direct competition with U.S. industry efforts to expand exports. While a surplus existed between ABC and the mackerel fleet's harvesting capacity for many years, that surplus has disappeared due to downward adjustments of the specifications in recent years. Based on analysis and a review of the state of the world mackerel market and possible increases in U.S. production levels, the Council concluded that specifying a DAH/DAP resulting in zero TALFF will yield positive social and economic benefits to both U.S. harvesters and processors, and to the Nation. For these reasons, consistent with the Council's recommendation, NMFS proposes to specify DAH at a level that can be fully harvested by the domestic fleet, thereby precluding the specification of a TALFF, in order to support the U.S. mackerel industry. NMFS concurs that it is reasonable to assume that in 2013 the commercial fishery has the ability to harvest 33,821 mt of mackerel.

Butterfish

The current status of the butterfish stock is unknown because biomass reference points could not be determined in the SAW 49 assessment (February 2010); however, survey trends since the most recent assessment suggest an increase in butterfish abundance. In recommending 2013 specifications, the SSC considered multiple sources of information including a recent analysis of the butterfish stock by Dr. Paul Rago and Dr. Tim Miller from NOAA's Northeast Fisheries Science Center (NEFSC). Because of the uncertainty in the most recent butterfish stock assessment, on April 6, 2012, the Council requested that NEFSC offer additional analysis of the butterfish stock to aid the SSC in the ABC setting process for the 2013 fishing year. The Rago-Miller analysis applied ranges of a number of different factors (such as natural mortality and survey catchability) to develop a range of likely stock biomasses that would be consistent with recent survey results and observed butterfish catch. The Rago-Miller analysis also examined a range of fishing mortalities that would result from these biomass estimates. The SSC used the Rago-Miller analysis, along with guidance (Patterson, 1992) that suggests maintaining a natural mortality/fishing mortality ratio of 67 percent for small pelagic species, to develop a proxy overfishing limit (OFL) for butterfish. Consistent with the 2010 butterfish assessment, the SSC assumed a high level of natural morality (M = 0.8) and applied the 67-percent ratio to result in a fishing mortality of F = 0.536, which the SSC used as a proxy maximum fishing mortality rate threshold for butterfish. In the Rago-Miller analysis, a catch of 16,800 mt would only lead to fishing mortality rates higher than F = 0.536 (i.e., rates consistent with overfishing based on the maximum fishing mortality rate threshold proxy) under very extreme assumptions. The SSC therefore adopted 16,800 mt as a proxy OFL and recommended an ABC of 8,400 mt (50 percent of the OFL, and a 232-percent increase from the 2012 ABC). A detailed summary of the SSC's rationale for its 2013 butterfish ABC recommendation is available in its May 2012 Report (available, along with other materials from the SSC discussion, at: *http://www.mafmc.org/meeting_materials/SSC/2012-05/SSC_2012_05.htm).*

The Council recommended setting the butterfish ACL equal to the ABC, and establishing a 10-percent buffer between ACL and ACT for management uncertainty, which would result in an ACT of 7,560 mt. Since discards have been roughly ⅔ of catch (1999–2008 average), the Council recommended setting the DAH and DAP at 2,570 mt (7,560 mt—4,990 mt discards). Since up to 3 percent of the ACL for butterfish may be set aside for scientific research, the Council recommended setting aside 2 percent of the butterfish ACT for research, where 59 mt would be set aside for butterfish discard on longfin squid research trips, and 151 mt would be set aside for directed butterfish landings. Finally, the Council recommended setting the butterfish mortality cap on the longfin squid fishery at 4,500 mt (184 percent increase from 2012).

NMFS proposes specifications, consistent with the Council's recommendation, that would set the butterfish ABC/ACL at 8,400 mt, the ACT at 7,560 mt, the DAH and DAP at 2,570 mt, and the butterfish mortality cap on the longfin squid fishery at 4,500 mt. Additionally, consistent with MSB regulations, NMFS is proposing zero TALFF for butterfish in 2013. Consistent with 2012, NMFS proposes that the 2013 butterfish mortality cap be allocated by Trimester as follows:

TABLE 2—PROPOSED TRIMESTER ALLOCATION OF BUTTERFISH MORTALITY CAP ON THE LONGFIN SQUID FISHERY FOR 2013

Trimester	Percent	Metric Tons
I (Jan–Apr)	65	2925
II (May–Aug)	3.3	148.5
III (Sep–Dec)	31.7	1426.5
Total	100	4,500

Due to the increase in the recommended butterfish DAH and butterfish mortality cap, a variety of management measures were recommended by the Council to control fishing effort while allowing the expansion of a profitable directed butterfish fishery. The Council recommended a three-phase management system for the directed butterfish fishery (Table 3) to allow for maximum utilization of the butterfish resource without exceeding the stock-wide ACL. In phase 1, there would be no trip limit for vessels issued longfin squid/butterfish moratorium permits using mesh greater than or equal to 3 inches (7.62 cm), a 2,500-lb (1.13-mt) trip limit for longfin squid/butterfish moratorium permits using mesh less than 3 inches (7.62 cm), and a trip limit of 600 lb (0.27 mt) for vessels issued squid/butterfish incidental catch permits. Once butterfish harvest reaches the trip hold reduction threshold for phase 2, the trip limit for longfin squid/butterfish moratorium permit holders would be reduced to 5,000 lb (2.27 mt) for vessels using greater than or equal to 3-inch (7.62 cm) mesh and 2,500 lb (1.13 mt) for vessels using under 3-inch (7.62 cm) mesh. When butterfish harvest is projected to reach the trip hold reduction thresholds for phase 3, the trip limit for all longfin squid/butterfish moratorium permit holders would be reduced to 500 lb (0.23 mt) to avoid quota overages. For phases 2 and 3, the quota thresholds to reduce the trip limits are proposed to vary bimonthly throughout the year (Tables 4 and 5).

TABLE 3—THREE-PHASE BUTTERFISH MANAGEMENT SYSTEM

Phase	Longfin squid/butterfish moratorium permit trip limit		Squid/butterfish incidental catch permit trip limit
	≥ 3 inch (7.62 cm) mesh	<3 inch (7.62 cm) mesh	
1	Unlimited	2,500 lb (1.13 mt)	600 lb (0.27 mt).
2	5,000 lb (2.27 mt)	2,500 lb (1.13 mt)	600 lb (0.27 mt).
3	500 lb (0.23 mt)	500 lb (0.23 mt)	600 lb (0.27 mt).

TABLE 4—PROPOSED BUTTERFISH THRESHOLDS FOR REDUCING TRIP LIMITS FOR PHASE 2

Months	Trip limit reduction threshold (percent)	Butterfish harvest (metric tons)
Jan–Feb	40	1,028
Mar–Apr	47	1,208
May–Jun	55	1,414
Jul–Aug	63	1,619
Sept–Oct	71	1,825
Nov–Dec	78	2,005

TABLE 5—PROPOSED BUTTERFISH THRESHOLDS FOR REDUCING TRIP LIMITS FOR PHASE 3

Months	Trip limit reduction threshold (percent)	Butterfish harvest (metric tons)
Jan–Feb	58	1,491
Mar–Apr	64	1,645
May–Jun	71	1,825
Jul–Aug	78	2,005
Sept–Oct	85	2,185
Nov–Dec	91	2,339

Finally, during phase 3, the NMFS Regional Administrator would have the authority to adjust the phase 3 trip limit for limited access vessels within the range from 250 (0.11 mt) to 750 lb (0.34 mt) so that butterfish harvest does not exceed the annual DAH.

Proposed Management Measures for Longfin Squid

The Council recommended regulatory changes for the longfin squid fishery. Currently, vessels that intend to land 2,500 lb (1.13 mt) or more of longfin squid are required to notify the Northeast Fisheries Observer Program (NEFOP) at least 72 hr in advance of the start of a trip. Longfin squid vessel

owners have reported that the 72-hr call in notification is burdensome as trips are often planned with reference to weather, sea conditions, and longfin squid movement patterns, which can be highly variable. Therefore, the Council recommended, and NMFS proposes, to change the longfin pre-trip observer notification requirement from 72 to 48 hrs. In addition, to avoid closing the directed longfin fishery close to the end of a trimester, the Council recommended, and NMFS proposes, to change the closure threshold for longfin squid on April 15 (2 weeks prior to the end of Trimester 1) and August 15 (2 weeks prior to the end of Trimester 2) of each year from 90 to 95 percent.

Proposed Management Measures for the Butterfish Mortality Cap in the Longfin Squid Fishery

NMFS proposes changes to management measures for the butterfish mortality cap in the longfin squid fishery consistent with the Council's recommendations. To avoid closing the directed longfin squid fishery due to the butterfish mortality cap in the last 2 weeks of Trimester 1, NMFS proposes changing the closure threshold on April 15 of each year from 80 to 90 percent. As there is currently no closure mechanism for the butterfish mortality cap in Trimester 2, the entire annual butterfish mortality cap could potentially be harvested in Trimester 2, which would not leave any butterfish mortality cap quota for the Trimester 3 longfin squid fishery. To avoid the entire allocation of the butterfish mortality cap being harvested prior to the start of Trimester 3 on September 1, NMFS proposes to close the directed longfin squid fishery in Trimester 2 if 75 percent of the annual mortality cap is projected to be reached, consistent with the Council's recommendations.

Corrections

This proposed rule also contains minor corrections to existing regulations. The corrections would not change the intent of any regulations; they would only clarify the existing regulations by correcting minor errors. The current regulations at § 648.24 state that NMFS will implement any changes to the ACL due to overages from the previous year through notification in the **Federal Register**, by March 31 of the fishing year in which the deductions will be made. However, due to delayed reporting and analysis time to estimate discards in the MSB fisheries, finalized data are not available until April 15 of each year. Therefore, NMFS proposes to change the date a notification will be published in the **Federal Register** announcing any overage deductions from March 31 to May 1 of the fishing year in which the deductions will be made.

This rule proposes a correction to § 648.22(b)(2) regarding the mackerel ABC. This rule clarifies that the MAFMC's SSC recommends a stock-wide ABC, and that the Domestic ABC or ACL is calculated by deducting Canadian catch from the stock-wide ABC. This rule also proposes a correction to § 648.27(c) to clarify that the pre-trip notification requirement for vessels issued longfin squid/butterfish moratorium permits is for trips with landings greater than 2,500 lb (1.13 mt) and not trips with landings equal to or greater than 2,500 lb (1.13 mt) of longfin squid.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Mackerel, Squid, and Butterfish FMP, other provision of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Council prepared an IRFA, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A summary of the analysis follows. A copy of this 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

This action proposes 2013–2015 specifications for mackerel and 2013 specifications for butterfish, along with management measures for longfin squid and butterfish. A complete description of the reasons why this action is being considered, and the objectives of and legal basis for this action, are contained in the preamble to this proposed rule and are not repeated here.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

Based on permit data for 2011, 3,405 commercial or charter vessels possessed MSB permits for the 2011 fishing year, and similar numbers of vessels are expected to have MSB permits for 2013. All but a few of these participants can be considered small businesses under the guidelines of the Small Business Administration. Small businesses operating in commercial and recreational (i.e., party and charter vessel operations) fisheries have been defined by the Small Business Administration as firms with gross revenues of up to $4.0 and $7.0 million, respectively. There are no large entities, as that term is defined in section 601 of the RFA, participating in this fishery. Therefore, there are no disproportionate economic impacts on small entities. Many vessels participate in more than one of these fisheries; therefore, permit numbers are not additive.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

There are no new reporting or recordkeeping requirements contained in any of the alternatives considered for this action. In addition, there are no Federal rules that duplicate, overlap, or conflict with this proposed rule.

Minimizing Significant Economic Impacts on Small Entities

Proposed Actions

The mackerel commercial DAH (33,821 mt) and recreational ACT/RHL (2,443 mt) proposed in this action represent no change from status quo. Commercial mackerel landings for 2011 were 1,463 mt, and recreational catch was 932 mt, and in both cases, catch was below the allocation. As of the publication of this rule, mackerel catch is estimated to be 5,266 mt and is not likely to increase significantly for the remainder of the year, which means that 2012 catch will also be below the 2012 DAH. Therefore, this proposed action allows the mackerel fleet the opportunity to harvest more than they have in the previous year. Overall, the proposed action is expected to generate revenue very similar to the 2012 revenue for vessels that participate in the commercial mackerel fisheries.

The butterfish DAH proposed in this action (2,570 mt) represents a 236-percent increase over the 2012 DAH (1,087 mt). Due to market conditions, there has not been a directed butterfish fishery since 2001; therefore, recent landings have been low. The proposed increase in the DAH has the potential to dramatically increase revenue for permitted vessels because it has been an incidental catch fishery for several years.

In addition, the three-phased management system proposed for the directed butterfish fishery, which would allow an unlimited quota until butterfish harvest reaches a particular threshold, would allow vessels to harvest substantially more butterfish

during the start of the fishing year, when the market is suspected to be available. The three-phased management system would allow the potentially expanded directed butterfish fishery to increase catch without exceeding the ACL and having to payback overages the following year.

The butterfish mortality cap proposed in this action (4,500 mt) represents a 184-percent increase over the 2012 cap level (2,445 mt). The increase in the butterfish mortality cap will be less restrictive on the longfin squid fishery than in previous years. While longfin squid catch will still be restrained by the longfin squid DAH, there is less of likelihood that the longfin squid fishery will be closed due to the butterfish mortality cap. In addition, the management measures for the longfin squid fishery are proposed to ensure that the directed longfin squid fishery is not closed during the last two weeks a particular trimester, therefore, causing economic harm to the fishing industry when there is still a small amount of catch available to the fleet. Therefore, the implementation of these actions should result in an increase in revenue for the longfin squid fishery for 2013.

The *Illex* and longfin squid IOYs proposed in this action (22,915 mt and 22,445 mt respectively) represent no change from status quo. Thus, implementation of this proposed action should not result in a reduction in revenue or a constraint on expansion of the fishery in 2013.

Alternatives to the Proposed Rule

The Council analysis evaluated three alternatives to the proposed specifications for mackerel. The first (status quo) alternative differed from the proposed mackerel specifications, only in that the status quo alternative recommends specifications for one year, while the proposed alternative sets mackerel specifications for 3 years (2013–2015). The status quo alternative would set the stock-wide ABC of 80,000 mt, Canadian catch of 36,219 mt, and a U.S. ABC of 43,781 mt. The second alternative (the least restrictive) would set the stock-wide ABC at 100,000 mt, would maintain Canadian catch at 35,219 mt, and would set a U.S. ABC at 63,781 mt. This alternative could generate increased revenue if more mackerel became available to the fishery. The third alternative (the most restrictive) would set the stock-wide ABC at 60,000 mt, would maintain Canadian catch at 36,219 mt, and would set a U.S. ABC at 23,781 mt. This alternative could generate the lowest revenue of all of the alternatives. These two alternatives were not selected because they were all inconsistent with the ABC recommended by the SSC.

There were three alternatives to the preferred action for butterfish that were not selected by the Council. The first (status quo) alternative would have kept the butterfish ABC and ACL at 3,622 mt, the ACT at 3,260 mt, the DAH and DAP at 1,087, and the butterfish mortality cap at 2,445 mt. The second alternative (least restrictive) would have set the ABC and ACL at 10,500 mt, the ACT at 9,450 mt, the DAH and DAP at 3,213 mt, and the butterfish mortality cap at 5,625 mt, and would generate the highest revenues of all of the alternatives. The fourth alternative (most restrictive) would have set the ABC and ACL at 6,300 mt, the ACT at 5,670 mt, the DAH and DAP at 1,928 mt, and the butterfish mortality cap at 3,375 mt, and would generate the lowest revenue of all of the alternatives. These three alternatives were not selected because they were inconsistent with the ABC recommended by the SSC.

The Council recommended the status quo as an alternative to both the proposed action for changing management measures for the longfin squid fishery and for the butterfish mortality cap. For all proposed management measures, the status quo alternative recommended no changes to the longfin squid or butterfish mortality cap management measures. The status quo alternative requires vessels possessing 1,000 lb (0.45 mt) or more of butterfish to fish with a 3-inch (76-mm) minimum codend mesh. The status quo alternatives were considered, but not selected, because the proposed measures have the potential to increase economic opportunity for the fishing fleet while still ensuring the ACL for the longfin squid fishery and the butterfish mortality cap are not exceeded. There were also two alternatives to the proposed three-phase management system for the directed butterfish fishery. The first (status quo and most restrictive) would maintain the 5,000-lb (2.27-mt) trip limit for vessels issued longfin squid/butterfish moratorium permits using over 3-inch (76-mm) mesh, 2,000-lb (0.91-mt) trip limit for vessels issued longfin squid/butterfish moratorium permits using under 3-inch (76-mm) mesh, and the 600-lb (0.27-mt) trip limit for vessels issued squid/butterfish incidental catch permits. Even with the proposed increase in quota, the butterfish fishery may not be able to harvest an increased amount of butterfish with these restrictive trip limits. Therefore, this alternative could generate the lowest amount of revenue out of all of the alternatives. The second alternative would provide a simpler management system for the directed fishery in which the trip limit for vessels issued longfin squid/butterfish moratorium permits would be 20,000 lb (9.07 mt) for vessels issued longfin squid/butterfish moratorium permits using greater than 3-inch (76-mm) mesh, 2,500 lb (1.13 mt) for permits using under 3-inch (76-mm) mesh, and 1,000 lb (4.54 mt) for vessels issued squid/butterfish incidental catch permits. If 80 percent of the DAH is projected to be harvested before October 1, the trip limit for all vessels would be reduced to 250 lb (0.11 mt), and if the DAH is projected to be harvested on or after October 1, the trip limit for all vessels would be 500 lb (0.23 mt). This alternative would provide the butterfish fishery the opportunity to increased revenues over the first alternative, but not as great as the proposed alternative. While these alternatives were considered, they were not selected because the proposed alternative has the potential to increase economic opportunity for vessels participating in the directed butterfish fishery while still ensuring the ACL is not exceeded. The other alternatives would not be as effective for directed butterfish vessels to re-establish a butterfish market.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: November 14, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

2. In § 648.4, paragraph (a)(5)(ii) is revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(5) * * *

(ii) *Squid/butterfish incidental catch permit.* Any vessel of the United States may obtain a permit to fish for or retain up to 600 lb (0.27 mt) of longfin squid or butterfish, or up to 10,000 lb (4.54 mt) of *Illex* squid, as an incidental catch in another directed fishery. The incidental catch allowance may be revised by the Regional Administrator

based upon a recommendation by the Council following the procedure set forth in § 648.22.

* * * * *

3. In § 648.14, paragraphs (g)(2)(ii)(E) and (F) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(E) Possess more than 2,500 lb (1.13 mt) of butterfish, unless the vessel meets the minimum mesh requirements specified in § 648.23(a).

(F) Take, retain, possess, or land mackerel after a total closure specified under § 648.24(b)(1).

* * * * *

4. In § 648.22, revise paragraph (b)(2)(i) and (b)(2)(ii), redesignate paragraphs (b)(3)(v) through (b)(3)(vii) as paragraphs (b)(3)(vi) through (b)(3)(viii), respectively, and add new paragraph (b)(3)(v) to read as follows:

§ 648.22 Atlantic mackerel, squid, and butterfish specifications.

* * * * *

(b) * * *

(2) Mackerel—(i) *ABC.* The MAFMC's SSC shall recommend a stock-wide ABC to the MAFMC, as described in § 648.20. The stock-wide mackerel ABC is reduced from the OFL based on an adjustment for scientific uncertainty; the stock-wide ABC must be less than or equal to the OFL.

(ii) *ACL.* The ACL or Domestic ABC is calculated using the formula ACL/Domestic ABC = stock-wide ABC − C, where C is the estimated catch of mackerel in Canadian waters for the upcoming fishing year.

* * * * *

(3) * * *

(v) The trip limit reduction thresholds for phase 2 and phase 3 of the butterfish three-phase management system will be modified annually through the specifications process. Trip limit reduction thresholds vary bi-monthly and are set to allow the butterfish fishery to continue to operate without exceeding the stock-wide ACL. An example of the phase 2 and 3 trip limit reduction thresholds is shown in the table below:

PROPOSED BUTTERFISH THRESHOLDS FOR REDUCING TRIP LIMITS FOR PHASE 2

Months	Trip limit reduction threshold (percent)	Butterfish harvest (Metric Tons)
Jan–Feb	40	1,028
Mar–Apr	47	1,208
May–Jun	55	1,414
Jul–Aug	63	1,619
Sept–Oct	71	1,825
Nov–Dec	78	2,005

* * * * *

5. In § 648.23, paragraph (a)(1) is revised to read as follows:

§ 648.23 Mackerel, squid, and butterfish gear restrictions.

(a) * * *

(1) *Butterfish fishery.* Owners or operators of otter trawl vessels possessing 2,500 lb (1.13 mt) or more of butterfish harvested in or from the EEZ may only fish with nets having a minimum codend mesh of 3 inches (7.62 cm) diamond mesh, inside stretch measure, applied throughout the codend for at least 100 continuous meshes forward of the terminus of the net, or for codends with less than 100 meshes, the minimum mesh size codend shall be a minimum of one-third of the net, measured from the terminus of the codend to the headrope.

* * * * *

6. In § 648.24, paragraphs (a)(1), (b)(6), (c)(1), (c)(3), and (c)(4) are revised to read as follows:

§ 648.24 Fishery closures and accountability measures.

(a) *Fishery closure procedures*—(1) *Longfin squid.* NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 90 percent of the longfin squid quota is harvested before April 15 of Trimester I and/or August 15 of Trimester II, and when 95 percent of the longfin squid DAH has been harvested in Trimester III. On or after April 15 of Trimester I and/or August 15 of Trimester II, NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 95 percent of the longfin squid quota is harvested. The closure of the directed fishery shall be in effect for the remainder of that fishing period, with incidental catches allowed as specified at § 648.26.

* * * * *

(b) * * *

(6) *Mackerel ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

(c) *Butterfish AMs*—(1) *Butterfish three-phase management system.* The butterfish fishery operates under a three-phase management system. Phase 1 begins annually at the start of the fishing year on January 1. Trip limit reductions are implemented in phase 2 and 3 dependent upon the amount of butterfish harvest and the trip limit reduction thresholds set during the specification process as described in § 648.22.

(i) *Phase 1.* During phase 1, vessels issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) have an unlimited trip limit and vessels issued a longfin squid/butterfish moratorium permit fishing with mesh less than 3 inches (76 mm) are prohibited from landing more than 2,500 lb (1.13 mt) of butterfish per trip.

(ii) *Phase 2.* NMFS shall reduce the trip limit for vessels issued longfin squid/butterfish moratorium permits (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) to 5,000 lb (2.27 mt), when butterfish harvest reaches the relevant phase 2 trip limit reduction threshold. Trip limits for vessels issued longfin squid/butterfish moratorium permits fishing with mesh less than 3 inches (76

mm) will remain at 2,500 lb (1.13 mt) of butterfish per trip.

(iii) *Phase 3.* NMFS shall subsequently reduce the trip limit for vessels issued longfin squid/butterfish moratorium permits to 500 lb (0.23 mt), regardless of minimum mesh size, when butterfish harvest is projected to reach the relevant phase 3 trip limit reduction threshold. The NMFS Regional Administrator may adjust the butterfish trip limit during phase 3 of the directed butterfish fishery anywhere from 250 lb (0.11 mt) to 750 lb (0.34 mt) to ensure butterfish harvest does not exceed the specified DAH.

* * * * *

(3) *Butterfish mortality cap on the longfin squid fishery.* NMFS shall close the directed fishery in the EEZ for longfin squid when the Regional Administrator projects that 80 percent of the Trimester I butterfish mortality cap allocation has been harvested in Trimester I, when 75 percent of the annual butterfish mortality cap has been harvested in Trimester II, and/or when 90 percent of the butterfish mortality cap has been harvested in Trimester III.

(4) *Butterfish ACL overage evaluation.* The ACL will be evaluated based on a single-year examination of total catch (landings and discards). Both landings and dead discards will be evaluated in determining if the ACL has been exceeded. NMFS shall make determinations about overages and implement any changes to the ACL, in accordance with the Administrative Procedure Act, through notification in the **Federal Register**, by May 15 of the fishing year in which the deductions will be made.

* * * * *

7. In § 648.26, paragraph (d) is revised to read as follows:

§ 648.26 Mackerel, squid, and butterfish possession restrictions.

* * * * *

(d) *Butterfish*—(1) *Phase 1.* A vessel issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) is authorized to fish for, possess, or land butterfish with no possession restriction in the EEZ per trip, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours, provided that butterfish harvest has not reached the phase 2 trip limit reduction threshold, as described in § 648.24(c). Vessels issued longfin squid/butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) may not fish for, possess, or land more than 2,500 lb (1.13 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, provided that butterfish harvest has not reached the phase 3 trip limit reduction threshold, as described in § 648.24(c).

(2) *Phase 2.* When butterfish harvest reaches the phase 2 trip limit reduction threshold for the butterfish fishery (as described in § 648.24), vessels issued a longfin squid/butterfish moratorium permit (as specified at § 648.4(a)(5)(i)) fishing with a minimum mesh size of 3 inches (76 mm) may not fish for, possess, or land more than 5,000 lb (2.27 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. Trip limits for vessels issued butterfish moratorium permits fishing with mesh less than 3 inches (76 mm) will remain at 2,500 lb (1.13) per trip.

(3) *Phase 3.* When butterfish harvest is projected to reach the trip limit reduction threshold for phase 3 (as described in § 648.24), all vessels issued a longfin squid/butterfish moratorium permit, regardless of mesh size used, may not fish for, possess, or land more than 500 lb (0.23 mt) of butterfish per trip at any time, and may only land butterfish once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours. If a vessel has been issued a longfin squid/butterfish incidental catch permit (as specified at § 648.4(a)(5)(ii)), it may not fish for, possess, or land more than 600 lb (0.27 mt) of butterfish per trip at any time.

8. In § 648.27, paragraphs (a), (c), and (d) are revised to read as follows:

§ 648.27 Observer requirements for the longfin squid fishery.

(a) A vessel issued a longfin squid and butterfish moratorium permit, as specified at § 648.4(a)(5)(i), must, for the purposes of observer deployment, have a representative provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, telephone number or email address for contact; and the date, time, port of departure, and approximate trip duration, at least 48 hr, but no more than 10 days, prior to beginning any fishing trip, unless it complies with the possession restrictions in paragraph (c) of this section.

* * * * *

(c) A vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), that does not have a representative provide the trip notification required in paragraph (a) of this section is prohibited from fishing for, possessing, harvesting, or landing greater than 2,500 lb (1.13 mt) of longfin squid per trip at any time, and may only land longfin squid once on any calendar day, which is defined as the 24-hr period beginning at 0001 hours and ending at 2400 hours.

(d) If a vessel issued a longfin squid and butterfish moratorium permit, as specified in § 648.4(a)(5)(i), intends to possess, harvest, or land more than 2,500 lb (1.13 mt) of longfin squid per trip or per calendar day, has a representative notify NMFS of an upcoming trip, is selected by NMFS to carry an observer, and then cancels that trip, the representative is required to provide notice to NMFS of the vessel name, vessel permit number, contact name for coordination of observer deployment, and telephone number or email address for contact, and the intended date, time, and port of departure for the cancelled trip prior to the planned departure time. In addition, if a trip selected for observer coverage is cancelled, then that vessel is required to carry an observer, provided an observer is available, on its next trip.

[FR Doc. 2012–28057 Filed 11–16–12; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 77, No. 223
Monday, November 19, 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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meeting of the Assembly of the Administrative Conference of the United States

AGENCY: Administrative Conference of the United States.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Assembly of the Administrative Conference of the United States will hold a meeting to consider three proposed recommendations and to conduct other business. This meeting will be open to the public.

DATES: The meeting will take place on Thursday, December 6, 2012, 2:00 p.m. to 6:00 p.m., and on Friday, December 7, 2012, 9:00 a.m. to 12:30 p.m. Please note that the meeting may adjourn early if all business is finished.

ADDRESSES: The meeting will be held at the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581 (Main Conference Room).

FOR FURTHER INFORMATION CONTACT: Shawne McGibbon, General Counsel (Designated Federal Officer), Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036; Telephone 202–480–2088; email *smcgibbon@acus.gov*.

SUPPLEMENTARY INFORMATION: The Administrative Conference of the United States makes recommendations to administrative agencies, the President, Congress, and the Judicial Conference of the United States regarding the improvement of Federal administrative procedures (5 U.S.C. 594). The membership of the Conference, when meeting in plenary session, constitutes the Assembly of the Conference (5 U.S.C. 595).

Agenda: The Assembly will discuss and consider the following matters:

- Opening Remarks
- Presentation of the Conference's *Sourcebook of United States Executive Agencies*
- Recommendation on ''Need To Reform 28 U.S.C. 1500''
- Recommendation on ''Third-Party Programs To Assess Regulatory Compliance''
- Presentation of the Second Annual Walter Gellhorn Innovation Award
- Web site Updates
- Recommendation on ''Inflation Adjustment for Civil Penalties''
- Update on Current Research Projects and Discussion of Future Topics

Additional information about the proposed recommendations, as well as other materials related to the meeting, can be found at the ''Research'' and ''Events'' sections of the Conference's Web site (*www.acus.gov*).

Public Participation: The Conference welcomes the attendance of the public at the meeting, subject to space limitations, and will make every effort to accommodate persons with disabilities or special needs. Members of the public who wish to attend in person are asked to RSVP via email (*comments@acus.gov*), no later than two business days before the meeting, in order to facilitate entry. Members of the public who attend the meeting may be permitted to speak only with the consent of the Chairman and the unanimous approval of the members. If you need special accommodations due to disability, please inform the Designated Federal Officer noted above at least 7 days in advance of the meeting. Members of the public may also view the meeting virtually. A live Webcast of the meeting will be available at: *http://www.acus.gov/events/57th-plenary-session/*. In addition, the public may follow the meeting on our Twitter feed *@acusgov* or *hashtag #57thPlenary.*

Written Comments: Persons who wish to comment on any of the proposed recommendations may do so by submitting a written statement either by email to *comments@acus.gov* (with ''December 2012 Plenary Session Comments'' in the subject line), or by mail addressed to: December 2012 Plenary Session Comments, Administrative Conference of the United States, Suite 706 South, 1120 20th Street NW., Washington, DC 20036. Written submissions must be received at least 5 business days prior to the meeting to assure consideration by the Assembly.

Dated: November 14, 2012.

David Pritzker,

Deputy General Counsel.

[FR Doc. 2012–28036 Filed 11–16–12; 8:45 am]

BILLING CODE 6110–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: National Voluntary Laboratory Accreditation Program (NVLAP) Information Collection System.

OMB Approval Number: 0693–0003.

Form Number(s): None.

Type of Review: Regular submission (extension of a currently approved information collection).

Burden Hours: 2,026.

Number of Respondents: 850.

Average Hours per Response: 2 hours, 23 minutes.

Needs and Uses: This information is collected from all testing and calibration laboratories that apply for National Voluntary Laboratory Accreditation Program (NVLAP) accreditation. It is used by NVLAP to assess laboratory conformance with applicable criteria as defined in 15 CFR part 285, § 285.14. The information provides a service to customers in business and industry, including regulatory agencies and purchasing authorities that are seeking competent laboratories to perform testing and calibration services. An accredited laboratory's contact information and scope of accreditation are provided on NVLAP's Web site (*http://www.nist.gov/nvlap*).

Affected Public: Business or other for-profit organizations; not-for-profit institutions; and Federal, State or Local government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: November 13, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–27984 Filed 11–16–12; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1868]

Grant of Authority for Subzone Status and Partial Approval of Manufacturing Authority; Toho Tenax America, Inc. (Oxidized Polyacrylonitrile Fiber and Carbon Fiber), Rockwood, TN

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones for manufacturing activity when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit, with a net positive economic effect, and is in the public interest;

Whereas, the Industrial Development Board of Blount County, grantee of Foreign-Trade Zone 148, has made application to the Board for authority to establish a special-purpose subzone at the oxidized polyacrylonitrile fiber (OPF) and carbon fiber manufacturing and distribution facilities of Toho Tenax America, Inc. (TTA), located in Rockwood, Tennessee, (FTZ Docket 57–2010, filed 9–29–2010);

Whereas, notice inviting public comment has been given in the **Federal Register** (75 FR 61696, 10/6/2010 and 75 FR 74002, 11/30/2010) and the application has been processed pursuant to the FTZ Act and the Board's regulations;

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied with regard to approval of the proposed subzone with authority for TTA to manufacture OPF and to manufacture 24K or higher tow, standard grade carbon fiber for export; and

Whereas, at this time, the Board is unable to approve authority for manufacturing under FTZ procedures of carbon fiber with tow less than 24K or other than standard grade, or of any carbon fiber that TTA would sell in the U.S. market, because the record of the proceeding does not currently demonstrate that such manufacturing would result in a net positive economic effect and be in the public interest. However, the Board's staff will continue the review of the information in TTA's case record, as well as that presented in pending and projected FTZ applications for carbon fiber production and through any further industry questionnaire(s) or public hearing(s), before making any recommendation for a final determination regarding carbon fiber production for the U.S. market;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of OPF and of 24K or higher tow, standard grade carbon fiber for export at the facilities of Toho Tenax America, Inc., located in Rockwood, Tennessee (Subzone 148C), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 7th day of November 2012.

Paul Piquado

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–27969 Filed 11–16–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–82–2012]

Proposed Foreign-Trade Zone—Tunica County, MS; Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Tunica County, Mississippi, to establish a foreign-trade zone (FTZ) at sites in Tunica County, adjacent to the Memphis Customs and Border Protection port of entry, under the alternative site framework (ASF) adopted by the Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new ''subzones'' or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on November 9, 2012. The applicant is authorized to make the proposal under Section 59–3–33 of the Mississippi Code Annotated (1972).

The proposed zone would be the second general-purpose zone in Mississippi for the Memphis CBP port of entry and would be the sixth zone overall for the port of entry. The existing zones are as follows: FTZ 77, Memphis, Tennessee (Grantee: City of Memphis, Board Order 189, April 2, 1982); FTZ 223, Memphis, Tennessee (Grantee: Memphis International Trade Development Corporation, Board Order 904, July 2, 1997); FTZ 262, Southaven, Mississippi (Grantee: Northern Mississippi FTZ, Inc., Board Order 1353, October 1, 2004); FTZ 273, West Memphis, Arkansas (Grantee: City of West Memphis, Arkansas, Board Order 1551, April 15, 2008); and, FTZ 283, West Tennessee Area (Grantee: Northwest Tennessee Regional Port Authority, Board Order 1851, October 11, 2012).

The applicant's proposed service area under the ASF would be Tunica County, Mississippi. If approved, the applicant would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to the Memphis Customs and Border Protection port of entry.

The proposed zone would include one ''magnet'' site and two ''usage-

driven'' sites: *Proposed Site 1* (100 acres)—SXP Schulz, 1001 Schulz Boulevard, Robinsonville; *Proposed Site 2* (200 acres)—GreenTech Automotive, 1630 Casino Strip Resorts Boulevard, Robinsonville; and, *Proposed Site 3* (289 acres)—Tunica County Airport, 209 South Airport Boulevard, Tunica. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 3 be so exempted.

The application indicates a need for zone services in the Tunica County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific production approvals are not being sought at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 18, 2013. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 4, 2013.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz*. For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 9, 2012.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–27970 Filed 11–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1866]

Reorganization of Foreign-Trade Zone 41 (Expansion of Service Area), Under Alternative Site Framework; Milwaukee, WI

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

Whereas, the Port of Milwaukee, grantee of Foreign-Trade Zone 41, submitted an application to the Board (FTZ Docket B–40–2012, filed 5/21/2012) for authority to expand the service area of the zone to include Dodge, Fond du Lac, Jefferson, Ozaukee, Rock, Sheboygan, Walworth, Washington and Waukesha Counties, Wisconsin, adjacent to the Milwaukee, Wisconsin Customs and Border Protection ports of entry, and the grantee proposes two additional usage-driven sites (Sites 12 and 13);

Whereas, notice inviting public comment was given in the **Federal Register** (77 FR 31307–31308, 5/25/12) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to reorganize FTZ 41 to expand the service area under the alternative site framework is approved, subject to the FTZ Act and the Board's regulations, including Section 400.13, and to the Board's standard 2,000-acre activation limit for the zone, and to a three-year ASF sunset provision for usage-driven sites that would terminate authority for Sites 12 and 13 if no foreign-status merchandise is admitted for a *bona fide* customs purpose by November 30, 2015.

Signed at Washington, DC, this 5th day of November 2012.

Paul Piquado,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2012–27980 Filed 11–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

JPSS Polar Satellite—Gap Mitigation—Request for Public Comment

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Request for public comment.

SUMMARY: NOAA has long been concerned about the potential for a gap in polar satellite coverage in the afternoon orbit. In addition to reports from Inspector General and the Government Accountability Office on this topic, NOAA has also convened an Independent Review Team (IRT) to review the progress of our satellite programs and identify the challenges ahead. These reports have all substantiated NOAA's concerns regarding the gap.

NOAA is taking positive steps to mitigate the negative impacts to NOAA's numerical weather forecasts that could be introduced by a lack of polar satellite data. To this end, NOAA has commissioned an investigative study to broadly explore all available options, such as substitute satellite observations, alternative non-satellite data, weather modeling, and data assimilation improvements. NOAA is convening teams of internal and external experts, industry leaders, foreign partners, and academia to study each of these areas.

As a part of this effort, and to ensure we examine all potential solutions, NOAA is also seeking comments, suggestions, and innovative ideas from the public on how to preserve the quality and timeliness of NOAA's numerical weather forecasts should we experience a loss of polar satellite environmental data. Through this web portal, the public can submit ideas, review submissions from other parties, and make comments and collaborate on ideas.

DATES: Comments must be received by 5:00 p.m. on December 19, 2012.

ADDRESSES: Additional information as well as instructions on how to submit comments can be found at the following Web site: *www.osd.noaa.gov/JPSSGAP* For individuals who do not have access to the Internet, comments may be submitted in writing to: NOAA Satellite and Information Service, Advanced Satellite Planning and Technology Office, c/o Mr. David Hermreck, 1335 East-West Highway—6th Floor, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Mr. David Hermreck, NOAA Satellite and Information Service, 1335 East-West Highway, 6th Floor, Silver Spring, Maryland 20910. (Phone: 301–713–9801, *david.hermreck@noaa.gov*).

SUPPLEMENTARY INFORMATION: Proprietary information will not be accepted. All submitted comments will be available for public inspection.

The Independent Review Team report can be found at: *http://science.house.gov/noaa-nesdis-independent-review-team-report*.

The response from the Acting Secretary of Commerce can be found at: *http://science.house.gov/sites/republicans.science.house.gov/files/documents/091812_doc_decision_memo.pdf*

The NOAA Administrator's response to the IRT report can be found at: *http://www.noaanews.noaa.gov/stories2012/pdfs/UNSEC%20satellite%20oversight%20decision%20memo%20final%20signed%20(2).pdf*.

Information on NOAA's Weather mission can be found at *http://www.weather.gov/about*.

Information on NOAA's satellite programs can be found at: *http://www.nesdis.noaa.gov/SatInformation.html*.

Charles Baker,

Deputy Assistant Administrator for Satellite and Information Services, National Environmental Satellite Data, and Information Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2012–28190 Filed 11–16–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 12–55]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 12–55 with attached transmittal, and policy justification.

Dated: November 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

NOV 08 2012

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 12-55, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Saudi Arabia for defense articles and services estimated to cost $6.7 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

William E. Landay III
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 12–55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Kingdom of Saudi Arabia

(ii) *Total Estimated Value:*

Major Defense Equipment * ...	$3.6 billion
Other	$3.1 billion
Total	$6.7 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 20 C–130J–30 Aircraft, 5 KC–130J Air Refueling Aircraft, 120 Rolls Royce AE2100D3 Engines (100 installed and 20 spares), 25 Link-16 Multifunctional Information Distribution Systems, support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance, and other related logistics support.

(iv) *Military Department:* USAF (SAQ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 8 November 2012

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Saudi Arabia—C–130J–30 and KC–130J Aircraft

The Kingdom of Saudi Arabia (KSA) has requested a possible sale of 20 C–130J–30 Aircraft, 5 KC–130J Air Refueling Aircraft, 120 Rolls Royce AE2100D3 Engines (100 installed and 20 spares), 25 Link-16 Multifunctional Information Distribution Systems, support equipment, spare and repair parts, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance, and other related logistics support. The total estimated cost is $6.7 billion.

This proposed sale of C–130J–30 and KC–130J assets will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been, and continues to be, an important force for political stability and economic progress in the Middle East.

Saudi Arabia needs these aircraft to sustain its aging fleet, which faces increasing obsolescence. The proposed sale of C–130J and KC–130J aircraft will provide a modern configuration, improve reliability and enhance the Royal Saudi Air Force's ability to effectively field, support, and employ these aircraft.

The proposed sale of these aircraft and support will not alter the basic military balance in the region.

Implementation of this sale will require the assignment of U.S. Government and contractor representatives to the Kingdom of Saudi Arabia for delivery, system checkout, and logistics support for an undetermined period of time.

The prime contractors will be Lockheed-Martin in Bethesda Maryland; General Electric Aviation Systems in Sterling Virginia; and Rolls Royce Corporation in Indianapolis, Indiana. There are no known offset agreements proposed in connection with this potential sale.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 12–55

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) *Sensitivity of Technology:*

1. *VHF Airborne Communications System (AN/ARC–222):* This radio operates in the Very High Frequency (VHF) FM and AM spectrum. Hardware, technical data and documentation are Unclassified.

2. *UHF Airborne Communications System (AN/ARC–164):* This Ultra High Frequency (UHF) radio offers Have Quick II jam-resistant capability. Hardware is Unclassified. The radio can employ classified cryptographic technology.

3. *Multifunctional Information Distribution System (MIDS):* This is an advanced Link-16 command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements. The MIDS terminal hardware, publications, performance specifications, operational capability, parameters, vulnerabilities to countermeasures, and software documentation are classified Confidential. The classified information to be provided consists of that which is necessary for the operation, maintenance, and repair (through intermediate level) of the data link terminal, installed systems, and related software.

4. *Inertial Navigation/Global Positioning System (INS/GPS):* This highly accurate inertial navigation system has embedded GPS for blended INS/GPS, free-inertial, and GPS only solutions. Classified elements include Selective Availability Anti-spoofing Module (SAASM) for decryption of precision GPS signals.

5. *Electro-Optical Infrared System (Wescam MX–15 or suitable substitute):* This is a gyro-stabilized, multi-field of view EO/IR system. The system provides color daylight TV and night time IR video with a laser range finder and laser pointer through use of an externally mounted turret sensor unit and internally mounted sensor control. Video imagery is displayed in the aircraft real time and may be recorded for subsequent ground analysis. Hardware is Unclassified. Technical data and documentation to be provided is Unclassified.

6. *Identification Friend or Foe transponder interrogator system (AN/APX–114/119):* This system responds to interrogating signals to assist in identification, location, and terrain avoidance.

7. *Chaff/Flare Counter Measure Dispensing System (AN/ALE–47):* The AN/ALE–47 Counter-Measures Dispensing System (CMDS) is an integrated, threat-adaptive, software-programmable dispensing system capable of dispensing chaff and flares. The threats countered by the CMDS include radar-directed anti-aircraft artillery (AAA), radar command-guided missiles, radar homing guided missiles, and infrared (IR) guided missiles. An integrated Chaff/Flare Counter Measures Dispensing System equal to or superior to this system has been released for the King Air 350ER. The highest classification for the software is CONFIDENTIAL. Hardware is UNCLASSIFIED.

8. *Radar Warning Receiver (AN/ALR–56M):* The AN/ALR–56M RWR is designed to detect incoming radar signals, identify and characterize those signals to a specific threat, and alert the aircrew through the C–130J Tactical Electronic Warfare System display. The system consists of external antennae mounted on the fuselage. The ALR–56M is based on a digitally-controlled, single channel receiver that scans within a specific frequency spectrum and is capable of adjusting to threat changes by modifications to the Mission Data (MD) software. The ALR–56C capability has been released to the RSAF for their F–15C/D/S aircraft. A capability equal to or greater than the ALR–56M has been released to the RSAF for their F–15SA. Hardware is CONFIDENTIAL. Software is CONFIDENTIAL.

9. *Missile Approach Warning System (AN/AAR–47):* The AN/AAR–47 is an aircraft passive MWS designed for detection of incoming surface-to-air and air-to-air missiles on transport and helicopter aircraft. The system detects, identifies, and displays potential threats. The AN/AAR–47 warns of missile approach by detecting radiation associated with the rocket motor and automatically initiates flare ejection. Hardware is UNCLASSIFIED. Software is SECRET. Technical data and documentation to be provided is UNCLASSIFIED.

[FR Doc. 2012–28070 Filed 11–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0173; Docket 2012–0076; Sequence 52]

Information Collection; Limitations on Pass-Through Charges

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a previously approved information collection requirement regarding Limitations on Pass-Through Charges.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 18, 2013.

ADDRESSES: Submit comments identified by *Information Collection 9000–0173, Limitations on Pass-Through Charges* by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0173, Limitations on Pass-Through Charges''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0173, Limitations on Pass-Through Charges'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0173, Limitations on Pass-Through Charges.

Instructions: Please submit comments only and cite Information Collection 9000–0173, Limitations on Pass-Through Charges, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers, Procurement Analyst, Office of Acquisition Policy, at telephone (202) 501–3221 or via email to *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

To enable contracting officers to verify that pass-through charges are not excessive, the provision at 52.215–22 requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with its proposal: (1) The percent of effort the offeror intends to perform and the percent expected to be performed by each subcontractor. (2) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed—(i) The amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s); and (ii) A description of the value added by the offeror as related to the work to be performed by the subcontractor(s). (3) If any subcontractor intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed under its subcontract—(i) The amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s); and (ii) A description of the value added by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

B. Annual Reporting Burden

The estimated annual reporting burden is slightly increased from that published in the **Federal Register** at 75 FR 77741, on December 13, 2010. Based on data, from the Federal Procurement Data System, for fiscal year 2011, an upward adjustment is made to the estimated annual reporting burden.

Respondents: 25,892.
Responses per Respondent: 1.014676.
Total Responses: 26,272.
Hours per Response: 514464.
Total Burden Hours: 13,516.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0173, Limitations on Pass-Through Charges, in all correspondence.

Dated: November 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–28032 Filed 11–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Docket 2012–0076; Sequence 40; OMB Control No. 9000–0059]

Federal Acquisition Regulation; Submission for OMB Review; North Carolina Sales Tax Certification

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an reinstatement of a previously approved information collection requirement concerning North Carolina sales tax certification. A notice was published in the **Federal Register** at 77 FR 43077, on July 23, 2012. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the

burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before December 19, 2012.

ADDRESSES: Submit comments identified by *Information Collection 9000–0059, North Carolina Sales Tax Certification,* by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0059, North Carolina Sales Tax Certification''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0059, North Carolina Sales Tax Certification'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0059, North Carolina Sales Tax Certification.

Instructions: Please submit comments only and cite Information Collection 9000–0059, North Carolina Sales Tax Certification, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Edward Chambers, Procurement Analyst, Office of Acquisition Policy, GSA (202) 501–3221 or email *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The North Carolina Sales and Use Tax Act authorizes counties and incorporated cities and towns to obtain each year from the Commissioner of Revenue of the State of North Carolina a refund of sales and use taxes indirectly paid on building materials, supplies, fixtures, and equipment that become a part of or are annexed to any building or structure in North Carolina. However, to substantiate a refund claim for sales or use taxes paid on purchases of building materials, supplies, fixtures, or equipment by a contractor, the Government must secure from the contractor certified statements setting forth the cost of the property purchased from each vendor and the amount of sales or use taxes paid. Similar certified statements by subcontractors must be obtained by the general contractor and furnished to the Government. The information is used as evidence to establish exemption from State and local taxes.

B. Annual Reporting Burden

Respondents: 424.
Responses per Respondent: 1.
Annual Responses: 424.
Hours per Response: .17.
Total Burden Hours: 72.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0059, North Carolina Sales Tax Certification, in all correspondence.

Dated: November 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–28040 Filed 11–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129; Docket 2012–0076; Sequence 56]

Federal Acquisition Regulation; Information Collection; Cost Accounting Standards Administration

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning cost accounting standards administration.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 18, 2013.

ADDRESSES: Submit comments identified by *Information Collection 9000–0129, Cost Accounting Standards Administration* by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0129, Cost Accounting Standards Administration''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0129, Cost Accounting Standards Administration'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0129, Cost Accounting Standards Administration.

Instructions: Please submit comments only and cite Information Collection 9000–0129, Cost Accounting Standards Administration, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Office of Acquisition Policy, GSA, (202) 501–3221 or email *edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Subpart 30.6 and the provision at 52.230–6 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and

descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

The estimated annual reporting burden is increased from that published in the **Federal Register** at 75 FR 3236, on January 20, 2010. Based on data from the Federal Procurement Data System for fiscal year 2011, an upward adjustment is made to the estimated annual reporting burden.

Number of Respondents: 1,288.
Responses per Respondent: 2.27.
Total Responses: 2,924.
Average Burden Hours per Response: 175.00.
Total Burden Hours: 511,700.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: November 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–28038 Filed 11–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0068: Docket 2012–0076; Sequence 55]

Federal Acquisition Regulation; Information Collection; Economic Price Adjustment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning economic price adjustment.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 18, 2013.

ADDRESSES: Submit comments identified by *Information Collection 9000–0068, Economic Price Adjustment* by any of the following methods:

- Regulations.gov: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0068, Economic Price Adjustment''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0068, Economic Price Adjustment'' on your attached document.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0068, Economic Price Adjustment.

Instructions: Please submit comments only and cite Information Collection 9000–0068, Economic Price Adjustment, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael O. Jackson, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA (202) 208–4949 or email *michaelo.jackson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 16.203, Fixed-price contracts with economic price adjustment, and associated clauses at 52.216–2, 52.216–3, and 52.216–4 provide for upward and downward revision of the stated contract price upon occurrence of specified contingencies. In order for the contracting officer to be aware of price changes, the firm must provide pertinent information to the Government. The information is used to determine the proper amount of price adjustments required under the contract.

B. Annual Reporting Burden

The estimated annual reporting burden is being adjusted upward since published in the **Federal Register** at 74 FR 64085, on December 7, 2009. The upward adjustment is based on a revised number of respondents obtained from the Federal Procurement Data System—Next Generation (FPDS–NG) data for fixed-price contracts with economic price adjustments.

Respondents: 11,945.
Responses per Respondent: 1.
Annual Responses: 11,945.
Hours per Response: .25.
Total Burden Hours: 2,986.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0068, Economic Price Adjustment, in all correspondence.

Dated: November 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–28031 Filed 11–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0138]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense/Joint Staff, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Office of the Secretary of Defense is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on December 20, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Service, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Office of the Secretary of Defense proposes to amend one system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DHRA 06 DoD

SYSTEM NAME:

Defense Sexual Assault Incident Database (June 20, 2012, 77 FR 37002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Primary location: Washington Headquarters Services, Enterprise Information Technology Support Directorate, WHS-Supported Organizations Division, 2521 South Clark Street, Suite 640, Arlington, VA 22209–2328.

SECONDARY LOCATIONS:

The Department of the Army, Sexual Assault Data Management System, Army G–1, DAPE–HR–HF, Room 300 Army Pentagon, Washington, DC 20310–0300.

The Department of the Navy, Consolidated Law Enforcement Operations Center, Naval Criminal Investigative Service, Russell Knox Building, 27130 Telegraph Road, Quantico, VA 22134–2253.

The Department of the Air Force, Investigative Information Management System, Headquarters United States Air Force, Air Force Office of Special Investigations, Russell Knox Building, 27130 Telegraph Road, Quantico, VA 22134–2253.

Decentralized locations include the Services staff and field operating agencies, major commands, installations, and activities. Official mailing addresses are published as an appendix to each Services compilation of systems of records notices.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Sexual Assault Prevention and Response Office, ATTN: Defense Sexual Assault Incident Database Program Manager, 4800 Mark Center Drive, Suite 07G21, Alexandria, VA 22350–8000.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate Service office listed below:

The Department of the Army, Human Resources Policy Directorate (HRPD), Sexual Harassment/Assault Response and Prevention (SHARP), 2530 Crystal Drive, 6th Floor, Arlington, VA 22202–3938.

The Department of the Navy, ATTN: Sexual Assault Prevention and Response Program Manager, 716 Sicard Street SE., Suite 1000, Washington Navy Yard, DC 20374–5140.

Headquarters United States Air Force/A1S, ATTN: Sexual Assault Prevention and Response Program Manager, 1040 Air Force Pentagon, Washington, DC 20330–1040.

The National Guard Bureau, Sexual Assault Prevention and Response Office, ATTN: Sexual Assault Prevention and Response Program Manager, 111 South George Mason Drive, AH2 Arlington, VA 22204–1373.

Requests must be signed and include the name, identification number and type of identification, and indicate whether the individual is a victim or alleged perpetrator.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the following as appropriate:

The Department of the Army, HRPD, Sexual Harassment/Assault Response and Prevention (SHARP), 2530 Crystal Drive, 6th Floor, Arlington, VA 22202–3938.

The Department of the Navy, ATTN: Sexual Assault Prevention and Response Program Manager, 716 Sicard Street SE., Suite 1000, Washington Navy Yard, DC 20374–5140.

Headquarters United States Air Force/A1S, ATTN: Sexual Assault Prevention and Response Program Manager, 1040 Air Force Pentagon, Washington, DC 20330–1040.

The National Guard Bureau, Sexual Assault Prevention and Response Office, ATTN: Sexual Assault Prevention and Response Program Manager, 111 South George Mason Drive, AH2, Arlington, VA 22204–1373.

Requests must be signed and include the name, identification number and type of identification, indicate whether the individual is a victim or alleged perpetrator, and the number of this system of records notice.''

* * * * *

[FR Doc. 2012–28013 Filed 11–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–OS–0140]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to amend two systems of records.

SUMMARY: The Defense Threat Reduction Agency is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on December 20, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal*: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail*: Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Gaines, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201 or by phone at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the records systems being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 013

SYSTEM NAME:

Assignment and Correspondence Tracking System (December 14, 2010, 75 FR 77851).

CHANGES:

* * * * *

PURPOSE:

Delete entry and replace with ''The system is used to initiate, manage, and track assignments coming from outside DTRA as well as those generated within DTRA at the Director, Deputy Director, Chief of Staff, Staff offices, and Directorate to Directorate levels.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should submit a written request, to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should furnish their full name, current address, and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Individuals should furnish their full name, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA Privacy Program; 32 CFR Part 318; or may be obtained from the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

HDTRA 017

SYSTEM NAME:

Voluntary Leave Transfer Program Records (April 2, 2010 75 FR 16758).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Human Resources, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete ''Human Capital Office'' and replace with ''Human Resources.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should submit a written request, to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the individual's full name and Social Security Number (SSN).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

Written requests should contain the individual's full name and Social Security Number (SSN).''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11, DTRA Privacy Program; 32 CFR Part 318; or may be obtained from the Chief, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.''

* * * * *

[FR Doc. 2012–28020 Filed 11–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2012–OS–0139]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Finance and Accounting Service is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on December 20, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory L. Outlaw, Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–HKC/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150 or at (317) 212–4591.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The proposed changes to the record system being amended are set forth below. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7330

SYSTEM NAME:

DFAS Payroll Locator File System (PLFS) (September 1, 2005, 70 FR 52078).

CHANGES:

Change System Identifier to read ''T7335.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''System Manager, Defense Finance and Accounting Service-Cleveland, Information Systems Program Specialist, I&T, Payroll Service, Cleveland, OH 44199–2055.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Requests should contain individual's full name, SSN, current address, and provide a reasonable description of what they are seeking.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this record system should address written inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN, current address, and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The Defense Finance and Accounting Service (DFAS) rules for accessing records, for contesting contents and appealing initial agency determinations are published in Defense Finance and Accounting Service Regulation 5400.11–R, 32 CFR 324; or may be obtained from the Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications, DFAS–ZCF/IN, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Request should contain individual's full name, SSN, current address, and telephone number.''

* * * * *

[FR Doc. 2012–28014 Filed 11–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2012–0013]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on December 20, 2012 unless comments are received which result in a contrary determination. Comments will be accepted on or before December 19, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Leroy Jones, Jr., Department of the Army, Privacy Office, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22315–3827 or by phone at 703–428–6185.

SUPPLEMENTARY INFORMATION: The Department of Army notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 11, 2012, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: November 14, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0190–45 OPMG

SYSTEM NAME:

Military Police Reporting System (MPRS) (July 7, 2008, 73 FR 38419).

CHANGES

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Military Police Reporting Program Records (MPRP).''

SYSTEM LOCATION:

Delete entry and replace with ''Decentralized to Army installations which created the Military Police Report. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices. The official copy of the military police report and other law enforcement related documents are maintained at the U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134–2253. Automated records of the Military Police Report are maintained in the Centralized Operations Police Suite (COPS); the Automated Criminal Investigative and Intelligence data file (ACI2) located at Office of the Provost Marshal General, 2800 Army Pentagon, Washington, DC 20310–2800.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Any individual, civilian or military, involved in, witnessing, or suspected of being involved in, or reporting, possible criminal activity affecting the interests, property, and/or personnel of the U.S. Army.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Criminal information or investigative files involving the Army which may consist of military police reports or similar reports containing investigative data, supporting or sworn statements, affidavits, provisional passes; receipts for prisoners or detained persons, reports of action taken, and disposition of cases. Specific data to include: Name, Social Security Number (SSN), rank, date and place of birth, chronology of events; reports of investigation and criminal intelligence reports containing statements of witnesses, suspects, subject and responding Police Officer; summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative and intelligence agencies and departments. Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers consisting of driver license numbers, Service component, organization, sex, marital status, height, weight, eye color, hair color, race, ethnicity, complexion, nation of origin, home and work telephone numbers, and citizenship of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims of criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files.

Witness identification data consisting of name, SSN, rank, date and place of birth, driver license numbers, Service Component, organization, sex, marital status, height, weight, eye color, hair color, race, ethnicity, complexion, nation of origin, home and work telephone numbers, and citizenship.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 18 U.S.C. 921–922, Brady Handgun Violence Prevention Act; 28 U.S.C. 534, Uniform Federal Crime Reporting Act of 1988; 42 U.S.C. 5119 et seq., National Child Protection Act of 1993; 42 U.S.C. 10607, Victims' Rights and Restitution Act of 1990; Section 105 of the Immigration and Naturalization Act of 1952; DoD Directive 10310.1, Victim and Witness Assistance; Army Regulation 190–45, Military Police Law Enforcement Reporting; Army Regulation 195–2, Criminal Investigative Activities; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''Provides detailed criminal investigative information to Commanders and designated Army officials to foster a positive environment, promote and safeguard the morale, physical well-being and general welfare of Soldiers in their units. Enables the maintenance of discipline, law, and order through investigation of complaints and incidents and possible criminal prosecution, civil court action, or regulatory order in accordance with United States Law.

To conduct criminal investigations, crime prevention, prevention of high risk behavior and criminal intelligence activities; to accomplish management studies involving the analysis, compilation of statistics, and quality control, to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism. Includes personnel security, internal security, criminal, and other law enforcement matters, all of which are essential to the effective operation of the Department of the Army.

To provide brigade-level or higher commanders with criminal history reports, in accordance with Army Policy, to identify Soldiers with founded criminal offenses and open investigations occurring during their period of service.

To determine suitability for access or continued access to classified information; suitability for promotion, employment, or assignment; suitability for access to military installations or industrial firms engaged in government projects/contracts; suitability for awards or similar benefits; use in current law enforcement investigation or program of any type including applicants; use in judicial or adjudicative proceedings including litigation or in accordance with a court order; advising higher authorities and Army commands of the important developments impacting on security, good order or discipline; reporting of statistical data to Army commands and higher authority.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, detecting organized criminal activity, or criminal justice employment. Information may be disclosed to foreign countries under the provisions of international agreements and arrangements including the Status of Forces Agreements regulating the stationing and status of DoD military and civilian personnel, or Treaties.

To the Department of Veterans Affairs to adjudicate veteran claims for

disability benefits, post-traumatic stress disorder, and other veteran entitlements.

To Federal, state, and local agencies to comply with the Victim and Witness Assistance Program and the Victims' Rights and Restitution Act of 1990, when the agency is requesting information on behalf of the individual.

To Federal, state, and local law enforcement agencies for the purposes of complying with mandatory background checks, i.e., Brady Handgun Violence Prevention Act (18 U.S.C. 922) and the National Child Protection Act of 1993 (42 U.S.C. 5119 *et seq.*).

To Federal, state, and local child protection services or family support agencies for the purpose of providing assistance to the individual or their family members.

To victims and witnesses of a crime for purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

To the Immigration and Naturalization Service, Department of Justice, for use in alien admission and naturalization inquiries conducted under Section 105 of the Immigration and Naturalization Act of 1952, as amended.

The DoD Blanket Routine Uses set forth at the beginning of the Army's compilation of systems of records notices may also apply to this system.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By individual's name, date of birth, SSN, and case number.''

SAFEGUARDS:

Delete entry and Replace with ''Access to system with sensitive information is controlled by DoD Common Access Card authentication with PKI encryption for authorized users having a need to know.

Criminal Records Reports will be sent via authorized government electronic mail with PKI encryption only to the brigade-level or higher commanders with a need-to-know. Need to know includes persons whose official duties require access to information for purposes relating to risk assessment and management (e.g. The Soldier's chain of command, unit legal officers/NCO, adjutants).

Paper Records stored in secure container/file cabinet with access restricted to those with a need to know includes persons whose official duties require access to information for purposes relating to risk assessment and management (e.g. The Soldier's chain of command, unit legal officers/NCO, adjutants).''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Criminal investigations data/information is sent to the Crime Records Center where it is retained 40 years after date of final report, all other data/information in the electronic file is destroyed after 5 years.

Soldier's Criminal history reports sent to commanders are deleted or destroyed by shredding after the Soldier departs the unit.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Office of the Provost Marshal General, 2800 Army Pentagon, Washington, DC 20310–2800.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134–2253.

Individual should provide the full name, SSN, date and place of the incident.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C 1746, in the following format:

IF EXECUTED OUTSIDE THE UNITED STATES:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature).'

IF EXECUTED WITHIN THE UNITED STATES, ITS TERRITORIES, POSSESSIONS, OR COMMONWEALTHS:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Crime Records Center, 27130 Telegraph Road, Quantico, VA 22134–2253.

Individual should provide the full name, SSN, date and place of the incident and signature.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C 1746, in the following format:

If Executed Outside the United States:

'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United State of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths:

'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

* * * * *

[FR Doc. 2012–28012 Filed 11–16–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: December 19, 2012.

Location: The Julian Carroll Convention Center at the Paducah McCracken County Convention and Expo Center, 414 Park Street, Paducah, Kentucky 42001 at 270–408–1346 or *Info@paducahconventions.com*, with accommodations at the Fairfield Inn and Suites Paducah, 3950 Coleman Crossing Circle, Paducah, Kentucky 42001 at 270–442–1700.

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at approximately 1:00 p.m.

Agenda: The agenda will include the status of funding for inland navigation projects and studies and the status of the Inland Waterways Trust Fund, the funding status for Fiscal Year (FY) 2013, status of the Olmsted Locks and Dam Project, the Board's annual report for 2012 and the project investment recommendations, along with updates of the Inland Marine Transportation System (IMTS) Levels of Service and the Impacts of Low Water on the Inland Waterways System.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Pointon, Institute for Water Resources, U.S. Army Corps of Engineers, CEIWR–GM, 7701 Telegraph Road, Casey Building, Alexandria,

Virginia 22315–3868; Ph: 703–428–6438.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2012–27986 Filed 11–16–12; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP13–9–000.
Applicants: Dominion Transmission, Inc.
Description: Application to Abandon Gas Transportation with NSTAR of Dominion Transmission, Inc.
Filed Date: 10/25/12.
Accession Number: 20121025–5162.
Comments Due: 5 p.m. ET 11/16/12.

Docket Numbers: RP13–266–000.
Applicants: Big Sandy Pipeline, LLC.
Description: Big Sandy Pipeline, LLC, et al. submit Petition for Temporary Waiver of Capacity Release Regulations and Related Tariff Provisions and Request for Expedited Action and Shortened Comment Period.
Filed Date: 11/8/12.
Accession Number: 20121108–5106.
Comments Due: 5 p.m. ET 11/14/12.

Docket Numbers: RP13–267–000.
Applicants: Granite State Gas Transmission, Inc.
Description: NAESB Version 2.0 Compliance Filing to be effective 12/1/2012.
Filed Date: 11/8/12.
Accession Number: 20121108–5113.
Comments Due: 5 p.m. ET 11/20/12.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP05–164–019.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits Annual Report on Fuel and Lost and Unaccounted for gas volumes for the period September 2011 through August 2012.
Filed Date: 11/1/12.
Accession Number: 20121101–5185.
Comments Due: 5 p.m. ET 11/13/12.

Docket Numbers: RP13–65–001.
Applicants: Destin Pipeline Company, L.L.C.
Description: NAESB Version 2.0 Compliance Filing 1 to be effective 12/1/2012.
Filed Date: 11/8/12.
Accession Number: 20121108–5121.
Comments Due: 5 p.m. ET 11/20/12.

Docket Numbers: RP13–9–001.
Applicants: Trunkline Gas Company, LLC.
Description: Compliance with RP13–9–000 Order to be effective 12/1/2012.
Filed Date: 11/8/12.
Accession Number: 20121108–5021.
Comments Due: 5 p.m. ET 11/20/12.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, and service can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 09, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28007 Filed 11–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2906–006; ER10–2908–006; ER10–2911–006; ER10–2909–006; ER10–2910–006; ER10–2900–006; ER10–2899–006; ER10–2898–011; ER11–4393–003.
Applicants: Morgan Stanley Capital Group Inc., MS Solar Solutions Corp., Naniwa Energy LLC, Power Contract Financing II, Inc., Power Contract Financing II, L.L.C., South Eastern Generating Corp., South Eastern Electric Development Corp., Utility Contract Financing II, LLC,TAQA Gen X LLC.
Description: Notice of Non-Material Change in Status of Morgan Stanley Capital Group Inc., *et al.*
Filed Date: 11/8/12.
Accession Number: 20121108–5103.
Comments Due: 5 p.m. ET 11/29/12.

Docket Numbers: ER13–342–000.
Applicants: CPV Shore, LLC.
Description: Application for Market-Based Rate Authorization to be effective 1/10/2013.
Filed Date: 11/8/12.
Accession Number: 20121108–5114.
Comments Due: 5 p.m. ET 11/29/12.

Docket Numbers: ER13–343–000.
Applicants: CPV Maryland, LLC.
Description: Application for Market-Based Rate Authorization to be effective 1/10/2013.
Filed Date: 11/8/12.
Accession Number: 20121108–5116.
Comments Due: 5 p.m. ET 11/29/12.

Docket Numbers: ER13–344–000.
Applicants: Crestwood Energy, LP.
Description: Notice of Cancellation to be effective 11/9/2012.
Filed Date: 11/8/12.
Accession Number: 20121108–5145.
Comments Due: 5 p.m. ET 11/29/12.

Docket Numbers: ER13–345–000.
Applicants: West Oaks Energy NY/NE., LP.
Description: Notice of Cancellation to be effective 11/9/2012.
Filed Date: 11/8/12.
Accession Number: 20121108–5146.
Comments Due: 5 p.m. ET 11/29/12.

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 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28008 Filed 11–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–34–000.
Applicants: Dynasty Power Inc.
Description: Application of Dynasty Power Inc. under FPA Section 203 under EC13–34.
Filed Date: 11/9/12.
Accession Number: 20121109–5076.
Comments Due: 5 p.m. ET 11/30/12.

Docket Numbers: EC13–35–000.
Applicants: High Prairie Wind Farm II, LLC, Old Trail Wind Farm, LLC, Telocaset Wind Power Partners, LLC.
Description: Application for Authorization for Disposition of Jurisdictional Facilities and Request for Expedited Action of High Prairie Wind Farm II, LLC, et al.
Filed Date: 11/9/12.
Accession Number: 20121109–5138.
Comments Due: 5 p.m. ET 11/30/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2179–015; ER10–2181–015; ER10–2182–015.
Applicants: Calvert Cliffs Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, R.E. Ginna Nuclear Power Plant, LLC.
Description: Notice of Non-Material Change in Status of Calvert Cliffs Nuclear Power Plant, LLC, et al.
Filed Date: 11/9/12.
Accession Number: 20121109–5091.
Comments Due: 5 p.m. ET 11/30/12.

Docket Numbers: ER12–2178–002; ER10–2172–013; ER12–2311–002; ER11–2016–008; ER10–2184–013; ER10–2183–010; ER10–1048–010 ER10–2176–014; ER10–2192–013; ER11–2056–007; ER10–2178–013; ER10–2174–013; ER11–2014–010; ER11–2013–010 ER10–3308–012; ER10–1017–009; ER10–1020–009; ER10–1145–009; ER10–1144–008; ER10–1078–009; ER10–1079–009; ER10–1080–009; ER11–2010–010; ER10–1081–009; ER10–2180–013; ER11–2011–009; ER12–2201–003; ER12–2528–001; ER11–2009–009; ER11–3989–008; ER10–1143–009; ER11–2780–008; ER12–1829–002; ER11–2007–008; ER12–1223–007; ER11–2005–010.
Applicants: AV Solar Ranch 1, LLC, Baltimore Gas and Electric Company, Beebe Renewable Energy, LLC, Cassia Gulch Wind Park, LLC, CER Generation II, LLC, CER Generation, LLC, Commonwealth Edison Company, Constellation Energy Commodities Group, Inc., Constellation Energy Commodities Group Maine, LLC, Constellation Mystic Power, LLC, Constellation NewEnergy, Inc., Constellation Power Source Generation, Inc., Cow Branch Wind Power, L.L.C., CR Clearing, LLC, Criterion Power Partners, LLC, Exelon Energy Company, Exelon Framingham LLC, Exelon New Boston, LLC, Exelon Generation Company, LLC, Exelon New England Power Marketing, LP, Exelon West Medway, LLC, Exelon Wind 4, LLC, Exelon Wyman, LLC, Handsome Lake Energy, LLC, Harvest Windfarm, LLC, High Mesa Energy, LLC, Michigan Wind 1, LLC, Michigan Wind 2, LLC, PECO Energy Company, Safe Harbor Water Power Corporation, Shooting Star Wind Project, LLC, Tuana Springs Energy, LLC, Wildcat Wind, LLC, Wind Capital Holdings, LLC, Harvest Windfarm II, LLC.
Description: Notice of Non-Material Change in Status of AV Solar Ranch 1, LLC, et al.
Filed Date: 11/9/12.
Accession Number: 20121109–5092.
Comments Due: 5 p.m. ET 11/30/12.

Docket Numbers: ER13–346–000.
Applicants: Upper Peninsula Power Company.
Description: Upper Peninsula Power Company submits Notice of Cancellation of Multiple Rate Schedules.
Filed Date: 11/9/12.
Accession Number: 20121109–5078.
Comments Due: 5 p.m. ET 11/30/12.

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 9, 2012.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2012–28009 Filed 11–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–12–000]

Gulf South Pipeline Company, LP; Notice of Request Under Blanket Authorization

Take notice that on November 1, 2012, Gulf South Pipeline Company, LP (Gulf South), 9 Greenway Plaza, Suite 2800, Houston, TX 77046, filed in Docket No. CP13–12–000, an application pursuant to sections 157.205(b), 157.208(c), 157.210 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to construct certain facilities at its Rodrigue Compressor Station and to abandon in place an idled compressor unit at its Napoleonville Compressor Station in Assumption Parish, Louisiana, under Gulf South's blanket certificate issued in Docket No. CP82–430–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Gulf South is proposing these modifications in order to provide transportation service to Entergy Louisiana, LLC's Ninemile Power Plant in Assumption Parish, Louisiana. 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, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Michael E. McMahon, Senior Vice President and General Counsel, J. Kyle Stephens, Vice President, Regulatory Affairs or M.L. Gutierrez, Director, Regulatory Affairs, Boardwalk Pipeline Partners, LP, 9 Greenway Plaza, Suite 2800, Houston, TX 77046 at telephone (713) 479–8252, fax (713) 479–1745 or email: *Mike.McMahon@bwpmlp.com, Kyle.Stephens@bwpmlp.com* or *Nell.Gutierrez@bwpmlp.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed

activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental 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 environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: November 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28011 Filed 11–16–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance

	Docket No.
PacifiCorp	ER13–64–000
Deseret Generation & Transmission Cooperative, Inc.	ER13–65–000
Northwestern Corporation (Montana).	ER13–67–000
Portland General Electric Company.	ER13–68–000
Idaho Power Company	ER13–127–000
Public Service Company of Colorado.	ER13–75–000
Terra-Gen Dixie Valley, LLC.	ER13–76–000
Tucson Electric Power Company.	ER13–77–000
UNS Electric, Inc	ER13–78–000
Public Service Company of New Mexico.	ER13–79–000
Arizona Public Service Company.	ER13–82–000
El Paso Electric Company	ER13–91–000
Black Hills Power, Inc., et al.	ER13–96–000
Black Hills Colorado Electric Utility Company.	ER13–97–000
NV Energy, Inc	ER13–105–000
Cheyenne Light, Fuel and Power Company.	ER13–120–000
Avista Corporation	ER13–93–000
Avista Corporation	ER13–94–000
Puget Sound Energy	ER13–98–000
Puget Sound Energy	ER13–99–000
Bonneville Power Administration.	NJ13–1–000
California Independent System Operator Corporation.	ER13–103–000

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on November 16, 2012, members of its staff will attend a meeting conducted by representatives of WestConnect, ColumbiaGrid, Northern Tier Transmission Group, and the California Independent System Operator regarding the interregional coordination requirements established by Order No. 1000. Information regarding this meeting, including the meeting agenda, may be found at *www.nttg.biz.*

The meeting is open to all stakeholders and Commission staff's attendance is part of the Commission's ongoing outreach efforts. The meeting may discuss matters at issue in the above captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov.*

Dated: November 13, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–28010 Filed 11–16–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–1184; FRL–9753–1]

Proposed Information Collection Request; Comment Request; Emissions Certification and Compliance Requirements for Locomotives and Locomotive Engines (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Emissions Certification and Compliance Requirements for Locomotives and Locomotive Engines (Renewal).'' (EPA ICR No. 1800–07, OMB Control No. 2060–0392) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through February 28, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 18, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2007–1184 online using *www.regulations.gov* (our preferred method), by email to *a-and-r-Docket@epa.gov* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Mail Code 6403J, Washington, DC 20460; telephone number: 202–343–9264; fax number: 202–343–2804; email address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Title II of the Clean Air Act, (42 U.S.C. 7521 et seq.; CAA), charges the Environmental Protection Agency (EPA) with issuing certificates of conformity for those engines that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. Under this ICR, EPA collects information necessary to (1) issue certificates of compliance with emission statements, and (2) verify compliance with various programs and regulatory provisions pertaining to locomotives, locomotive engines, and locomotive remanufacturing kits (collectively referred to here as ''engines'' for simplicity). To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production engines, including detailed descriptions of emission control systems and test data. This information is organized by ''engine family'' groups expected to have similar emission characteristics. There are recordkeeping requirements. Those manufacturers electing to participate in the Averaging, Banking and Trading (AB&T) Program are also required to submit information regarding the calculation, actual generation and usage of credits in an initial report, end-of-the-year report and final report. These reports are used for certification and enforcement purposes. Manufacturers must maintain records for eight years on the engine families included in the AB&T Program.

The Act also mandates EPA to verify that manufacturers have successfully translated their certified prototypes into mass produced engines, and that these engines comply with emission standards throughout their useful lives. Under the Production Line Testing Program (''PLT Program''), manufacturers are required to test a sample of engines as they leave the assembly line. This self-audit program allows manufacturers to monitor compliance with statistical certainty and minimize the cost of correcting errors through early detection. A similar audit program exists for the installation of locomotive remanufacturing kits. In-use testing allows manufacturers and EPA to verify compliance with emission standards throughout the locomotive's useful life. Through Selected Enforcement Audits, (SEAs), EPA verifies that test data submitted by engine manufacturers is reliable and testing is performed according to EPA regulations.

The information requested is collected by the Diesel Engine Compliance Center (DECC), Compliance Division (CD), Office of Transportation and Air Quality, Office of Air and Radiation, EPA. Besides DECC and CD, this information could be used by the Office of Enforcement and Compliance Assurance and the Department of Justice for enforcement purposes. Non-confidential business information submitted by respondents to this information collection may be disclosed over the Internet. That information is used by trade associations, environmental groups, and the public. Under this ICR, most of the information is collected in electronic format and stored in CD's databases.

Form Numbers: 5900–125 (ABT template); 5900–135 (PLT/Installation Audit template), 5900–90 (Annual Production Report template)

Respondents/affected entities: Respondents are manufacturers of nonroad equipment and engines within the following North American Industry Classification System (NAICS) codes: 333618 (Other Engine Equipment Manufacturing), 336510 (Railroad Rolling Stock manufacturing), and 482111 (Line-haul Railroads).

Respondent's obligation to respond: Manufacturers must respond to this collection if they wish to sell their locomotives, locomotive engines and locomotive remanufacturing kits in the US, as prescribed by Section 206(a) of the CAA (42 U.S.C. 7521) and 40 CFR Part 1033. Certification reporting is mandatory (Section 206(a) of CAA (42 U.S.C. 7521) and 40 CFR Part 1033, Subpart C). PLT/Installation Audit reporting is mandatory (Section 206(b)(1) of CAA and 40 CFR Part 1033, Subpart D). Participation in ABT is voluntary, but once a manufacturer has elected to participate, it must submit the required information (40 CFR Part 1033, Subpart H). In-Use reporting is mandatory (40 CFR Part 1033, Subpart F).

Estimated number of respondents: 10 (total).

Frequency of response: Quarterly, Annually, On Occasion, depending on the program.

Total estimated burden: 21,129 hours per year. Burden is defined at 5 CFR 1320.03(b)

Total estimated cost: Estimated total annual costs: $2,349,724 (per year), includes an estimated $1,365,299 annualized capital or maintenance and operational costs.

Changes in Estimates: To date, there are no changes in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. However, EPA is evaluating information that may lead to a change in the estimates. After EPA has evaluated this information, estimates may rise due to an increase in the number of respondents.

Dated: November 8, 2012.

Byron J. Bunker,

Acting Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2012–28087 Filed 11–16–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0494; FRL–9752–9]

Proposed Information Collection Request; Comment Request; Tips and Complaints Regarding Environmental Violations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Tips and Complaints Regarding Environmental Violations'' (EPA ICR No. 2219.04, OMB Control No. 2020–0032) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through March 31, 2013. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 18, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OECA–20009–0494, online using *www.regulations.gov* (our preferred method), by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Michael Le Desma; Legal Counsel & Resource Management Division; Office of Criminal Enforcement, Forensics and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462–9453; fax number: (303) 462–9075; email address: *ledesma.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The EPA tips and complaints web form is intended to provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the webform when supplying a tip or complaint is also entirely voluntary. Tippers need not supply contact information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Form Numbers: None.

Respondents/affected entities: Respondents are expected to be members of the general public as well as employees of any company subject to federal environmental regulation. There is no specific industry or group of industries about which EPA expects tips or complaints.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 630 per month (total).

Frequency of response: generally, a one-time response.

Total estimated burden: 3,780 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $75,146 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: There is expected to be an increase in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase would reflect an increase in the number of tips and complaints being filed, not an increase in the time or burden associated with filing each tip or complaint. Growing awareness of the ease with which tips and complaints can be filed using the tips and complaints webform is expected to result in, perhaps, a 20% increase in usage.

Dated: November 6, 2012.

Cynthia J. Giles,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 2012–28095 Filed 11–16–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE UNITED STATES

[Public Notice: 2012–0542]

Application for Final Commitment for a Long-Term Loan or Financial Guarantee in Excess of $100 Million

AGENCY: Export-Import Bank of the United States.

ACTION: Notice.

SUMMARY: This Notice is to inform the public, in accordance with Section 3(c)(10) of the Charter of the Export-Import Bank of the United States (''Ex-Im Bank''), that Ex-Im Bank has received an application for final commitment for a long-term loan or financial guarantee in excess of $100 million (as calculated in accordance with Section 3(c)(10) of the Charter). Comments received within the comment period specified below will be presented to the Ex-Im Bank Board of Directors prior to final action on this Transaction.

Reference: AP087436XX & AP087436XA

Purpose and Use:

Brief description of the purpose of the transaction:

To support the export of commercial aircraft to the United Arab Emirates.

Brief non-proprietary description of the anticipated use of the items being exported:

To be used for long-haul passenger air service between the United Arab Emirates and destinations throughout the world.

To the extent that Ex-Im Bank is reasonably aware, the item(s) being exported may be used to produce exports or provide services in competition with the exportation of goods or provision of services by a United States industry.

Parties:

Principal Supplier: The Boeing Company.

Obligor: Emirates Airline.

Guarantor(s): N/A.

Description of Items Being Exported: Boeing 777 aircraft.

Information on Decision: Information on the final decision for this transaction

will be available in the ''Summary Minutes of Meetings of Board of Directors'' on *http://www.exim.gov/articles.cfm/board%20minute*

Confidential Information: Please note that this notice does not include confidential or proprietary business information; information which, if disclosed, would violate the Trade Secrets Act; or information which would jeopardize jobs in the United States by supplying information that competitors could use to compete with companies in the United States.

DATES: Comments must be received on or before December 14, 2012 to be assured of consideration before final consideration of the transaction by the Board of Directors of Ex-Im Bank.

ADDRESSES: Comments may be submitted through Regulations.gov at *www.regulations.gov.* To submit a comment, enter EIB–2012–0040 under the heading ''Enter Keyword or ID'' and select Search. Follow the instructions provided at the Submit a Comment screen. Please include your name, company name (if any) and EIB–2012–0040 on any attached document.

Kathryn Hoff-Patrinos,

Deputy General Counsel.

[FR Doc. 2012–28024 Filed 11–16–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application for a $20.4 million long-term guarantee to support the export of approximately $18.4 million worth of mining trucks to the Ukraine. The repayment term of the guarantee is 7 years. The U.S. exports will enable the Ukrainian mining company to establish a maximum production capacity of 10 million metric tons of iron ore concentrate per year. Available information indicates that the Ukrainian iron ore concentrate will be consumed in China, India, and other Asian markets. Interested parties may submit comments on this transaction by email to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue NW., Room 947, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Angela Mariana Freyre,

Senior Vice President and General Counsel.

[FR Doc. 2012–28022 Filed 11–16–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 12–1807]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing the meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and agenda.

DATES: Thursday, December 13, 2012, 10:00 a.m.

ADDRESSES: Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue, Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, Portals II, 445 12th Street SW., Room 5–C162, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *Deborah.Blue@fcc.gov.* The fax number is: (202) 418–1413. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document in CC Docket No. 92–237, DA 12–1807 released November 9, 2012. The complete text in this document is available for public inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document my also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com.* It is available on the Commission's Web site at *http://www.fcc.gov.*

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, December 13, 2012, from 10:00 a.m. until 2:00 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty). Reasonable accommodations for people with disabilities are available upon request. Include a description of the accommodation you will need, including as much detail as you can. Also include a way we can contact you if we need more information. Please allow at least five days advance notice; last minute requests will be accepted, but may be impossible to fill.

Proposed Agenda: Thursday, December 13, 2012, 10:00 a.m.*

1. Announcements and Recent News
2. Approval of Transcript —Meeting of September 20, 2012
3. Report of the North American Numbering Plan Administrator (NANPA)
4. Report of the National Thousands Block Pooling Administrator (PA)
5. Report of the Numbering Oversight Working Group (NOWG)
6. Report of the North American Numbering Plan Billing and Collection (NANP B&C) Agent
7. Report of the Billing and Collection Working Group (B&C WG)
8. Report of the North American Portability Management LLC (NAPM LLC)
9. Report of the LNPA Selection Working Group (SWG)
10. Report of the Local Number Portability Administration (LNPA) Working Group
11. Status of the Industry Numbering Committee (INC) activities
12. Report of the Future of Numbering Working Group (FoN WG)
13. Summary of Action Items
14. Public Comments and Participation (5 minutes per speaker)
15. Other Business

Adjourn no later than 2:00 p.m.

* The Agenda may be modified at the discretion of the NANC Chairman with the approval of the DFO.

Federal Communications Commission.

Marilyn Jones,

Attorney, Wireline Competition Bureau.

[FR Doc. 2012–28092 Filed 11–16–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 12–1721]

Emergency Access Advisory Committee; Announcement of Date of Next Meeting

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the date of the Emergency Access Advisory Committee's (Committee or EAAC) next meeting. At the November meeting, the agenda will include discussion of draft reports from the EAAC subcommittees and other activities needed to ensure access to 911 by individuals with disabilities.

DATES: The Committee's next meeting will take place on Friday, November 9, 2012, 10:30 a.m. to 3:30 p.m. (EST), at the headquarters of the Federal Communications Commission (FCC).

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, in the Commission Meeting Room.

FOR FURTHER INFORMATION CONTACT: Cheryl King, Consumer and Governmental Affairs Bureau, (202) 418–2284 (voice) or (202) 418–0416 (TTY), email: *Cheryl.King@fcc.gov* and/or Patrick Donovan, Public Safety and Homeland Security Bureau, (202) 418–2413, email: *Patrick.Donovan@fcc.gov.*

SUPPLEMENTARY INFORMATION: On December 7, 2010, in document DA 10–2318, Chairman Julius Genachowski announced the establishment and appointment of members and Co-Chairpersons of the EAAC, an advisory committee required by the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 11–260, for the purpose of achieving equal access to emergency services by individuals with disabilities as part of our nation's migration to a national Internet protocol-enabled emergency network, also known as the next generation 9–1–1 system (NG9–1–1). The purpose of the EAAC is to determine the most effective and efficient technologies and methods by which to enable access to Next Generation 911 (NG 9–1–1) emergency services by individuals with disabilities, and to make recommendations to the Commission on how to achieve those effective and efficient technologies and methods. During the spring of 2011, the EAAC conducted a nationwide survey of individuals with disabilities and released a report on that survey on June 21, 2011. Following release of the survey report, the EAAC developed recommendations, which it submitted to the Commission on December 7, 2011, as required by the CVAA. At the November 2012 EAAC meeting, the agenda will include discussion of draft reports from the EAAC subcommittees and other activities needed to ensure access to 911 by individuals with disabilities.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–28093 Filed 11–16–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 4, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Thomas F. Dungan, III, Teri Dungan, and Thomas F. Dungan, Jr., all of Fairfax, Virginia; together with Andover Investments, LLC,* Vienna, Virginia, as a group acting in concert, to acquire voting shares of Virginia Heritage Bank, Vienna, Virginia.

2. *Edgar L. Woods, Bluffton, South Carolina, individually and as part of a group acting in concert with Edgar Woods, Woods Holdings Inc., RPM Palmetto Grain Brokerage LLC Profit Sharing Plan DTD 12/01/01 FBO Edgar L. Woods, Milton Woods Jr. and Susan H Woods, both of Ridgeland, South Carolina, and J. Eric Woods,* Bluffton, South Carolina, as a group acting in concert; to individually acquire voting shares of Atlantic Bancshares, Inc., and thereby indirectly acquire voting shares of Atlantic Community Bank, both in Bluffton, South Carolina.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Roger D. Underwood, individually and acting in concert with Michael L. Underwood,* both of Guthrie Center, Iowa; to acquire voting shares of Guthrie County Bancshares, Inc., Guthrie Center, Iowa and thereby indirectly acquire voting shares of Guthrie County State Bank, Panora, Iowa.

Board of Governors of the Federal Reserve System, November 14, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–28073 Filed 11–16–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 14, 2012.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02210–2204:

1. New Hampshire Mutual Bancorp, Manchester, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Meredith Village Savings Bank, Meredith, New Hampshire.

2. New Hampshire Mutual Bancorp, Manchester, New Hampshire, to become a bank holding company by acquiring and merging with Merrimack Bancorp, MHC, and thereby indirectly acquiring voting shares of Merrimack County Savings Bank, both in Concord, New Hampshire.

Board of Governors of the Federal Reserve System, November 14, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–28072 Filed 11–16–12; 8:45 am]

BILLING CODE 6210–01–P

FINANCIAL STABILITY OVERSIGHT COUNCIL

Proposed Recommendations Regarding Money Market Mutual Fund Reform

AGENCY: Financial Stability Oversight Council.

ACTION: Proposed recommendation.

SUMMARY: Section 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizes the Financial Stability Oversight Council (Council) to issue recommendations to a primary financial regulatory agency to apply new or heightened standards and safeguards for a financial activity or practice conducted by bank holding companies or nonbank financial companies under the agency's jurisdiction. The Council is seeking public comment on proposed recommendations that the Council may make to the Securities and Exchange Commission to implement structural reforms for money market mutual funds (MMFs). *Proposed Recommendations Regarding Money Market Mutual Fund Reform* provides an overview of MMFs, an outline of the history of reform efforts and the role of the Council, the Council's proposed determination that MMFs' activities and practices create or increase certain risks, three proposed alternatives for reform, and an assessment of the impact of the Council's proposed recommendations on long-term economic growth. In addition, the Council is requesting public comment on alternative structural reforms for MMFs.

DATES: Comment due date: January 18, 2013.

ADDRESSES: Interested persons are invited to submit comments on all aspects of *Proposed Recommendations Regarding Money Market Mutual Fund Reform* according to the instructions below. All submissions must refer to docket number FSOC–2012–0003.

Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Council to make them available to the public. Comments submitted electronically through *http://www.regulations.gov* can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Mail: Comments may be mailed to Financial Stability Oversight Council, Attn: Amias Gerety, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Public Inspection of Comments. Properly submitted comments will be available for inspection and downloading at *http://www.regulations.gov.*

Additional Instructions. In general, comments received, including attachments and other supporting materials, are part of the public record and are immediately available to the public. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Amias Gerety, Deputy Assistant Secretary for the Financial Stability Oversight Council, Department of the Treasury, at (202) 622–8716; Sharon Haeger, Office of the General Counsel, Department of the Treasury, at (202) 622–4353; or Eric Froman, Office of the General Counsel, Department of the Treasury, at (202) 622–1942.

SUPPLEMENTARY INFORMATION:

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II. Overview of Money Market Mutual Funds
III. History of Reform Efforts and Role of the Financial Stability Oversight Council
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V. Proposed Recommendations
VI. Consideration of the Economic Impact of Proposed Reform Recommendations on Long-Term Economic Growth

I. Executive Summary

Reforms to address the structural vulnerabilities of money market mutual funds (MMFs or funds) are essential to safeguard financial stability. MMFs are mutual funds that offer individuals, businesses, and governments a convenient and cost-effective means of pooled investing in money market instruments. MMFs are a significant source of short-term funding for businesses, financial institutions, and governments. However, the 2007–2008 financial crisis demonstrated that MMFs are susceptible to runs that can have destabilizing implications for financial markets and the economy. In the days after Lehman Brothers Holdings, Inc. failed and the Reserve Primary Fund, a $62 billion prime MMF, ''broke the buck,'' investors redeemed more than $300 billion from prime MMFs and commercial paper markets shut down for even the highest-quality issuers. The Treasury Department's guarantee of more than $3 trillion of MMF shares and a series of liquidity programs introduced by the Federal Reserve were needed to help stop the run on MMFs during the financial crisis and ultimately helped MMFs to continue to function as intermediaries in the financial markets.

The Securities and Exchange Commission (SEC) took important steps in 2010 by adopting regulations to improve the resiliency of MMFs (the ''2010 reforms''). But the 2010 reforms did not address the structural vulnerabilities of MMFs that leave them susceptible to destabilizing runs. These vulnerabilities arise from MMFs' maintenance of a stable value per share and other factors as discussed below. MMFs' activities and practices give rise to a structural vulnerability to runs by

creating a ''first-mover advantage'' that provides an incentive for investors to redeem their shares at the first indication of any perceived threat to an MMF's value or liquidity. Because MMFs lack any explicit capacity to absorb losses in their portfolio holdings without depressing the market-based value of their shares, even a small threat to an MMF can start a run. In effect, first movers have a free option to put their investment back to the fund by redeeming shares at the customary stable share price of $1.00, rather than at a price that reflects the reduced market value of the securities held by the MMF.

The broader financial regulatory community has focused substantial attention on MMFs and the risks they pose. Both the President's Working Group on Financial Markets (PWG) and the Financial Stability Oversight Council (Council) called for additional reforms to address the structural vulnerabilities in MMFs, through the PWG's 2010 report on *Money Market Fund Reform Options* and unanimous recommendations in the Council's 2011 and 2012 annual reports, respectively.

In October 2010, the SEC issued a formal request for public comment on the reforms initially described in the PWG report, and in May 2011 the SEC hosted a roundtable on MMFs and systemic risk in which several Council members and their representatives participated. However, in August 2012, SEC Chairman Schapiro announced that the SEC would not proceed with a vote to publish a notice of proposed rulemaking to solicit public comment on potential structural reforms of MMFs.

Under Section 120 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act),[1] if the Council determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of a financial activity or practice conducted by bank holding companies or nonbank financial companies could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, the financial markets of the United States, or low-income, minority, or under-served communities, the Council may provide for more stringent regulation of such financial activity or practice by issuing recommendations to a primary financial regulatory agency to apply new or heightened standards or safeguards. The recommended standards and safeguards are required by Section 120 to take costs to long-term economic growth into account, and may include prescribing the conduct of the activity or practice in specific ways, such as applying particular capital or risk-management requirements.

The Council is proposing to use this authority to recommend that the SEC proceed with much-needed structural reforms of MMFs. There will be a 60-day public comment period on the proposed recommendations. The Council will then consider the comments and may issue a final recommendation to the SEC, which, pursuant to the Dodd-Frank Act, would be required to impose the recommended standards, or similar standards that the Council deems acceptable, or explain in writing to the Council within 90 days why it has determined not to follow the recommendation.

Pursuant to Section 120, the Council proposes to determine that MMFs' activities and practices could create or increase the risk of significant liquidity, credit, and other problems spreading among bank holding companies, nonbank financial companies, and U.S. financial markets. This is due to the conduct and nature of the activities and practices of MMFs that leave them susceptible to destabilizing runs; the size, scale, and concentration of MMFs and the important role they play in the financial markets; and the interconnectedness between MMFs, the financial system and the broader economy that can act as a channel for the transmission of risk and contagion and curtail the availability of liquidity and short-term credit.

Based on this proposed determination, the Council seeks comment on the proposed recommendations for structural reforms of MMFs that reduce the risk of runs and significant problems spreading through the financial system stemming from the practices and activities described above. The Council is proposing three alternatives for consideration:

- *Alternative One: Floating Net Asset Value.* Require MMFs to have a floating net asset value (NAV) per share by removing the special exemption that currently allows MMFs to utilize amortized cost accounting and/or penny rounding to maintain a stable NAV. The value of MMFs' shares would not be fixed at $1.00 and would reflect the actual market value of the underlying portfolio holdings, consistent with the requirements that apply to all other mutual funds.
- *Alternative Two: Stable NAV with NAV Buffer and ''Minimum Balance at Risk.''* Require MMFs to have an NAV buffer with a tailored amount of assets of up to 1 percent to absorb day-to-day fluctuations in the value of the funds' portfolio securities and allow the funds to maintain a stable NAV. The NAV buffer would have an appropriate transition period and could be raised through various methods. The NAV buffer would be paired with a requirement that 3 percent of a shareholder's highest account value in excess of $100,000 during the previous 30 days—a minimum balance at risk (MBR)—be made available for redemption on a delayed basis. Most redemptions would be unaffected by this requirement, but redemptions of an investor's MBR itself would be delayed for 30 days. In the event that an MMF suffers losses that exceed its NAV buffer, the losses would be borne first by the MBRs of shareholders who have recently redeemed, creating a disincentive to redeem and providing protection for shareholders who remain in the fund. These requirements would not apply to Treasury MMFs, and the MBR requirement would not apply to investors with account balances below $100,000.
- *Alternative Three: Stable NAV with NAV Buffer and Other Measures.* Require MMFs to have a risk-based NAV buffer of 3 percent to provide explicit loss-absorption capacity that could be combined with other measures to enhance the effectiveness of the buffer and potentially increase the resiliency of MMFs. Other measures could include more stringent investment diversification requirements, increased minimum liquidity levels, and more robust disclosure requirements. The NAV buffer would have an appropriate transition period and could be raised through various methods. To the extent that it can be adequately demonstrated that more stringent investment diversification requirements, alone or in combination with other measures, complement the NAV buffer and further reduce the vulnerabilities of MMFs, the Council could include these measures in its final recommendation and would reduce the size of the NAV buffer required under this alternative accordingly.

These proposed recommendations are not necessarily mutually exclusive but could be implemented in combination to address the structural vulnerabilities that result in MMFs' susceptibility to runs. For example, MMFs could be permitted to use floating NAVs or, if they preferred to maintain a stable value, to implement the measures contemplated in Alternatives Two or Three.

[1] Public Law 111–203, 124 Stat. 1376 (2010).

Other reforms, not described above, may be able to achieve similar outcomes. Accordingly, the Council seeks public comment on the proposed recommendations and other potential reforms of MMFs. Comments on other reforms should consider the objectives of addressing the structural vulnerabilities inherent in MMFs and mitigating the risk of runs. For example, some stakeholders have suggested features that only would be implemented during times of market stress to reduce MMFs' vulnerability to runs, such as standby liquidity fees or gates. Commenters on such proposals should address concerns that such features might increase the potential for industry-wide runs in times of stress.

The Council recognizes that regulated and unregulated or less-regulated cash management products (such as unregistered private liquidity funds) other than MMFs may pose risks that are similar to those posed by MMFs, and that further MMF reforms could increase demand for non-MMF cash management products. The Council seeks comment on other possible reforms that would address risks that might arise from a migration to non-MMF cash management products. Further, the Council is not considering MMF reform in isolation. The Council and its members intend to use their authorities, where appropriate and within their jurisdictions, to address any risks to financial stability that may arise from various products within the cash management industry in a consistent manner. Such consistency would be designed to reduce or eliminate any regulatory gaps that could result in risks to financial stability if cash management products with similar risks are subject to dissimilar standards.

In accordance with Section 120 of the Dodd-Frank Act, the Council has consulted with the SEC staff. In addition, the standards and safeguards proposed by the Council take costs to long-term economic growth into account.

II. Overview of Money Market Mutual Funds

A. Description of Money Market Mutual Funds

MMFs are a type of mutual fund registered under the Investment Company Act of 1940 (the Investment Company Act).[2] Investors in MMFs fall into two categories: (i) Individual, or ''retail'' investors; and (ii) institutional investors, such as corporations, bank trust departments, pension funds, securities lending operations, and state and local governments, that use MMFs for a variety of cash management and investment purposes.[3] MMFs are widely used by both retail and institutional investors for cash management purposes, although the industry has become increasingly dominated by institutional investors. MMFs marketed primarily to institutional investors account for almost two-thirds of assets today compared to about one-third of industry assets in 1996.[4]

MMFs are a convenient and cost-effective way for investors to achieve a diversified investment in various money market instruments, such as commercial paper (CP), short-term state and local government debt, Treasury bills, and repurchase agreements (repos). This diversification, in combination with principal stability, liquidity, and short-term market yields, has made MMFs an attractive investment vehicle. MMFs provide an economically significant service by acting as intermediaries between investors who desire low-risk, liquid investments and borrowers that issue short-term funding instruments. MMFs serve an important role in the asset management industry through their investors' use of MMFs as a cash-like product in asset allocation and as a temporary investment when they choose to divest of riskier investments such as stock or long-term bond mutual funds.

The MMF industry had approximately $2.9 trillion in assets under management (AUM) as of September 30, 2012, of which approximately $2.6 trillion is in funds that are registered with the SEC for sale to the public. This represents a decline from $3.8 trillion at the end of 2008.[5] As of the end of 2011, there were 632 such funds, compared to 783 at the end of 2008.[6]

MMFs are categorized into four main types based on their investment strategies. Treasury MMFs, with about $400 billion in AUM, invest primarily in U.S. Treasury obligations and repos collateralized with U.S. Treasury securities. Government MMFs, with about $490 billion in AUM, invest primarily in U.S. Treasury obligations and securities issued by entities such as the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Banks (FHLBs), as well as in repo collateralized by such securities. In contrast, prime MMFs, with about $1.7 trillion in AUM, invest more substantially in private debt instruments, such as CP and certificates of deposit (CDs). Commensurate with the greater risks in their portfolios, prime MMFs generally pay higher yields than Treasury or government MMFs. Finally, tax-exempt MMFs, with about $280 billion in AUM, invest in short-term municipal securities and pay interest that is generally exempt from state and federal income taxes, as appropriate.

B. Rule 2a–7 and the 2010 Reforms

Like other mutual funds, MMFs must register under the Investment Company Act and are subject to its provisions. An MMF must comply with all of the same legal and regulatory requirements that apply to mutual funds generally, except that rule 2a–7 under the Investment Company Act[7] allows MMFs to use special methods to value their portfolio securities and price their shares, subject to the conditions in the rule. These methods permit MMFs to maintain a stable NAV per share, typically $1.00. Pursuant to rule 2a–7, MMFs generally use the amortized cost method of valuation and the penny rounding method of pricing in order to effectively ''round'' their share prices. Under these methods, securities held by MMFs are valued at acquisition cost, with adjustments for amortization of premium or accretion of discount, instead of at fair market value, and the MMFs' price per share is rounded to the nearest penny. This permits an MMF to price its shares for purposes of sales and redemptions at $1.00 even though the fund's NAV based on the fair market value of its portfolio securities—rather than amortized cost—may vary by as much as 0.50 percent per share above or below $1.00. All other types of mutual funds, in contrast, must value their NAVs using the market value of the funds' portfolio securities and sell and redeem their shares based on that NAV without using penny rounding.

In order to protect investors from being treated unfairly, an MMF may continue to use these valuation and

[2] 15 U.S.C. 80a–1—80a–64.

[3] At times, these two categories may overlap. For example, retail investors may invest in institutional MMF shares through employer-sponsored retirement plans, such as 401(k) plans and broker or bank sweep accounts. Investment Company Institute, ''Report of the Money Market Working Group'' (March 17, 2009), *at* 24–27, *available at http://www.ici.org/pdf/ppr_09_mmwg.pdf.*

[4] Investment Company Institute, ''2012 Investment Company Fact Book'' (''ICI Fact Book''), *at* Table 39; ''Weekly Money Market Mutual Fund Assets'' (Oct. 25, 2012), *available at http://www.ici.org/research/stats/mmf.*

[5] Based on data filed on SEC Form N–MFP as of September 30, 2012; ''Weekly Money Market Mutual Fund Assets'' (Oct. 25, 2012), *available at http://www.ici.org/research/stats/mmf*; ICI Fact Book, *at* Table 39.

[6] *See* ICI Fact Book, *at* Table 5.

[7] 17 CFR 270.2a–7.

pricing methods only when the fund's stable $1.00 per share value fairly represents the fund's market-based share price. Rule 2a–7 requires an MMF to periodically calculate its market-based NAV, or ''shadow price,'' and compare this value to the fund's stable $1.00 share price. If there is a difference of more than 0.50 percent (or $0.005 per share), the fund's board of directors must consider promptly what action, if any, should be taken, including whether the fund should discontinue the use of these methods and re-price the securities of the fund at a value other than $1.00 per share, an event known as ''breaking the buck'' (*i.e.,* the fund would fail to maintain a stable NAV of $1.00).

In order to reduce the likelihood that an MMF would experience such a significant deviation, rule 2a–7 imposes upon MMFs certain ''risk-limiting conditions'' relating to portfolio maturity, credit quality, liquidity, and diversification. These risk-limiting conditions limit the funds' exposures to certain risks, such as credit, currency, and interest rate risks.[8]

The risk-limiting conditions, in their current form, include numerous changes to rule 2a–7 that were adopted by the SEC in 2010 as an initial response to the financial crisis. These 2010 reforms strengthened maturity limitations, increased MMFs' diversification and liquidity requirements, imposed stress-test requirements, improved the credit-quality standards for MMF portfolio securities, increased reporting and disclosure requirements on portfolio holdings, and provided new redemption and liquidation procedures to minimize contagion from a fund breaking the buck, as described below. The 2010 reforms were a necessary and important step in reducing MMF portfolio risk and increasing the resiliency of MMFs to redemptions.

Quality of portfolio securities. MMFs may purchase a security only if the security, at the time of acquisition, has received a specified credit rating from a nationally recognized statistical rating organization (''NRSRO''), generally the highest short-term rating (or is an unrated security of comparable quality as determined by the board of directors), and the fund's board of directors determines that the security presents minimal credit risks based on factors pertaining to credit quality in addition to any credit rating assigned to the security by an NRSRO.[9] The 2010 reforms sought to reduce MMFs' exposure to risks from lower-rated securities—so-called ''second-tier'' securities—in several ways.[10] First, the reforms reduced the limit on investments in these securities from 5 percent to 3 percent of the fund's total assets. Second, MMFs' allowable exposure to a single issuer of second-tier securities was reduced to 0.5 percent.[11] Third, MMFs are only permitted to purchase second-tier securities with maturities of 45 days or less. The previous limit was 397 days. The reforms also tightened requirements relating to MMF holdings of repo that are collateralized with private debt instruments rather than cash equivalents or government securities.

Maturity limitations. MMFs generally are prohibited from acquiring any security with a remaining maturity greater than 397 days (certain features, like an unconditional ''put,'' can shorten a security's maturity for this and certain other purposes under rule 2a–7), and are subject to a maximum allowable dollar-weighted average portfolio maturity (WAM) and weighted average life (WAL). The 2010 reforms strengthened the maturity limitations by reducing the maximum allowable WAM of an MMF's portfolio from 90 days to 60 days, which reduces an MMF's exposure to interest-rate risk. In addition, the 2010 reforms introduced a new 120-day WAL limit, which lowers MMFs' exposure to credit-spread risk from floating- or variable-rate portfolio holdings by taking into account the securities' ultimate maturity.[12]

Diversification requirement. Generally, MMFs must limit their investments in the securities of any one issuer (other than government securities) to no more than 5 percent of fund assets at the time of purchase. They must also generally limit their investments in securities subject to a demand feature or a guarantee from any particular provider to no more than 10 percent of fund assets.

Liquidity requirements. The 2010 reforms added a requirement that each MMF maintain a minimum liquidity buffer. Each MMF must have at least 10 percent of its assets invested in ''daily liquid assets'' and at least 30 percent of its assets invested in ''weekly liquid assets.''[13] Daily liquid assets are cash, U.S. Treasury obligations, and securities that convert into cash (by maturing or through a put) within one business day. Weekly liquid assets are daily liquid assets, securities of an instrumentality of the U.S. Government that have a remaining maturity of 60 days or less, and securities that convert into cash within five business days. The amendments also reduced the amount of illiquid securities—those that cannot be disposed of within seven days without taking a discounted price—that an MMF can hold from 10 percent to 5 percent. These liquidity requirements are designed to help MMFs meet shareholder redemptions without selling portfolio securities into potentially distressed markets at discounted prices.

Stress-testing requirement. The 2010 reforms introduced a stress-testing requirement for MMFs, requiring that a fund's board of directors adopt procedures for periodic stress tests of the fund's ability to maintain a stable share price. The stress tests are based on certain hypothetical stress events and the results of these tests must be provided to the MMF's board.

Disclosure and reporting. The 2010 reforms introduced enhanced reporting and disclosure obligations that require funds to post portfolio information on their Web sites within five business days after the end of each month. MMFs are also required to submit to the SEC each month more detailed portfolio holdings information, including the shadow price, which is made available

[8] SEC, Money Market Fund Reform, 75 FR 32688, 10060 (Mar. 4, 2010).

[9] An MMF's board of directors may delegate to the fund's investment adviser or officers the responsibility to make this determination pursuant to written guidelines that the board establishes and oversees. In addition, Section 939A of the Dodd-Frank Act requires the SEC (and other regulators) to review its regulations for any references to or requirements regarding credit ratings that require the use of an assessment of the creditworthiness of a security or money market instrument, remove these references or requirements, and substitute in those regulations other standards of creditworthiness in place of the credit ratings that the agency determines to be appropriate. The SEC has proposed to remove references to credit ratings from rule 2a–7. *See* SEC, References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. IC–28807, 76 FR 12896 (Mar. 9, 2011). It is the Council's understanding that the SEC intends to act on removal of credit ratings from rule 2a–7 as required by the Dodd-Frank Act, and therefore the Council is not addressing this issue in these recommendations.

[10] Second-tier securities are defined in rule 2a–7 generally as securities that have received the second-highest short-term debt rating from an NRSRO or are of comparable quality.

[11] The previous limit was the greater of one percent or $1 million.

[12] Widening credit spreads, reflecting additional yield demanded by investors over a comparable risk-free rate, can negatively affect the value of a fund's portfolio securities. The limit on an MMF's WAL is designed to protect the fund against spread risk because longer-term adjustable-rate securities are more sensitive to credit spreads than short-term securities with final maturities equal to the reset date of the longer-term security. Under rule 2a–7, therefore, MMFs are permitted to use interest-rate reset dates to shorten the maturity of an adjustable-rate security or a floating rate security in their WAM calculation, but not in their WAL calculation.

[13] Tax-exempt MMFs are exempt from the requirement regarding daily liquid assets.

to the public 60 days after the end of the month to which the information pertains. These requirements allow the SEC, investors, and others to better monitor fund risk taking.

Facilitation of orderly fund liquidation. The 2010 reforms introduced a new rule, rule 22e–3 under the Investment Company Act, that permits the board of directors of an MMF, upon notification to the SEC, to suspend redemptions and liquidate the fund if it has broken, or is in danger of breaking, the buck. The rule is designed to prevent shareholder harm from distressed sales of securities that can occur with rapid liquidations when a fund breaks the buck.

While the enhancements introduced in the 2010 reforms increase resiliency and limit MMFs' exposure to certain risks, they do not address MMFs' structural vulnerabilities. These vulnerabilities and the resulting risks to financial stability are described in more detail in the following sections.

III. History of Reform Efforts and Role of the Financial Stability Oversight Council

A. Reform Efforts to Date

Following the financial crisis, the Department of the Treasury (Treasury) released a roadmap for financial reform in June 2009 [14] calling for: (i) The SEC to complete its near-term MMF reform efforts and (ii) the PWG to evaluate the need for structural reform of MMFs. The SEC addressed this first element when it adopted the 2010 reforms.

At the time of the adoption of the 2010 reforms, the SEC noted that these reforms served as a ''first step'' in addressing MMF reform.[15] In October 2010, the PWG released a report outlining a set of additional policy options intended to address the risks to financial stability posed by MMFs' susceptibility to runs.[16] This report stated that the 2010 reforms ''alone could not be expected to prevent a run of the type experienced in September 2008.'' This report was released for public comment and generated a large number of thoughtful and detailed responses, including suggestions by both academics and industry participants that MMFs maintain a capital buffer or impose a liquidity fee to help absorb losses and mitigate liquidity pressures. To further engage the public on reform, the SEC hosted a roundtable to discuss potential reform options in May 2011 that included Council members and their representatives, other regulators, trade groups, issuers of securities in which MMFs invest, MMF sponsors, and MMF investors. Throughout this period, the SEC engaged with stakeholders and regulators in an intensive effort to consider and refine various potential reform options.

Concurrently, the broader financial regulatory community in both the United States and abroad has made repeated calls for MMF reform. The Council, in both its 2011 and 2012 annual reports, highlighted the need for additional MMF reform to address structural vulnerabilities in the U.S. financial system. In 2012, the Council specifically recommended that the SEC publish structural reform proposals for public comment and ultimately adopt reforms that address MMFs' lack of loss-absorption capacity and susceptibility to runs. The Office of Financial Research, in its 2012 annual report, identified the run risk for MMFs as one of the ''current threats to financial stability.''

Internationally, on October 9, 2012, the International Organization of Securities Commissions (IOSCO) issued policy recommendations for reforming MMFs. The IOSCO recommendations demonstrate the efforts by the G–20 and the Financial Stability Board to fulfill the mandate of strengthening the oversight and regulation of the ''shadow banking system.'' [17] There are also other international efforts, along with IOSCO's, to consider aspects of MMF regulation where greater harmonization between jurisdictions and regulatory improvements could occur in an effort to avoid jurisdictional arbitrage.[18]

On August 22, 2012, SEC Chairman Schapiro announced that the majority of the SEC's Commissioners would not support seeking public comment on the SEC's staff proposal to reform the structure of MMFs. As a result, on September 27, 2012, the Chairperson of the Council, Treasury Secretary Geithner, sent a letter to Council members urging the Council to take action in the absence of the SEC doing so.

B. Role of the Council and Dodd-Frank Act Section 120

The Dodd-Frank Act established the Council ''(A) to identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system.'' [19]

To carry out its financial stability mission, the Council has various authorities, including the authority under Section 120 of the Dodd-Frank Act to issue recommendations to primary financial regulatory agencies to apply ''new or heightened standards and safeguards'' for a financial activity or practice conducted by bank holding companies or nonbank financial companies under the regulatory agency's jurisdiction. Prior to issuing such a recommendation, the Council must determine that ''the conduct, scope, nature, size, scale, concentration, or interconnectedness'' of the financial activity or practice ''could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, financial

[14] Treasury, ''Financial Regulatory Reform: A New Foundation'' (2009), *available at http://www.treasury.gov/initiatives/Documents/FinalReport_web.pdf.*

[15] SEC, Money Market Fund Reform, Investment Company Act Release No. IC–29132, 75 FR 10600, 10062 (Mar. 4, 2010) (''Our June 2009 proposals were the product of [the SEC's and staff's review of MMFs] and were, we explained, a first step to addressing regulatory concerns we identified.'').

[16] President's Working Group on Financial Markets, ''Money Market Fund Reform Options'' (Oct. 2010), *available at http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf.*

[17] IOSCO, ''Policy Recommendations for Money Market Funds'' (Oct. 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf.* Substantially all of IOSCO's recommendations are included in the SEC's current regulation of MMFs or are addressed in these proposed recommendations. IOSCO noted in a media release issued on October 9, 2012, that although a majority of the SEC's commissioners did not support the publication of IOSCO's recommendations, there were no other objections, and IOSCO's board approved the report containing the recommendations during its meeting on October 3–4, 2012. In addition, in a statement issued on May 11, 2012, three of the SEC's commissioners stated that IOSCO's consultation report on MMFs, published on April 27, 2012, did not reflect the views and input of a majority of the SEC and, accordingly, cannot be considered to represent the views of the SEC.

[18] The European Commission is also considering the need for further reforms to their regulation of money market funds. *See* European Commission Green Paper on Shadow Banking (Mar. 19, 2012), *available at http://ec.europa.eu/internal_market/bank/docs/shadow/green-paper_en.pdf*; European Commission Consultation Document, Undertakings for Collective Investment in Transferable Securities (UCITS) Product Rules, Liquidity Management, Depositary, Money Market Funds, Long-term Investments (Jul. 26, 2012), *available at http://ec.europa.eu/internal_market/consultations/docs/2012/ucits/ucits_consultation_en.pdf.*

[19] Dodd-Frank Act Section 112(a)(1).

markets of the United States, or low-income, minority or underserved communities.'' [20] The Council believes that MMFs are ''predominantly engaged in financial activities'' [21] as defined in section 4(k) of the Bank Holding Company Act of 1956 [22] and thus are ''nonbank financial companies'' [23] for purposes of Title I of the Dodd-Frank Act.

Pursuant to Section 120 of the Dodd-Frank Act, the Council proposes to determine that the activities and practices of MMFs, for which the SEC is the primary financial regulatory agency, could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and the financial markets of the United States. This proposed determination is set forth below in Section IV. The Council seeks public comment on this proposed determination.

To address the concerns regarding MMFs, the Council also seeks public comment on the proposed recommendations described in Section V. Comments are due 60 days after publication in the **Federal Register**. The Council will then consider the comments and may issue a final recommendation to the SEC, which, pursuant to the Dodd-Frank Act, would be required to impose the recommended standards, or similar standards that the Council deems acceptable, or explain in writing to the Council, not later than 90 days after the date on which the Council issues the final recommendation, why the SEC has determined not to follow the Council's recommendation. If the SEC accepts the Council's recommendation, it is expected that the SEC would implement the recommendation through a rulemaking, subject to public comment, that would consider the economic consequences of the implementing rule as informed by the SEC staff's own economic study and analysis.

The SEC, by virtue of its institutional expertise and statutory authority, is best positioned to implement reforms to address the risks that MMFs present to the economy. If the SEC moves forward with meaningful structural reforms of MMFs before the Council completes its Section 120 process, the Council expects that it would not issue a final Section 120 recommendation to the SEC.

In addition to the proposed recommendations to the SEC under its Section 120 authority, the Council and some of its members are actively evaluating alternative authorities in the event the SEC determines not to impose the standards recommended by the Council in any final recommendation.

For instance, under Title I of the Dodd-Frank Act, the Council has the authority and the duty to designate any nonbank financial company that could pose a threat to U.S. financial stability. Designated companies are subject to supervision by the Federal Reserve and enhanced prudential standards. Alternatively, the Council's authority to designate systemically important payment, clearing, or settlement activities under Title VIII of the Dodd-Frank Act could enable the application of heightened risk-management standards on an industry-wide basis. Additionally, other Council member agencies have the authority to take action to address certain of the risks posed by MMFs and similar cash-management products, as appropriate.

IV. Proposed Determination That MMFs Could Create or Increase the Risk of Significant Liquidity and Credit Problems Spreading Among Financial Companies and Markets

In order to issue a recommendation under Section 120 of the Dodd-Frank Act, the Council must determine that the conduct, scope, nature, size, scale, concentration, or interconnectedness of MMFs' activities or practices could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, or U.S. financial markets.

As further discussed below, the conduct and nature of MMFs' activities and practices make MMFs vulnerable to destabilizing runs, which may spread quickly among funds, impairing liquidity broadly and curtailing the availability of short-term credit.[24] Because of the size, scale, concentration, and interconnectedness of MMFs' activities, the liquidity pressures on the MMF industry resulting from a run can cause this stress to propagate rapidly throughout the financial system and to the broader economy.

As was evidenced in the financial crisis, even small portfolio losses may cause a fund to break the buck. If investors perceive a risk of such an event, MMFs' lack of explicit loss-absorption capacity, the first-mover advantage enjoyed by redeeming investors, investor uncertainty regarding sponsor support, and the similarity of MMFs' portfolios can incite widespread runs on MMFs. Heavy redemptions may magnify losses for other funds and potentially cause them to break the buck and suspend redemptions under rule 22e-3, harming investors by impairing their liquidity. Further, due to the significant role MMFs play in the short-term credit markets, an industry-wide run on MMFs can reduce the availability of credit to borrowers. Ultimately, a run on MMFs can create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and U.S. financial markets.

- Conduct and nature of activities and practices: Several activities and practices of MMFs combine to create a vulnerability to runs, including: (i) Relying on the amortized cost method of

[20] Dodd-Frank Act Section 120(a).

[21] *See* 12 U.S.C. 5311(b).

[22] *See* sections 4(k)(1), 4(k)(4)(A), 4(k)(4)(D), and 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(1), 1843(k)(4)(A), 1843(k)(4)(D), 1843(k)(4)(H)).

[23] *See* 12 U.S.C. 5311(a)(4).

[24] The inherent fragility and susceptibility of MMFs to destabilizing runs has been the subject of considerable academic research and commentary. *See, e.g.,* Sean S. Collins and Phillip R. Mack, ''Avoiding Runs in Money Market Mutual Funds: Have Regulatory Reforms Reduced the Potential for a Crash,'' Working Paper 94–14, Federal Reserve Board Finance and Economics Discussion Series (June 1994); Naohiko Baba, Robert N. McCauley, and Srichander Ramaswamy, ''US dollar money market funds and non-US banks,'' *BIS Quarterly Review (*March 2009), *at* 65–81; Gary Gorton and Andrew Metrick, ''Regulating the Shadow Banking System,'' *Brookings Papers on Economic Activity* (Fall 2010), *at* 261–297; Patrick E. McCabe, ''The Cross Section of Money Market Fund Risks and Financial Crises,'' Working Paper 2010–51, Federal Reserve Board Finance and Economics Discussion Series (September 2010); Squam Lake Group, ''Reforming Money Market Funds,'' Letter to the Securities and Exchange Commission re: File No. 4–619; Release No. IC–29497 President's Working Group Report on Money Market Fund Reform (Jan. 14, 2011), *available at http://www.sec.gov/comments/4–619/4619–57.pdf*; Eric S. Rosengren, ''Money Market Mutual Funds and Financial Stability: Remarks at the Federal Reserve Bank of Atlanta's 2012 Financial Markets Conference,'' (April 11, 2012), *available at http://www.bos.frb.org/news/speeches/rosengren/2012/041112/041112.pdf*; Marcin Kacperczyk and Philipp Schnabl, ''How Safe are Money Market Funds?'' (April 2012); Burcu Duygan-Bump, Patrick Parkinson, Eric Rosengren, Gustavo A. Suarez, and Paul Willen, ''How effective were the Federal Reserve emergency liquidity facilities? Evidence from the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility,'' *Journal of Finance,* forthcoming; Patrick E. McCabe, Marco Cipriani, Michael Holscher, and Antoine Martin, ''The Minimum Balance at Risk: A Proposal to Mitigate the Systemic Risks Posed by Money Market Funds,'' Working Paper 2012–47, Federal Reserve Board Finance and Economics Discussion Series (July 2012); David S. Scharfstein, ''Perspectives on Money Market Mutual Fund Reforms,'' Testimony before U.S. Senate Committee on Banking, Housing, & Urban Affairs (June 21, 2012); Jeffrey N. Gordon and Christopher M. Gandia, ''Money Market Funds Run Risk: Will Floating Net Asset Value Fix the Problem?'' Columbia Law and Economics Working Paper No. 426 (Sept. 23, 2012), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2134995.*

valuation and/or penny rounding to maintain a stable $1.00 per share price; (ii) offering shares that may be redeemed on demand despite MMFs' limited same-day liquidity; (iii) investing in assets that are subject to interest-rate and credit risk without having explicit loss-absorption capacity; (iv) relying upon *ad hoc* discretionary support from sponsors, which has often shielded investors from losses and obscured portfolio risks; and (v) attracting a base of highly risk-averse investors that are prone to withdraw assets when even small losses appear possible. Together, these activities and practices foster MMFs' structural vulnerability to runs by creating a first-mover advantage that provides an incentive for investors to redeem their shares at the first indication of any perceived threat to an MMF's value or liquidity. Because MMFs lack any explicit capacity to absorb losses in their portfolio holdings without depressing the market-based value of their shares, even a small threat to an MMF can start a run.

- Size, scale, and concentration of activities and practices: The MMF industry is large, with $2.9 trillion in assets, and provides a substantial portion of the short-term funding available to a range of borrowers in the capital markets. The industry is also highly concentrated, as the top 20 MMF sponsors operate funds with 90 percent of aggregate MMF assets under management.
- Interconnectedness of activities and practices: MMFs are highly interconnected with the rest of the financial system and can transmit stress throughout the system because of their role as intermediaries, as significant investors in the short-term funding markets, as potential recipients of economic support from the financial institutions that sponsor them, and as important providers of cash-management services.

Below is a further discussion of MMFs' activities and practices and how they contribute to the funds' vulnerability to runs, how those runs may transmit stresses throughout the financial system, evidence from the run on MMFs during the financial crisis, and an explanation of why action is needed beyond the 2010 reforms. The Council solicits public comment on this proposed determination.

Conduct and Nature

MMFs' vulnerability to runs results in part from the conduct and nature of the activities and practices of MMFs, their sponsors, and their investors.

The stable, rounded NAV per share. Unlike other mutual funds, most MMFs rely on valuation and rounding methods to maintain a stable NAV per share, typically $1.00. Rounding obscures the daily movements in the value of an MMF's portfolio and fosters an expectation that MMF share prices will not fluctuate. Importantly, rounding also exacerbates investors' incentives to run when there is risk that prices will fluctuate. When an MMF that has experienced a small loss satisfies redemption requests at the rounded $1.00 share price, the fund effectively subsidizes these redemptions by concentrating the loss among the remaining shareholders. As a result, redemptions from such a fund can further depress its shadow NAV and increase the risk that the MMF will break the buck. This contributes to a first-mover advantage, in which those who redeem early are more likely to receive the full $1.00 per share than those who wait. Thus, first movers have a free option to put their investment back to the fund by redeeming shares at the customary stable NAV of $1.00 per share (rather than at a share price reflecting the market value of the underlying securities held by the MMF). In the absence of an explicit mechanism to take losses in the value of the securities held by an MMF without depressing the fund's shadow NAV, the ''first movers'' leave other fund investors sharing in such losses.

Shares that can be redeemed on demand despite limited portfolio liquidity. MMFs perform maturity transformation by offering shares that investors may redeem on demand — providing shareholders unlimited daily liquidity — while also investing in relatively longer-term securities. MMFs invest not only in highly liquid instruments, such as securities that mature overnight and Treasury securities, but also in short-term instruments that are less liquid, including term CP and term repo. In the event of shareholder redemptions in excess of an MMF's available liquidity, a fund may be forced to sell less-liquid assets to meet redemptions. In times of stress, such sales may cause funds to suffer losses that must be absorbed by the fund's remaining investors, further reinforcing the first-mover advantage. Importantly, while the minimum liquidity requirements implemented in the SEC's 2010 reforms should make MMFs more resilient to market disruptions by increasing the funds' supply of liquid assets that can quickly be converted to cash, as noted below, these requirements are not designed to mitigate the first-mover advantage when a fund is at risk of suffering losses.

Investments with interest-rate and credit risk without explicit loss-absorption capacity. MMFs invest in securities with credit and interest-rate risk to increase the yields they offer to investors, but the funds do so without any formal capacity to absorb losses.[25] The short maturities of these securities and their high credit quality generally limit portfolio risks, but MMFs on occasion have been exposed to potentially significant losses. For example, 29 MMFs participating in the Treasury's Temporary Guarantee Program for Money Market Funds reported losses in September and October 2008 that, absent sponsor support, would have exceeded 0.50 percent of assets, and losses among those funds averaged 2.2 percent of assets.[26] As discussed in more detail below, the Reserve Primary Fund's experience demonstrates that the loss in value of a single security in an MMF's portfolio can cause the fund to break the buck. As a result of investors' expectations of a stable $1.00 per share NAV, even a small capital loss at an MMF can give its investors a strong incentive to redeem their shares.

Reliance on discretionary sponsor support. In the absence of capital, insurance, or any other formal mechanism to absorb losses when they do occur, MMFs historically have relied upon *ad hoc* discretionary support from their sponsors to maintain $1.00 per share prices.[27] Unlike other types of

[25] *See* SEC, ''Unofficial Transcript: Roundtable on Money Market Funds and Systemic Risk'' (May 10, 2011), *available at http://www.sec.gov/spotlight/mmf-risk/mmf-risk-transcript-051011.htm* (quoting Seth P. Bernstein of J.P. Morgan Asset Management, ''We find ourselves uncomfortable about the informal arrangements that have existed in the industry for some time because we believe it's both an issue of credit risk embedded in the portfolios, as well as the liquidity issues that arise in a run'').

[26] These data exclude losses that were absorbed by some forms of sponsor support, such as direct cash infusions to a fund and outright purchases of securities from a fund at above-market prices, so the number of funds that would have broken the buck in the absence of all forms of support may have exceeded 29. *See* McCabe, Cipriani, Holscher, and Martin, 2012.

[27] *See* SEC, ''Unofficial Transcript: Roundtable on Money Market Funds and Systemic Risk'' (May 10, 2011), *available at http://www.sec.gov/spotlight/mmf-risk/mmf-risk-transcript-051011.htm.* At the roundtable, Bill Stouten of Thrivent Financial stated, ''I think the primary factor that makes money funds vulnerable to runs is the marketing of the stable NAV. And I think the record of money market funds and maintaining the stable NAV has largely been the result of periodic voluntary sponsor support. I think sophisticated investors that understand this and doubt the willingness or ability of the sponsor to make that support know that they need to pull their money out before a declining asset is sold.''

mutual funds, MMF sponsors have often supported their funds, with researchers documenting over 200 instances of such support since 1989.[28]

While MMF prospectuses must warn investors that their shares may lose value,[29] the extensive record of sponsor intervention and its critical role historically in maintaining MMF price stability may have obscured some investors' appreciation of MMF risks and caused some investors to assume that MMF sponsors will absorb any losses, even though sponsors are under no obligation to do so. As such, it is not the sponsor support itself, but rather its discretionary nature that contributes to uncertainty among market participants about who will bear losses when they do occur. This uncertainty likely makes MMFs even more vulnerable to runs during periods of financial instability, when broader financial risks are most salient and when concerns arise about the health of the sponsors and their wherewithal to provide support to affiliated MMFs.

Highly risk-averse investors. Although MMFs invest in assets that may lose value and the funds are under no legal or regulatory requirement to redeem shares at $1.00, the industry's record of maintaining stable and rounded $1.00 per share NAVs combined with the funds' low-risk investment strategies has attracted highly risk-averse investors that are prone to withdraw assets rapidly when losses appear possible.[30] This has been exacerbated by the outsized growth of institutional MMFs in recent decades. MMFs marketed primarily to institutional investors made up only about one-third of industry assets in 1996 but account for almost two-thirds of assets today.[31] Institutional investors are typically more sophisticated than retail investors in obtaining and analyzing information about MMF portfolios and risks, have larger amounts at stake, and hence are quicker to respond to events that may threaten the stable NAV.

Interaction of these activities and practices. In combination, the activities and practices of MMFs described above tend to exacerbate each other's effects and increase MMFs' vulnerability to runs. For example, by relying on the amortized cost method of valuation and/or penny rounding to maintain a stable $1.00 per share NAV, offering shares that may be redeemed on demand despite limited same-day portfolio liquidity, and investing in assets with interest-rate and credit risk without explicit loss-absorption capacity, MMFs create a first-mover advantage for investors who redeem quickly during times of stress. If MMFs with rounded NAVs had lacked sponsor support over the past few decades, many might have broken the buck, causing investors to recalibrate their perception of MMF risks and resulting in a less risk-averse investor base. Or if funds maintained credible loss-absorption capacity, even a risk-averse investor base might be less likely to run because the funds would be better equipped to maintain a stable $1.00 per share NAV. As a result, policy responses that diminish these destabilizing interactions hold promise for mitigating the risks that MMFs pose—even if not all five of these activities and practices are fully addressed through reform.

Size, Scale, and Concentration

MMFs' size, scale, and concentration increase both their vulnerability to runs and the damaging impact of runs on short-term credit markets, borrowers, and investors.

As discussed in Section II, the MMF industry is large, with $2.9 trillion in assets under management.[32] MMFs are important providers of short-term funding to financial institutions, nonfinancial firms, and governments, and play a dominant role in some short-term funding markets. For example, as of September 30, 2012, MMFs owned 44 percent of U.S. dollar-denominated financial CP outstanding and about 30 percent of all uninsured dollar-denominated time deposits, including nearly two-thirds of the CDs that are tradable in financial markets.[33] These funds also provided approximately one-third of the lending in the tri-party repo market and held significant portions of the outstanding short-term securities issued by state and local governments, the Treasury, and Federal agencies.[34] Given the dominant role of MMFs in short-term funding markets, runs on these funds can therefore have severe implications for the availability of credit and liquidity in those markets.

In addition, because of the concentration of the MMF industry, even heavy withdrawals from (or shifts in portfolio holdings of) MMFs offered by a handful of asset management firms may reverberate through financial markets. As of September 30, 2012, the top five MMF sponsors managed funds with $1.3 trillion in assets (46 percent of industry assets), and the top 20 sponsors managed $2.6 trillion (90 percent).[35]

Interconnectedness

MMFs' extensive interconnectedness with financial firms, the financial system, and the U.S. economy can

[28] Moody's found 144 cases in which U.S. MMFs ''would have 'broken the buck' but for the intervention of their fund sponsor/investment management firm'' from 1989 to 2003. Moody's identified a total of 146 funds that would have lost value before 2007 in the absence of support, but one of these losses occurred before the adoption of rule 2a-7 and another loss was in a European fund. The Moody's report covers ''constant net asset value'' funds other than MMFs, but we understand that the remaining 144 funds in question were all registered U.S. MMFs. Moody's Investors Service, ''Sponsor Support Key to Money Market Funds'' (Aug. 8, 2010). Separately, other researchers documented 123 instances of support for 78 different MMFs between 2007 and 2011. These totals include support in the form of cash contributions from sponsors and outright purchases of securities from MMFs at above-market prices. However, the totals cited here exclude some forms of sponsor intervention, including capital support agreements and letters of credit that were not drawn upon. *See* Steffanie A. Brady, Ken E. Anadu, and Nathaniel R. Cooper, ''The Stability of Prime Money Market Mutual Funds: Sponsor Support from 2007 to 2011,'' Federal Reserve Bank of Boston Risk and Policy Analysis Unit, Working Paper RPA 12–3 (Aug. 13, 2012).

[29] An MMF's prospectus must state, ''An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.'' SEC Form N–1A, Item 4(b)(1)(ii).

[30] *See* SEC, ''Unofficial Transcript: Roundtable on Money Market Funds and Systemic Risk'' (May 10, 2011), *available at http://www.sec.gov/spotlight/mmf-risk/mmf-risk-transcript-051011.htm* (quoting Lance Pan of Capital Advisors Group, ''[MMF investors] will take zero loss, and they're loss averse as opposed to risk averse. So to the extent that they own that risk, at a certain point they started to own that risk, then the run would start to develop. It's not that throughout the history of money market funds we did not have asset deterioration. We did. But I think over the last 30 or 40 years, people have relied on the perception that even though there is risk in money market funds, that risk is owned somehow implicitly by the fund sponsors. So once they perceive that they are not able to get that additional assurance, I believe that was one probable cause of the run.''

[31] ICI Fact Book; Investment Company Institute, ''Weekly Money Market Mutual Fund Assets,'' *available at http://www.ici.org/research/stats/mmf* (Oct. 25, 2012).

[32] Aggregate assets under management in all MMFs that are registered under the Investment Company Act of 1940 and report on Form N–MFP to the SEC totaled $2.9 trillion at September 30, 2012. However, shares for some of these MMFs are not registered for sale to the public under the Securities Act of 1933. The assets in funds that are sold to the public totaled $2.6 trillion at September 30, 2012, according to data from the Investment Company Institute and iMoneyNet.

[33] Based on MMFs' filings of SEC Form N–MFP, CD data from the Depository Trust & Clearing Corporation (''DTCC''), large time deposits data from the Federal Reserve Board Flow of Funds Accounts, and CP data from DTCC and the Federal Reserve Board.

[34] For repo data, *see* Federal Reserve Bank of New York, *http://www.newyorkfed.org/banking/tpr_infr_reform.html*; for short-term municipal securities, *see* SIFMA, *http://www.sifma.org/research/item.aspx?id=8589940509* and Flow of Funds Accounts of the United States.

[35] Based on Form N–MFP filings with the SEC.

create a significant threat to broader financial stability because the shocks from a run on MMFs can rapidly propagate to other entities throughout the financial system.

Most of the short-term financing that MMFs provide to non-government entities is extended to financial firms. As of September 30, 2012, 86 percent of the funding that MMFs extended to private entities was in the form of financial sector obligations, including CDs, financial CP, asset-backed commercial paper (ABCP), repo, other MMF shares, and insurance company funding agreements.[36] Among the top 50 private sector firms that received funding from prime MMFs in September 2012, only four were nonfinancial firms.[37] Moreover, because 13 of the top 15 private-sector firms receiving funding were domiciled outside the United States, MMFs can also represent a potential channel for rapid transmission of global stress to the U.S. financial markets.

MMFs are further interconnected with the U.S. financial system because bank and savings and loan holding companies sponsor MMFs. Sponsors face potential risks because, historically, sponsors have absorbed nearly all MMF losses that threatened the funds' $1.00 per share NAVs, and sponsors would likely face pressure from investors and other market participants to continue to do so in the future. As of September 30, 2012, MMFs that are sponsored by subsidiaries of bank holding companies accounted for 41 percent of industry assets, and MMFs sponsored by subsidiaries of thrift holding companies accounted for another 11 percent of the industry's assets.[38]

The interconnectedness of the financial system and MMFs is exacerbated by the role of banks in providing liquidity enhancements and guarantees for securities held by MMFs. As of September 30, 2012, for example, three large U.S. banks provided liquidity or credit support for approximately $100 billion in securities held by MMFs, and European financial institutions provided liquidity or credit support for more than $115 billion in such securities.[39] Tax-exempt MMFs hold many of these securities, which are largely obligations of state and local governments and other tax-exempt issuers.[40] Due to these interconnections with financial firms, stress at MMFs can spread rapidly into the banking system and then more broadly through the financial system.

MMFs may also transmit risk to the broader economy through the payments system because MMFs are used as cash management vehicles by individual investors, businesses and other institutional investors, and governments. MMFs offer services such as check writing and other bank-like functions, particularly for retail investors. In addition, MMF shares outstanding are sizable relative to money stock measures. As of September 30, 2012, assets in MMFs registered with the SEC for sale to the public were 25 percent of the size of the Federal Reserve's M2 money stock measure, and prime fund assets alone were 14 percent of M2.[41] Hence, a widespread run on MMFs could quickly pose liquidity problems for the millions of investors—households, businesses, and governments—that use MMFs for cash management, and such an event would resonate rapidly throughout the payments system.

Finally, not only are MMFs interconnected with the financial sector and payments system, but the funds themselves are also highly interconnected due to their common exposures. The largest prime funds generally provide funding to a relatively small group of firms with high credit quality,[42] consistent with the requirements of rule 2a–7, leading to the potential for highly correlated losses. As of September 30, 2012, for example, financing for the top 50 firms accounted for 91 percent of prime MMF investments in private entities,[43] while 10 firms accounted for 39 percent. In addition, 14 firms individually received funding from more than half of the 243 prime MMFs.[44] The similarity of MMF portfolio holdings increases the contagion risk to the entire MMF industry and to the broader financial system in the event that one MMF encounters stress.

Evidence From the 2007–2008 Financial Crisis

The financial crisis demonstrated how the conduct, nature, size, scale, concentration, and interconnectedness of MMFs' activities and practices described above can interact and amplify the transmission of risk of significant liquidity and credit problems in the financial system.

Run on prime MMFs. MMFs came under intense stress after the Reserve Primary Fund announced on September 16, 2008, that it would break the buck due to losses on the Lehman Brothers Holdings, Inc. (Lehman) debt instruments that the fund owned. These holdings represented just 1.2 percent of that fund's assets—well below the 5 percent limit applicable to such holdings—but, due to the lack of explicit loss-absorption capacity, that exposure was large enough to cause the fund to break the buck.[45]

The Reserve Primary Fund's loss immediately started a run on that fund, as investors sought to redeem approximately $40 billion from the fund in just two days.[46] More importantly, the run quickly spread to other prime MMFs and illustrated several activities and practices that make MMFs vulnerable to runs as well as the contagion risk to the industry. The failure of Reserve Primary Fund's sponsor to deliver support for its fund may have heightened investors' uncertainty about the likelihood of discretionary sponsor support at other MMFs and, as a result, accelerated the run on the entire prime MMF industry.

[36] Based on Form N–MFP filings with the SEC.

[37] Based on Form N–MFP filings with the SEC; *see* Scharfstein, 2012.

[38] Based on Form N–MFP and form ADV filings with the SEC, company Web sites, and staff analysis from Federal Reserve Bank of Boston.

[39] Based on Form N–MFP filings with the SEC.

[40] Based on Form N–MFP filings with the SEC.

[41] The M2 money-stock measure includes retail MMF assets (excluding IRA and Keogh balances at MMFs) but not institutional MMF assets. M2 totaled $10.1 trillion in September 2012.

[42] This discussion focuses on prime MMFs, but holdings of other types of MMFs within the same category (such as different tax-exempt MMFs that specialize in the same state) also tend to be similar.

[43] Based on Form N–MFP filings with the SEC; *see* Scharfstein, 2012.

[44] Based on Form N–MFP filings with the SEC.

[45] The Reserve Primary Fund was only the second MMF to break the buck since rules for MMFs were first introduced in 1983. In 1994, the Community Bankers U.S. Government Money Market Fund, a small government MMF, broke the buck because of exposures to interest rate derivatives. The event passed without significant repercussions, in part because the Community Bankers U.S. Government Money Market Fund was very small (less than $100 million in assets when it closed) and was sold to a narrow group of investors, ''principally to small community banks seeking an alternative to lending money overnight on deposit at Federal Reserve banks at the Federal funds rate'' (*see* SEC, In the Matter of Craig S. Vanucci and Brian K. Andrew, Respondents: Order Instituting Public Administrative and Cease-and-Desist Proceedings (Jan. 11, 1998), Administrative Proceeding File No. 3–9804). In addition, the contagion risk stemming from this MMF's problem may have been limited by its idiosyncratic portfolio. According to the SEC cease and desist order, the fund had an ''unsuitable investment'' (27.5 percent of its assets) in adjustable-rate derivative securities. *See also* Jeffrey N. Gordon and Christopher M. Gandia, ''Money Market Fund Run Risk: Will Floating Net Asset Value Fix the Problem?'' Columbia Law School (Sept. 4, 2012).

[46] However, the Reserve Primary Fund evidently did not honor all of these redemptions, because it announced on October 30, 2008, that ''[t]he Fund's total assets have been approximately $51 billion since the close of business on September 15.'' The Reserve, ''Reserve Primary Fund Makes Initial Distribution of $26 Billion to Primary Fund Shareholders'' (Oct. 30, 2008). *See also* McCabe, 2010, *at* A–1; SEC, Securities and Exchange Commission v. Reserve Management Company, Inc. *et al.* Civil Action No. 09–CV–4346 (May 5, 2009).

At least a dozen MMFs held Lehman securities at the time of the Lehman bankruptcy, and the Reserve Primary Fund's Lehman holdings were below the average holdings among MMFs with exposure to Lehman.[47] However, the most serious phase of the run on MMFs occurred not in the two business days immediately after the Lehman bankruptcy, but in the two days following the Reserve Primary Fund's announcement that it had broken the buck.[48]

In addition, outflows from institutional prime MMFs following the Lehman bankruptcy tended to be larger among MMFs with sponsors that were themselves under stress, indicating that MMF investors redeemed shares when concerned about sponsors' potential inabilities to bolster ailing funds.[49] These run dynamics were primarily prevalent among the more sophisticated, risk-averse institutional investors, as institutional funds accounted for 95 percent of the net redemptions from prime funds.[50]

Aggregate daily outflows from other prime MMFs tripled the day after the Reserve Primary Fund announced its loss.[51] During the week of September 15, 2008, investors withdrew approximately $310 billion (15 percent of assets) from prime MMFs. The run slowed only after Treasury established the Temporary Guarantee Program for Money Market Funds and the Board of Governors of the Federal Reserve System established facilities aimed at stabilizing markets linked to MMFs.

Despite government intervention, the run in September 2008 led to rapid disinvestment by MMFs of short-term instruments which severely exacerbated stress in already strained financial markets. For example, in the three weeks following the Lehman bankruptcy, prime MMFs reduced their holdings of CP by $202 billion (29 percent) and repo by $75 billion (32 percent).[52] The reduction in CP held by MMFs accounted for a substantial portion of the decline in outstanding CP during that period[53] and contributed to a sharp rise in borrowing costs for CP issuers.[54] MMFs managed by just a dozen firms accounted for almost three-quarters of the $202 billion decline in the industry's holdings of CP, and five MMF sponsors accounted for almost half of the decline.[55]

Impact on government MMFs. While the run in September 2008 centered on prime MMFs, government MMFs attracted inflows of $192 billion during the week following the Lehman bankruptcy.[56] Some commenters have argued that these inflows provide evidence that MMFs are not structurally vulnerable to runs.[57] However, the activities and practices discussed above do not lead investors to redeem their shares in all types of funds simultaneously, but rather they increase the possibility that losses at one or more MMFs may lead to widespread redemptions at other funds that share similar characteristics. Such contagion was evident among prime MMFs in 2008 due to, among other factors, the similarity of their portfolios. Government MMFs did not face similar run vulnerabilities at the time because they had significantly different portfolio holdings than the distressed prime funds and many government MMF investments were appreciating in value. Government MMFs nonetheless may pose the same structural risks, in that the funds' investors would have an incentive to redeem if they feared even small losses.

Importantly, the inflows to government funds in 2008 did not mitigate the damage caused by the run on prime MMFs. Government MMFs only purchase limited amounts of private debt securities and hence could not alleviate the reduction in the availability of credit for businesses and financial institutions that relied on MMFs for short-term financing.[58]

Furthermore, government MMFs also can be vulnerable to runs. In November 2008, Treasury agreed to assist with the liquidation of the Reserve Fund's U.S. Government Fund by serving as ''a buyer of last resort'' for securities held by the fund, which suspended redemptions in September 2008.[59] In addition, during the last three business days in July 2011, amid large net redemptions from institutional MMFs (discussed below), outflows from government MMFs totaled 7 percent of assets and exceeded (as a percentage of assets) outflows from prime funds.[60]

The 2010 Reforms Do Not Address These Structural Factors

The SEC's 2010 reforms are important, but further reform is needed. The SEC's 2010 reforms helped to make MMFs more resilient to certain short-term market risks and more transparent. However, they did not address certain activities and practices of MMFs that continue to make the funds vulnerable to runs. Moreover, MMFs remain concentrated and highly interconnected with one another, the U.S. banking system, and the broader financial system.

Of the activities and practices listed above that make MMFs susceptible to runs, the two most directly addressed in the SEC's 2010 reforms are liquidity risks associated with maturity transformation and MMF portfolios' exposures to credit and interest-rate risks. While the reforms reduced these risks, many of the credit and liquidity risks at issue in 2008 persist today. Importantly, if the rules adopted in 2010 had been in place in 2008, they would not have prevented the Reserve Primary Fund from breaking the buck due to its holdings of Lehman securities.

Moreover, the redemptions from many MMFs during the run in 2008 exceeded the liquidity buffers now mandated by the daily and weekly liquidity requirements that were adopted as part of the 2010 reforms. At

[47] Moody's Investors Service, ''Lehman Support in Prime Money Market Funds,'' mimeo, April 30, 2012. The sponsors of the other MMFs with exposure to Lehman provided support to their funds, and as result did not break the buck as the Reserve Primary Fund did.

[48] According to data from iMoneyNet (with adjustments to correct misreported assets for the Reserve Primary Fund and for one closed MMF), prime MMF assets fell $81 billion in the two business days after the Lehman bankruptcy. In the two days following the Reserve Primary Fund's late-afternoon announcement on September 16 that it had broken the buck, prime MMF assets dropped $194 billion. *But see, e.g.,* Comment Letter of Treasury Strategies, Inc., SEC File No. 4–619 (Jun. 1, 2012) (stating that MMFs ''have been misidentified as a proximate contributor to the financial crisis'').

[49] As measured by credit default swap spreads for parent firms or affiliates. *See* McCabe, 2010.

[50] Based on data from iMoneyNet for the week following the Lehman bankruptcy.

[51] Based on data from iMoneyNet.

[52] Based on data from iMoneyNet on changes in prime MMFs' portfolio holdings from September 9 to September 30, 2008.

[53] Data from the Federal Reserve Board show that total CP outstanding declined $206 billion in that three-week period.

[54] *See* Federal Open Market Committee, ''Minutes of the Federal Open Market Committee, October 28–29, 2008,'' *at* 3, 5.

[55] Based on data from iMoneyNet.

[56] Based on data from iMoneyNet.

[57] *See, e.g.,* Comment Letter of the Investment Company Institute, SEC File No. 4–619 (Aug. 20, 2012) (stating, ''Investors pulled about $300 billion from prime money market funds, which held such securities. But those investors didn't run from money market funds. For every dollar that left prime funds, 61 cents went into Treasury and government and agency funds. It was a classic flight to quality—and money market funds were the vehicle of choice for fleeing investors.'').

[58] MMF shareholders moving their investments from prime MMFs to government MMFs in September 2008 may have reduced the effect of this episode on the availability of repo financing (since some government funds invest in repo), on the aggregate assets of MMFs, and on the fees earned by MMF advisers.

[59] *See* Treasury, ''Treasury Enters Into Agreement To Assist the Reserve Fund's US Government Money Market Fund'' (2008), *available at http://www.treasury.gov/press-center/press-releases/Pages/hp1286.aspx.*

[60] Based on daily data on MMF assets from iMoneyNet.

the height of the run in 2008, 40 institutional prime MMFs (excluding the Reserve Primary Fund) had one-day outflows in excess of the new 10 percent daily liquidity requirement, and 13 of those funds' one-day outflows exceeded 20 percent of assets. In addition, 10 institutional prime funds had five-day outflows exceeding the new 30 percent weekly liquidity requirement, including eight funds with five-day outflows greater than 40 percent of assets.[61] Notably, outflows in 2008 probably would have been considerably larger in the absence of the unprecedented government interventions to support MMFs and short-term funding markets.

Evidence from 2011. Heavy outflows from institutional prime MMFs in the summer of 2011 further highlighted MMFs' continued vulnerability to runs, even after the 2010 reforms. In the eight weeks ending on August 3, 2011, institutional prime funds experienced net outflows of $179 billion (16 percent of assets).[62] Because the pace of outflows in 2011 was well below that experienced during the run in September 2008 (total net redemptions from prime institutional funds in two days in 2008 exceeded the eight-week outflow in 2011),[63] MMFs were able to withstand redemption pressures without further repercussions.

The institutional investor redemptions were apparently in response to concerns about the funds' European holdings and the U.S. debt-ceiling impasse.[64] Importantly, these outflows occurred despite the fact that the MMFs suffered no material losses during this episode.[65] This is in stark contrast to August 2007, when many MMFs held distressed ABCP that ultimately lost significant value, yet institutional investors generally did not respond by redeeming MMF shares, likely because investors expected sponsors to absorb the losses.[66] Redemptions in the summer of 2011 may indicate that institutional investors have become more reactive and run-prone since 2008, when the Reserve Primary Fund's sponsor was unable to provide support to prevent that fund from breaking the buck. Furthermore, the increase in certain MMFs' exposure to European securities in 2011 appears to have been motivated by increased risk-taking in an attempt to boost investment yields and revenues.[67] This motive was also reportedly a significant factor in the investment policies that ultimately led the Reserve Primary Fund to break the buck.[68]

Council Proposed Determination Regarding MMFs

As described above, the conduct and nature of MMFs' activities and practices make MMFs vulnerable to runs that can spread quickly across the industry. As evidenced in the financial crisis, runs on MMFs can result in significant liquidity, credit and other problems in the short-term credit markets, particularly given the size and scale of the MMF industry's participation in those markets; cause or exacerbate substantial stresses in the financial system; and threaten financial stability. The interconnections among MMFs and the concentration of the MMF industry increase the likelihood that stresses at one MMF will spread to other MMFs, and MMFs' interconnectedness with other financial firms means that stresses in MMFs can spread rapidly to the larger financial system, further limiting system-wide liquidity and credit. Therefore, the Council proposes to determine that the conduct, nature, size, scale, concentration, and interconnectedness of MMFs' activities and practices could create or increase the risk of significant liquidity and credit problems spreading among bank holding companies, nonbank financial companies, and the financial markets of the United States.

V. Proposed Recommendations

The Council seeks comment on proposed recommendations to the SEC to address the structural vulnerabilities of MMFs discussed in Section IV. In particular, the Council aims to address the activities and practices of MMFs that make them vulnerable to destabilizing runs: (i) The lack of explicit loss-absorption capacity in the event of a drop in the value of a security held by an MMF and (ii) the first-mover advantage that provides an incentive for investors to redeem their shares at the first indication of any perceived threat to an MMF's value or liquidity.

In considering options for further reform, the Council notes three key features of MMFs that make them appealing to investors: The stability of principal associated with the funds' stable $1.00 per share NAV, liquidity through shares that can be redeemed on demand, and market-based yields that often exceed those of short-term Treasury securities and rates on FDIC-insured bank deposits.

The activities and practices of MMFs that have made them appealing to investors also contribute to their vulnerability to runs. For example, both MMFs' reliance on rounding to maintain stable NAVs and the liquidity of MMF shares contribute to a first-mover advantage for redeeming investors. MMFs' practice of investing in short-term securities with interest-rate and credit risk to boost yields, without explicit loss-absorption capacity, makes them more vulnerable when losses do occur.

Therefore, reforms that would provide meaningful mitigation of the risks posed by MMFs would likely reduce their appeal to investors by altering one or more of their attractive features. The first proposed alternative would require funds to have a floating NAV by removing the valuation and pricing provisions in rule 2a–7 that currently allow funds to maintain a stable, rounded $1.00 NAV. Alternatives Two and Three would preserve, and potentially bolster, the principal stability that investors currently enjoy by preserving the stable NAV, but would likely reduce the higher yields and/or the liquidity that MMFs offer to investors. These reform alternatives, therefore, present trade-offs between stability, yield, and liquidity.

Different MMF investors may have different preferences. Accordingly, it may be optimal to offer both floating NAV funds and stable NAV funds with enhanced protections and to allow investors to determine which they prefer. The Council seeks comment on the merits of adopting such a flexible approach as well as the merits of recommending a single structural reform alternative.

[61] Based on daily data on MMF assets from iMoneyNet.

[62] Based on weekly data on MMF assets from the Investment Company Institute.

[63] Based on daily data on MMF assets from iMoneyNet, prime MMF assets fell a total of $194 billion on September 17 and 18, 2008.

[64] Outflows from institutional prime MMFs were highly correlated with the funds' European exposures, particularly in June 2011. *See* Sergey Chernenko and Adi Sunderam, ''The Quiet Run of 2011: Money Market Funds and the European Debt Crisis,'' (May 12, 2012). During this eight-week period, retail prime MMFs had small net inflows.

[65] During this episode of heavy redemptions (from May to August 2011), the largest monthly decline in any prime MMF's reported shadow NAV was 12 basis points, and only five funds experienced shadow NAV declines of more than 4 basis points. Such small changes in shadow NAVs are not unusual: In the first seven months of 2012, three prime MMFs reported shadow NAV declines of 10 basis points or more. Presumably, if MMFs had suffered material losses in the summer of 2011, redemptions would have been larger.

[66] *See* SEC, Money Market Fund Reform, Investment Company Act Release No. IC–28807, 74 FR 32688, 32691 (July 8, 2009); McCabe, 2010; Brady, Anadu, and Cooper, 2012.

[67] *See* Chernenko and Sunderam, 2012 and Rosengren, 2012.

[68] *See* Investment Company Institute, ''Report of the Money Market Working Group'' (March 17, 2009); McCabe, 2010; Kacperczyk and Schnabl, 2012.

A. Alternative One: Floating Net Asset Value

Require MMFs to have a floating net asset value per share (NAV) by removing the special exemption that currently allows MMFs to utilize amortized cost accounting and/or penny rounding to maintain a stable NAV. The value of MMFs' shares would not be fixed at $1.00 and would reflect the actual market value of the underlying portfolio holdings, consistent with the requirements that apply to all other mutual funds.

(i) Description of the Alternative

Overview. This reform alternative would require MMFs to have a floating NAV instead of a stable NAV. The price per share would fluctuate based on small changes in the value of the MMF's portfolio, rather than remaining at $1.00 absent a break the buck event. As such, the value of MMFs' shares would reflect the market value of the underlying portfolio holdings, consistent with the valuation requirements that apply to all other mutual funds under the Investment Company Act. As discussed in more detail below, a requirement that MMFs use floating NAVs could make investors less likely to redeem *en masse* when faced with the prospect of even modest losses by eliminating the ''cliff effect'' associated with breaking the buck. Regular fluctuations in MMF NAVs likely would cause investors to become accustomed to, and more tolerant of, fluctuations in NAVs. A floating NAV would also reduce the first-mover advantage that exists in MMFs today because investors would no longer be able to redeem their shares for $1.00 when the shares' market-based value is less than $1.00. This alternative does not contemplate requiring funds to have an NAV buffer.

Rule 2a–7 protections remain. Consistent with investors' expectations about the nature of their MMF investments, the risk limiting provisions of rule 2a–7 that govern the credit quality, maturity, liquidity, and diversification of MMFs' portfolios would continue to apply to any fund that called itself a ''money market fund'' or used a similar name.

Portfolio valuation. This alternative would require removing the provisions of rule 2a–7 that allow MMFs to use the penny rounding method of pricing and the amortized cost method of valuation for their portfolios, except to the extent other mutual funds may do so. Rather, MMFs would value their portfolios like all other mutual funds, including using amortized cost valuation only under certain limited circumstances.[69]

Share pricing. Under this alternative, each floating-NAV MMF would re-price its shares to $100.00 per share (or initially sell them at that price) to be more sensitive to fluctuations in the value of the portfolio's underlying securities than under a $1.00 share price. For example, a 5 basis point loss would not move the share price of a floating-NAV MMF with a share price of $1.00.[70] If the fund's shares were priced at $100.00, in contrast, the fund's share price would decrease by 5 cents to $99.95. Hence, a $100.00 share price is more likely than a $1.00 share price to result in regular fluctuations in NAVs and therefore changes in investor expectations and behavior. Just like in any other mutual fund, shareholders would be able to purchase and redeem fractional shares, and as a result the re-pricing would not impact shareholder purchases and redemptions. For example, a shareholder could still purchase or redeem $50 of MMF shares regardless of the fund's price per share.

Removing exemptions under the Investment Company Act. Because MMFs would no longer seek to maintain a stable NAV, the SEC also would need to rescind two rules under the Investment Company Act that provide exemptions to MMFs to prevent a fund from breaking the buck:

- *Orderly Liquidation.* Rule 22e–3 currently allows an MMF to suspend redemptions and begin an orderly liquidation if the fund has broken or is about to break the buck. With a floating NAV, the need for MMF sponsors or boards of directors to suspend redemptions or otherwise intervene upon share price declines should be significantly reduced except under the most extreme market circumstances.[71]
- *Sponsor Support.* Rule 17a–9 allows affiliates of an MMF to purchase portfolio securities from an MMF and typically is used to support an MMF's stable price per share. Because a floating-NAV MMF is designed to fluctuate in value, allowing the type of affiliate support currently permitted under rule 17a–9 would appear to be unnecessary. This type of affiliate support is not permitted for any other type of mutual fund.

Transition. To reduce potential disruptions and facilitate the transition to a floating NAV for investors and issuers, existing MMFs could be grandfathered and allowed to maintain a stable NAV for a phase-out period, potentially lasting five years. Instead of requiring these grandfathered funds to transition to a floating NAV immediately, the SEC would prohibit any new share purchases in the grandfathered stable-NAV MMFs after a predetermined date, and any new investments would have to be made in floating-NAV MMFs. This would discourage significant and sudden investor redemptions that could occur out of fear that a fund would force existing shareholders to incur a loss immediately upon the fund's transition to a floating NAV.

(ii) Benefits and Considerations

An SEC requirement that all MMFs operate with a floating NAV could reduce financial instability and the risk of runs among MMFs in several ways.

Modified investor expectations. A floating NAV would make gains and losses on MMF investments a regular occurrence. It would accustom investors to changes in the value of their MMF shares and reduce the perception that shareholders do not bear any risk of loss when they invest in an MMF. Such beliefs can make MMFs prone to runs if shareholders suddenly become concerned that they may bear losses. Breaking the buck should no longer be a significant event because MMFs would simply fluctuate in value in the same manner as other mutual funds. Losses—which are inevitable in an investment product—would no longer be obscured by valuation and rounding conventions, but would be borne by shareholders and reflected in a fund's share price just like all other mutual funds.

Similar to other mutual funds. A floating NAV would allow MMFs to operate with the same price transparency as all other mutual funds. Currently, shadow prices for stable NAV funds are disclosed on a monthly basis with a 60-day delay. Under a floating NAV model, shareholders would not be required to obtain and analyze an MMF's portfolio to surmise the fund's mark-to-market value. Rather, investors would see day-to-day fluctuations in value in different market conditions and interest-rate environments, just as they

[69] All mutual funds, when fair valuing a portfolio debt security, may value the security at its amortized cost only if the security has a remaining maturity of 60 days or less and the fund's board of directors determines, in good faith, that the security's fair value is its amortized cost value and the circumstances do not suggest otherwise (*e.g.,* an impairment of the creditworthiness of an issuer). *See* SEC, Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies, Investment Company Act Release No. 9786, 42 Fed. Reg. 28999 (June 7, 1977).

[70] The fund would have a share price of $0.9995 after the loss which, even without penny rounding, would be rounded up to $1.00.

[71] Any mutual fund, including a floating-NAV MMF, may seek an order from the SEC permitting the fund to suspend redemptions and liquidate.

do today with all other mutual funds. This information should help all types of investors in MMFs make investment decisions that better match their risk-return preferences.

Investors bear risk. A floating NAV would remove uncertainty or confusion regarding who bears the risk of loss in an MMF. A floating NAV would reinforce the principle that investors, not fund sponsors or taxpayers, are expected to bear the pro rata risk of loss in MMFs, as they do with other investment vehicles.

Reduced first-mover advantage. Such a change would reduce, though not eliminate, the first-mover advantage currently present in MMFs because all redemptions would be priced at a fund's per share mark-to-market value. MMF shareholders would no longer have the opportunity to redeem shares at $1.00 when their market-based value falls below $1.00; so redemptions would no longer threaten to concentrate an MMF's loss over a shrinking shareholder base. In addition, even if some shareholders redeem due to a sudden change in perceived risk, a floating NAV results in a fairer allocation of losses among redeeming and remaining investors.

Though this first-mover advantage would be reduced, the incentive to redeem before others may remain, in part, because each MMF has a limited supply of liquid assets with which to meet redemptions. Shareholders still may have an incentive to redeem quickly from an MMF, just as they do from any mutual fund that is at risk of depleting its most liquid assets, because subsequent redemptions may force the fund to dispose of less liquid assets and potentially incur losses. In addition, while a floating NAV would remove the ability of a shareholder to redeem shares at $1.00 when the market value is less than $1.00, it would not remove a shareholder's incentive to redeem whenever the shareholder believes that the NAV will decline significantly in the future, consistent with the incentive that exists today for other types of mutual funds.

Evidence from other jurisdictions and U.S. ultra-short bond funds suggests that floating-NAV MMFs could experience redemption pressures under stressed market conditions.[72] Such behavior could be more likely if a floating-NAV MMF continues to be used as a cash management product and investors do not fully adjust their expectations of the risks inherent in MMFs. This adjustment could fail to take place because, under normal market conditions, the value of a floating-NAV MMF, even re-priced to $100.00 per share, would likely not fluctuate to the same degree as other mutual funds because of the risk-limiting conditions applicable to MMFs.[73] Investors may come to accept small, temporary variations in the value of their MMF shares, but still redeem at the prospect of larger declines.

Tax considerations. A floating NAV for MMFs also would present certain federal income tax issues for MMFs and their investors. The stable NAV of MMF shares under present law results in simpler tax-reporting rules for transactions in MMF shares than the rules for transactions in shares of all other types of mutual funds. Because all purchases and sales of MMF shares are at the same $1.00 price, these transactions generate no taxable gains or losses, obviating the need for shareholders to track the basis and holding period of particular shares. If the NAV of MMF shares were instead to fluctuate, there would be gains and losses to report. More specifically, because each redemption of MMF shares could produce a gain or loss for the shareholder, it would be necessary to determine for every redemption—(i) which share was redeemed, (ii) the tax basis (generally, the acquisition cost) of that share, and (iii) whether the holding period of that share was long term or short term. In addition, if a shareholder purchases shares in an MMF within thirty days before or after a redemption, the Tax Code's ''wash sale'' rules would limit the extent to which the shareholder could deduct any loss realized on the redemption.[74]

Because of the high volume of redemptions of shares of MMFs, however, and because of the minimal per share losses that may result from each redemption, the Council understands that the Treasury Department and the IRS will consider administrative relief for both shareholders and fund sponsors. Among the questions that the Council understands they plan to address are whether changes to tax rules and forms (including new assumptions and default methods) could simplify the measurement and reporting of gains and losses from floating-NAV MMFs. Today, the sponsors of non-MMF[75] mutual funds must report the basis and holding period of redeemed shares both to the IRS and to redeeming shareholders (referred to as ''basis reporting''). The Treasury Department and the IRS have indicated to the Council that they will consider the extent to which expansion or modification of basis reporting could help shareholders deal with floating-NAV MMFs. Finally, they will evaluate the possibility of some administrative relief from the wash sale rules for *de minimis* losses on floating-NAV MMF shares.

Accounting impacts. There also are accounting considerations relating to floating-NAV MMFs. U.S. generally accepted accounting principles (GAAP) currently include investments in MMFs as an example of a cash equivalent.[76] Shareholders and their accountants would need to evaluate whether a floating-NAV MMF meets the characteristics of a cash equivalent under relevant accounting guidance.

Operational costs. MMFs also would have to change their operations to accommodate a floating NAV. MMFs and their transfer agents are currently required to have the capacity to transact at the fund's floating NAV,[77] but a permanent change to a floating NAV may require additional operational changes.[78] These costs may be mitigated, however, because MMFs are required periodically to determine their market-based NAV and currently have systems in place to do so. In addition,

[72] Floating NAV cash funds in other jurisdictions and U.S. ultra-short bond funds also suffered heavy redemptions during the financial crisis. *See, e.g.,* Gordon and Gandia, 2012 and Comment Letter of the Investment Company Institute, SEC File No. 4–619 (Jan. 10, 2011), *at* 33–34 (''ICI January PWG Letter'') (noting that ''by the end of 2008, assets of [ultra-short bond] funds were down more than 60 percent from their peak in mid-2007'' and ''French floating NAV dynamic money funds (or *trésorerie dynamique* funds), lost about 40 percent of their assets over a three-month time span from July 2007 to September 2007''); Comment Letter of the European Fund and Asset Management Association, SEC File No. 4–619 (Jan. 10, 2011) (''In a matter of weeks, EUR 70 billion were redeemed from these [enhanced money market] funds, predominantly by institutional investors; around 15–20 suspended redemptions for a short period, and 4 of them were definitely closed''). In each case, these funds were not subject to the same investment restrictions as U.S. MMFs and as a result the experience of these funds is not necessarily indicative of the way floating-NAV MMFs and their investors would respond under this alternative in times of stress. In addition, many European MMFs accumulate dividends, rather than distributing any net income the fund earns to shareholders. Accordingly, losses in these funds are generally reflected as a negative yield rather than a loss in the value of a share.

[73] *See, e.g.,* Comment Letter of HSBC Global Asset Management on the European Commission's Green Paper on Shadow Banking (May 28, 2012), *available at http://ec.europa.eu/internal_market/consultations/2012/shadow/individual-others/hsbc_en.pdf.*

[74] *See* 26 U.S.C. 1091.

[75] 26 CFR 1.6045–1(c)(3)(vi) exempts MMFs from this requirement.

[76] Financial Accounting Standards Board, Accounting Standards Codification paragraph 305–10–20.

[77] 17 CFR 270.2a–7(c)(13).

[78] For a discussion of potential operational costs, *see e.g.,* Comment Letter of John D. Hawke, Jr. on behalf of Federated Investors, Inc., SEC File No. 4–619 (Dec. 15, 2011).

MMF sponsors may be able to adapt the systems used by their other mutual funds, which price at market value each day, to their floating-NAV MMFs. For example, funds may need to modify policies and procedures in order to calculate a daily floating NAV per share and to communicate that value to their distribution partners and shareholders on an ongoing basis. Both fund complexes and other intermediaries in the distribution chain may need to reprogram systems to accommodate a permanent floating NAV.

MMFs' current ability to transact at a stable NAV also generates other operational efficiencies that may be lost with a floating NAV. Some of these conveniences have evolved due to expectations that MMF share prices would never fluctuate and are not consistent with the actual risks in MMF portfolios. For example, a stable NAV facilitates same-day settlement of purchase and redemption transactions. MMFs would need to modify systems to allow same-day settlement to continue with a floating-NAV MMF or shift to next day settlement.[79]

Impact on industry size. Moving to a floating NAV may cause the MMF industry's AUM to contract. Some MMF investors may be unwilling or unable to conduct their cash management through an investment vehicle that does not offer a stable value.[80] Some institutional investors may be prohibited by board-approved guidelines or firm policies from conducting cash management using MMFs that do not have a stable NAV and may be unwilling to change these policies. Other investors, such as some state and local governments, may be subject to statutory or regulatory requirements that permit them to invest certain assets only in funds that seek to maintain a stable net asset value.

These factors may reduce overall investor demand for MMFs, which would diminish the funds' capacity to invest in the short-term securities of financial institutions, businesses, and governments, possibly impacting their costs of funding.[81] Elimination of the stable NAV would be a significant change for a multi-trillion dollar industry in which the stable $1.00 share price has been a core feature. It may take time for investors and short-term funding markets to adjust to such a change, and the ultimate long-term reaction to such a change is difficult to predict with any precision. In addition, if the transition to the new regulatory regime prompted investors to redeem suddenly and substantially, the transition itself could create financial instability. A longer transition period and the grandfathering of existing fund shareholdings are designed to lessen this risk.

(iii) Questions

The Council requests comment on this alternative as well as on all aspects of the discussion presented above. The Council also requests any quantitative analysis or data from commenters relating to this alternative.

Would requiring that all MMFs operate with a floating NAV make them less susceptible to runs? Would it reduce or increase the potential financial instability associated with MMFs? Would it enhance their resiliency?

Would floating the NAV alter investor expectations and make them substantially more willing to bear losses from their MMF investments? Alternatively, would shareholders become accustomed only to relatively small fluctuations in value but redeem heavily in the face of more significant losses?

Would some MMF sponsors support their MMFs despite the elimination of rule 17a–9 (for instance, by contributing capital) under this option and thereby prevent their share prices from deviating materially on a day-to-day basis? If so, would this mitigate the achievement of reform objectives? Should sponsor support of MMFs be prohibited?[82]

Would initially re-pricing MMF shares to $100.00 per share help sensitize investors to fluctuations in fund value and better change investor expectations? Should they be initially re-priced to a different value than $100.00 to best achieve this goal, for instance, $10.00?

Should existing MMFs be grandfathered for a limited phase-in period, as discussed above, or should they be grandfathered indefinitely? What length of time should be the optimal phase-in period? What length of time would be appropriate after which the SEC would prohibit any new share purchases in stable-NAV MMFs, and any new investments would have to be made in floating-NAV MMFs?

Should the current basis reporting rules applicable to other mutual funds be extended to MMFs in their present form, or can those rules be simplified in a manner that better reflects the comparatively larger volume of transactions in MMF shares and the greater likelihood that gains or losses arising from those transactions will be relatively small on a per-share basis? Are there changes to the basis-reporting rules, such as the use of rounding conventions, that would reduce compliance costs for MMFs while providing shareholders with the information they would need?

Are there classes of MMF shareholders to which current law does not require basis reporting but which may be unable to obtain this information from an MMF fund in the absence of an explicit regulatory requirement?

If the Treasury Department and the IRS were to provide administrative relief for *de minimis* losses on wash sales of shares in MMFs, what should be the terms of that relief?

How significant are the accounting and operational considerations relating to floating-NAV MMFs? To lessen possible issues arising from these considerations, what recommendations would commenters have for possible changes to accounting treatment for floating-NAV MMFs? What amount of operational costs would fund groups incur to implement a floating NAV for MMFs? To what extent are funds and their intermediaries currently prepared to operate floating-NAV MMFs on an ongoing basis due to the current

[79] To see one example of a floating-NAV MMF that conducts same-day settlement, *see* DWS Variable NAV Money Fund Prospectus (Dec. 1, 2011) (''If the fund receives a sell request prior to the 4:00 p.m. Eastern time cut-off, the proceeds will normally be wired on the same day. However, the shares sold will not earn that day's dividend.'').

[80] *See generally* ICI January PWG Letter; Comment Letter of the American Bankers Association, SEC File No. S7–11–09 (Sept. 8, 2009); Comment Letter of Fidelity Investments, SEC File No. 4–619 (Feb. 3, 2012); Comment Letter of Treasury Strategies, Inc., SEC File No. S7–11–09 (Sept. 8, 2009).

[81] *See, e.g.,* Comment Letter of the Investment Company Institute, SEC File No. 4–619 (Apr. 19, 2012) (enclosing survey data reflecting, among other things, that 79 percent of the 203 respondents (corporate, government, and institutional investors) would decrease or stop using MMFs if the funds had floating NAVs); Comment Letter of Fidelity Investments, SEC File No. 4–619 (Feb. 3, 2012) (enclosing survey data reflecting, among other things, that 57 percent of surveyed institutional investors and 47 percent of surveyed retail investors would reduce or eliminate their investments in MMFs if the funds used floating NAVs). Some institutional investors could be required to seek changes to investment policies or statutory or regulatory restrictions that otherwise could preclude them from investing certain assets in funds with floating NAVs. *See, e.g.,* Comment Letter of the American Bankers Association, SEC File No. S7–11–09 (Sept. 8, 2009).

[82] *See, e.g.,* Comment Letter of HSBC Global Asset Management on the European Commission's Green Paper on Shadow Banking (May 28, 2012), *available at http://ec.europa.eu/internal_market/consultations/2012/shadow/individual-others/hsbc_en.pdf.* ''We believe any ambiguity of risk ownership must be removed so risk is correctly priced. We therefore propose a prohibition on MMF sponsors providing support to their MMFs. This will make clear to all investors that they are buying an investment product and own the risks and rewards of that investment.''

requirement that MMFs be able to transact at a price other than the fund's stable price per share and as a result of the group's existing systems for their other mutual funds?

Would investors and their accountants consider floating-NAV MMFs to be cash equivalents under relevant accounting guidance without clarification by accounting standard setters? If not, what are the implications for a shareholder that treats MMF shares as an investment for accounting purposes? If not, and if there were relief on the potential accounting considerations, would these funds be an attractive investment to investors?

Should any types of MMFs be exempt from a requirement that they operate with a floating NAV, such as retail MMFs, Treasury MMFs, or government MMFs? If so, why? If there were an exemption for retail funds, how should the SEC define a retail MMF?

Should MMFs be required to mark-to-market all assets in their portfolios under this option and be limited in using the amortized cost method of valuation to the same extent as other mutual funds? Why or why not? If the SEC required MMFs to use floating NAVs like other mutual funds, should it nonetheless continue to permit different valuation practices regarding portfolio securities for MMFs versus other mutual funds? How effective would this be during times of stress, when markets for such securities may be less liquid or transparent?

Should a floating NAV requirement be combined with any other regulatory reform options, such as redemption restrictions, to further lessen funds' susceptibility to runs? If so, which restrictions and why?

How would floating the NAV affect investor demand for MMFs? To what extent and why would investors discontinue investing in MMFs if they operated with a floating NAV? Where would investors shift their investments and how would this mitigate or increase risks to financial stability?

B. Alternative Two: NAV Buffer and Minimum Balance at Risk

Require MMFs to have an NAV buffer with a tailored amount of assets of up to 1 percent to absorb day-to-day fluctuations in the value of the funds' portfolio securities and allow the funds to maintain a stable NAV. The NAV buffer would have an appropriate transition period and could be raised through various methods. The NAV buffer would be paired with a requirement that 3 percent of a shareholder's highest account value in excess of $100,000 during the previous 30 days—a minimum balance at risk (MBR)—be made available for redemption on a delayed basis. Most redemptions would be unaffected by this requirement, but redemptions of an investor's MBR itself would be delayed for 30 days. In the event that an MMF suffers losses that exceed its NAV buffer, the losses would be borne first by the MBRs of shareholders who have recently redeemed, creating a disincentive to redeem and providing protection for shareholders who remain in the fund. These requirements would not apply to Treasury MMFs, and the MBR requirement would not apply to investors with account balances below $100,000.

(i) Description of the Alternative

A second regulatory reform alternative would mandate that most MMFs: (i) Maintain an NAV buffer, which would be a tailored amount of assets of up to 1 percent in excess of those needed for a fund to maintain its $1.00 share price and which would absorb day-to-day fluctuations in the value of the fund's portfolio securities; and (ii) require that 3 percent of any shareholder's highest account value in excess of $100,000 during the previous 30 days (the MBR) be available for redemption with a 30-day delay. The MBR requirement would have no effect on any redemptions that leave an investor's remaining balance at least as large as the MBR; only redemptions of the MBR itself would be delayed. In the event that an MMF suffers losses that exceed its NAV buffer, those losses would be borne first by the MBRs of shareholders who have recently redeemed. These requirements would not apply to Treasury MMFs, and investors with balances of less than $100,000 would not be subject to the MBR requirement.

The NAV buffer and the MBR would be designed to reduce MMFs' susceptibility to runs by allowing a fund to absorb day-to-day fluctuations in the value of its portfolio securities, providing a disincentive for shareholders to redeem in times of stress, and allocating more fairly the costs to the fund that can result when shareholders do redeem. This alternative would be designed to address the structural vulnerabilities of MMFs while also allowing them to continue to maintain a stable NAV under most conditions.

NAV Buffer

Overview. MMFs would be required to maintain an NAV buffer, which would provide a fund with additional assets that would be available to absorb daily fluctuations in the value of the fund's portfolio securities. The NAV buffer would allow funds generally to maintain a $1.00 stable value per share and replace the provisions of rule 2a–7 that allow MMFs to use the penny-rounding method of pricing and the amortized cost method of valuation.

Size of the NAV buffer. The required minimum size of a fund's NAV buffer would be tailored based on the riskiness of the fund's assets, using the following formula:

(i) No buffer requirement for cash, Treasury securities, and Treasury repos (repos collateralized solely by cash and Treasury securities);

(ii) A 0.75 percent buffer requirement for other daily liquid assets (or for weekly liquid assets, in the case of tax-exempt funds);[83] and

(iii) A 1.00 percent buffer requirement for all other assets.[84]

Treasury MMFs—MMFs that invest at least 80 percent of their assets in cash, Treasury securities, and Treasury repos—would not be required to maintain an NAV buffer.[85] A fund whose NAV buffer fell below the required minimum amount would be required to limit its new investments to cash, Treasury securities, and Treasury repos until its NAV buffer was restored, using the methods discussed below. A fund that completely exhausted its NAV buffer would be required to suspend redemptions and liquidate under rule 22e–3, which the SEC would have to amend for this purpose, or could continue to operate as a floating-NAV MMF indefinitely or until it restored its NAV buffer.[86]

Funding the NAV buffer. An MMF would be permitted to use any funding method or combination of methods it found optimal to build the NAV buffer, and could vary these methods over time in response to market conditions and other considerations. An NAV buffer that may be raised from the capital markets, fund sponsors, and income from the fund itself would be designed to provide flexibility for funds to raise

[83] Daily and weekly liquid assets are defined in rule 2a–7, as described in Section II.

[84] Based on data reported to the SEC on Form N–MFP as of September 30, 2012, the average NAV buffer would be approximately 0.84 percent for prime funds; 0.80 percent for tax-exempt funds; and 0.70 percent for government funds.

[85] Treasury MMFs, despite not having an NAV buffer, generally would be able to maintain a stable value because they would be permitted to continue to use penny rounding. Treasury MMFs also would not be required to have minimum balances at risk, as discussed below.

[86] In the event that a fund is converted to a floating-NAV MMF, any subordinated portion of investors' MBRs (as discussed below) would be depleted before repricing the shares.

the buffer at the lowest possible cost. We have identified three funding methods that would be possible with SEC relief from certain provisions of the Investment Company Act:

• *Escrow account.* An MMF's sponsor could establish and contribute assets to an escrow account pledged to support the fund's NAV. The escrow account would be limited to holding weekly liquid assets (*i.e.,* cash, Treasury securities, certain short-term government securities, and securities payable within five business days). These accounts would be similar to the segregated accounts established by some MMF sponsors during the financial crisis to support their funds' stable values,[87] and therefore are a tested and, for some, familiar method of funding.

• *Subordinated buffer shares.* MMFs could issue a class of subordinated, non-redeemable equity securities (buffer shares) that would absorb first losses in the funds' portfolios and that could be sold to third parties or purchased by a fund's sponsor or affiliates. The buffer shares would be permitted to pay higher dividends than those paid to redeemable shares but would have a subordinated claim on the fund's assets. The fund's redeemable shares would offer a preferred claim on the fund's assets up to $1.00 per share (*i.e.,* the buffer shares would absorb losses before they affect the redeemable shareholder's $1.00 share value).[88]

• *Retained earnings.* An MMF could retain some earnings it otherwise would distribute to shareholders. The usefulness of this method of funding, however, would be greatly limited by the tax law requirements for maintaining the ability to avoid any fund-level tax. In addition to incurring tax on any amount retained, an MMF would be required to pay tax on the amounts that it does distribute if it fails to distribute substantially all of its earnings each year.

In order to permit an MMF to build its NAV buffer through the issuance of buffer shares or the retention of earnings, the SEC would need to amend rule 2a–7 to allow the fund to redeem and sell its redeemable shares for $1.00 per share, even when the value of the fund's assets, including the NAV buffer, is above $1.00.[89] In addition, a fund could be permitted to reduce an NAV buffer that becomes too large relative to the size of the fund's portfolio. A fund's board of directors could allow the fund to repurchase buffer shares, and a sponsor could recover assets it had contributed to an escrow account, in both cases only if the fund would exceed the minimum required NAV buffer immediately thereafter.

Transition period. In order to allow sufficient time for funds to raise the NAV buffer, an MMF would be required to put in place a buffer equal to one-half of the buffer described above one year after the effective date of any rule. The full required buffer would have to be in place two years after the effective date.

Minimum Balance at Risk

Overview. The NAV buffer would be coupled with a requirement that 3 percent of any shareholder's highest account value in excess of $100,000 during the previous 30 days (the shareholder's MBR) be available for redemption only with a 30-day delay. The MBR requirement would have no effect on any redemptions that leave an investor's remaining balance at least as large as the MBR. Shares other than those in the investor's MBR would be redeemable on demand, just as MMF shares are today; only redemptions of the MBR itself would be delayed. The MBR requirement, like the NAV buffer, would not apply to Treasury MMFs. In addition, the MBR requirement would not apply to investors with account balances of less than $100,000.

The MBR requirement would ensure that an investor who redeems from an MMF remains partially invested in the fund for 30 days and would share in any losses that the fund incurs during that time. This is designed to dampen investors' incentive to redeem quickly in a crisis, because they cannot entirely avoid imminent losses simply by redeeming. Furthermore, as discussed in more detail below, if the MMF suffers losses that exceed its NAV buffer, those losses would be borne first by the MBRs of shareholders who have recently redeemed. This allocation of losses would be designed to create a disincentive to redeem when an MMF is under stress and would provide some protection for shareholders who do not redeem.

Size of the MBR. An investor's MBR would be equal to 3 percent of the investor's ''High Water Mark,'' which would be the amount, if any, by which the highest balance in that investor's account over the previous 30 days exceeded $100,000. At any point in time, an investor's account balance available for immediate redemptions would be equal to the account balance less the MBR (the investor's ''Available Balance'').[90]

MBR delay period. If an investor chooses to redeem more than the Available Balance (*e.g.,* all of the shares in the account), the fund would be required to delay redemption of the MBR for 30 days. The investor would receive the MBR redemption proceeds, priced at $1.00 per share, after the 30-day delay period, unless the MMF suffered a loss in excess of its NAV buffer during that period. The MBR requirement would have no effect on an investor's transactions in the fund as long as the remaining shares exceeded the MBR.

Subordination of the MBR. For those investors subject to an MBR requirement, a portion of the investor's MBR could be subject to first loss (subordinated) if the investor had made net redemptions in excess of $100,000 during the prior 30 days, with the extent of subordination approximately proportionate to the shareholder's cumulative net redemptions during the prior 30 days.[91] In the event that an MMF suffered losses in excess of its NAV buffer, and only in such an event, the subordinated portions of shareholders' MBRs would absorb losses before other shares do.[92]

Illustrative examples.[93] The following examples illustrate how an MBR requirement would operate:

[87] *See, e.g.,* SEC Staff No-Action Letter to Legg Mason Partners Institutional Trust—Western Asset Institutional Money Market Fund (Oct. 22, 2008).

[88] To prevent overreaching on the part of a sponsor or affiliate, the MMF would not be permitted to pay buffer shares held by a sponsor or affiliate dividends at a higher rate than that paid to the redeemable shares unless at least 75 percent of the fund's buffer shares were owned by unaffiliated persons. This limitation would be designed to ensure that sponsors and other affiliates would receive dividends on their buffer shares at rates established in an arms'-length process.

[89] Today, in contrast, if a fund's market-based NAV exceeds $1.00 by more than 50 basis points, the fund would have to re-price its shares to $1.01 (or higher).

[90] The MBR calculation would exclude any MBR shares that the shareholder has tendered for redemption but that have not yet been redeemed due to the required delay period.

[91] Specifically, the number of subordinated shares would be zero for an investor whose account value exceeds the High Water Mark, as would be the case for any investor with an account balance that has not recently (or ever) exceeded $100,000. Otherwise, the fund would determine the number of subordinated MBR shares as follows: MBR × ((High Water Mark – current balance) ÷ (High Water Mark – MBR)).

[92] Losses that exceed the total of the fund's NAV buffer and the subordinated portions of shareholders' MBRs would be absorbed by the remaining portions of investors' MBRs. Any losses that exceed the total of the fund's NAV buffer and all of its shareholders' MBRs (subordinated and unsubordinated) would be allocated proportionally among the remaining shares in the fund. MMFs would be required to file as exhibits to their registration statements plans of liquidation providing for the liquidation of their assets in accordance with these priorities.

[93] For additional analysis on the operation of a minimum balance at risk requirement, see Patrick E. McCabe, Marco Cipriani, Michael Holscher, and Antoine Martin, *The Minimum Balance at Risk: A*

(a) An investor with a $200,000 MMF account and a $100,000 High Water Mark redeems $120,000. The transaction is unaffected by the MBR requirement because the remaining balance of $80,000 exceeds the MBR of $3,000 (equal to 3 percent of the High Water Mark). The transaction does, however, cause a portion of the investor's MBR to be placed in a subordinated, or first-loss, position. The portion of the MBR that would be subordinated is $619.[94]

(b) The investor closes the account the next day. The investor receives $77,000, all of the Available Balance, immediately. This represents the entire remaining account value of $80,000 less the $3,000 MBR. The MBR shares will be redeemed after a 30-day delay. By closing the account, the investor causes its entire MBR to be subordinated for that 30-day period.[95] However, the investor will receive the full $3,000 after the 30-day delay, unless the fund suffers losses in excess of its NAV buffer.

Design considerations. The 30-day delay period is designed to provide protection against preemptive runs while not unnecessarily inconveniencing redeeming shareholders or blunting the role of redemptions in imposing market discipline on MMFs. The delay should be sufficient to ensure that redeeming shareholders remain invested in the fund long enough to share in any losses due to stress on the fund at the time of redemption or liquidity costs that might be generated by their redemptions. On average, about half of MMF portfolio assets mature in 30 days or less,[96] and a 30-day period likely would be long enough to prevent a shareholder from avoiding a specific anticipated loss by preemptively redeeming. As a result, the 30-day delay period would provide more protection against preemptive runs than might occur with shorter delay periods. The MBR may also enhance market discipline by causing MMF investors to monitor more carefully MMF operations and risk-taking and redeem shares from a poorly run MMF well in advance of any specific problems developing in the fund's portfolio because investors would be unable to redeem quickly during a crisis to avoid losses.

The size of the MBR (3 percent) is designed to be large enough to mitigate the risk of destabilizing runs while, at the same time, not so large as to unnecessarily inconvenience shareholders. In order to reduce the incentives for investors to redeem from an MMF under stress, the combined size of the MBR and the NAV buffer must be greater than the expected portfolio losses in such an MMF as well as the liquidity losses that investors may suffer as a consequence of the MMF's closure.

The 3-percent MBR, combined with the NAV buffer, is designed to mitigate this risk in most potential loss scenarios. For example, although the record of MMF losses has been obscured by sponsor support actions, two MMFs have broken the buck since the adoption of rule 2a–7 in 1983. The Community Bankers U.S. Government Money Market Fund lost 3.9 percent of its value in 1994, and the Reserve Primary Fund announced a 3-percent loss on September 16, 2008. In addition, as previously discussed, data collected from MMFs participating in the Treasury's Temporary Guarantee Program for Money Market Funds show that losses among MMFs that would have broken the buck in the absence of sponsor support averaged 2.2 percent, including five funds that had losses exceeding 3 percent.[97] A default of MMFs' largest single-name exposures could also produce similarly sized losses. As of September 30, 2012, the average prime MMF had investments in approximately 20 firms that each exceeded 1 percent of the fund's assets and had investments in securities issued by seven firms, predominately financial institutions, that each exceeded 3 percent of the fund's assets.[98]

Importantly, because the MBR creates a disincentive for large redemptions when a fund is under stress and expected losses are less than the size of the MBR, the MBR's size need not exceed every conceivable loss to be effective in preventing runs from spreading among funds. While the combination of the NAV buffer and the 3-percent MBR likely would not be sufficient to stop a run on an MMF if investors anticipate very large losses in that fund, such a combination may be large enough to stem runs on most other funds unless investors expect that very large losses would be incurred across MMFs.

Application to recordholders. MMFs would be required to apply the MBR requirement to each of their recordholders. This would include recordholders that are financial intermediaries, such as banks or broker-dealers that hold shares on behalf of their customers, unless the intermediaries provide the MMF sufficient information to apply the MBR requirement to the intermediaries' individual customers directly. Absent such information, an MMF and its financial intermediary recordholders would allocate between themselves the responsibility (and associated costs) of applying the MBR requirement equitably.[99]

Treasury MMFs and retail investors. Treasury MMFs would not be required to maintain NAV buffers, and their shareholders would not have MBRs. Treasury MMFs are unlikely to suffer credit events; tend to experience net inflows, rather than net redemptions, in times of stress; and may be more likely to maintain a stable value during times of market stress, when Treasury securities generally maintain their values. Treasury MMFs would continue to be able to use penny rounding to maintain a stable value.

Because the MBR only applies to investors with account balances greater than $100,000, many retail investors would not be subject to the MBR requirement. The experience of MMFs during the financial crisis and the redemption pressures that some MMFs experienced in the summer of 2011 suggest that retail investors are far less likely to redeem in times of stress. In both episodes, institutional MMFs experienced substantially more redemptions than retail MMFs.[100]

(ii) Benefits and Considerations

A requirement for most MMFs to maintain NAV buffers and MBRs could mitigate funds' susceptibility to runs

Proposal To Mitigate the Systemic Risks Posed by Money Market Funds, Federal Reserve Bank of New York Staff Report No. 564 (July 2012).

[94] The subordinated portion of the MBR would be: MBR × ((High Water Mark − current balance) ÷ (High Water Mark − MBR)). Here, this amount is $3,000 × ($100,000 − $80,000) ÷ ($100,000 − $3,000)) = $619.

[95] That is, the subordinated portion of the MBR would be: MBR × ((High Water Mark − current balance) ÷ (High Water Mark − MBR)). Here, this amount is $3,000 × ($100,000 − $3,000) ÷ ($100,000 − $3,000)) = $3,000.

[96] Data reported to the SEC on Form N–MFP show that as of September 30, 2012, 52 percent of all MMF assets and 47 percent of prime MMF assets matured in 30 days or less.

[97] These data exclude losses that were absorbed by some forms of sponsor support, such as direct cash infusions to a fund and outright purchases of securities from a fund at above-market prices, so the number of funds that would have broken the buck in the absence of all forms of support may have exceeded 29. *See* McCabe, Cipriani, Holscher, and Martin, 2012.

[98] Based on data reported to the SEC on Form N–MFP as of September 30, 2012. Excludes exposures through repo backed by U.S. government securities and sponsored ABCP conduits. The definition of firm in this analysis differs from the definition of issuer in rule 2a–7, as it combines all affiliates within a single consolidated group as one firm.

[99] Although financial intermediaries would not be required by rule 2a–7 to apply the minimum balance at risk to their customers, they may need to do so (or take other measures) to ensure their customers are treated fairly in times of stress (*i.e.,* to ensure that delays in redemptions for various customers are managed equitably).

[100] *See* Section IV.

and reduce the likelihood of resulting financial instability in several ways.

Reduced first-mover advantage. A buffer-supported NAV would reduce the first-mover advantage that exists under rule 2a–7's current rounding conventions.[101] Specifically, by removing shareholders' ability to redeem at $1.00 per share when the fund's market-based NAV is below $1.00, the NAV buffer would be designed to prevent redeeming shareholders from extracting more than their *pro rata* share of fund assets.[102]

Explicit support. A fully funded NAV buffer would give the fund an explicit form of support that would be designed to enable the fund to absorb day-to-day fluctuations in the value of its portfolio, such as declines in the value of assets following increases in interest rates and minor credit losses. Unlike the discretionary sponsor support discussed in Section IV, the availability of the prefunded NAV buffer to support the fund during times of stress would not be in question.

Additional discipline on fund managers. The NAV buffer could impose additional discipline on fund managers by ensuring that small losses, which today are not reflected in funds' share prices, force changes in portfolio management. If an MMF's NAV buffer fell below the required amount, until the buffer is repaired, the fund would be required to limit its new investments to cash, Treasury securities, and Treasury repos. Repairing the buffer could be costly, and foregoing potentially higher-yielding investments to repair the buffer could reduce the fund's yield and its appeal to investors. As such, the buffer requirement may diminish the attractiveness of risky portfolio strategies that might lead to losses that erode a fund's NAV buffer.

Increased flexibility to sell securities. The NAV buffer also could increase the resilience of MMFs by providing them with additional flexibility to sell securities that have suffered small losses because such losses could be absorbed by the buffer. Today, in contrast, such losses may reduce the fund's market-based NAV below $1.00 per share and potentially heighten the risks of a run. Recognizing this, MMFs tend to avoid selling securities that have suffered small losses and instead dispose of securities that have not suffered losses first. Hence, the reluctance to sell securities that have suffered small losses can contribute to the first-mover advantage for redeeming investors.

Redeeming shareholders share in losses caused by redemptions. The MBR requirement could make MMFs more resilient by diminishing or reversing the first-mover advantage for investors who might otherwise redeem MMF shares when their fund is under stress. Investors who make sufficiently large redemptions from an MMF subject to an MBR requirement would remain partially invested in the fund for 30 days and would share in any losses that the fund might experience during that time, including losses that may be caused directly or indirectly by their own redemptions.

Disincentive for investors to redeem during times of stress. The MBR requirement would be designed to create a disincentive for redemptions from a fund that is at risk of suffering losses that an investor expects will be less than the NAV buffer plus the MBR. An investor with an account balance greater than $100,000 in such a fund could minimize or potentially avoid entirely any expected losses by not redeeming and not subordinating a portion of its MBR.

Protection for shareholders who do not redeem. The MBR requirement would provide some protection for investors who do not redeem from an MMF under stress. Because redeeming investors would share in losses that immediately follow their redemptions, investors who have not redeemed would not be forced to bear all of the fund's losses in excess of its NAV buffer. In addition, the portions of redeeming investors' MBRs that are subordinated would, by absorbing first losses, provide additional protection for the shareholders who do not redeem from a fund that suffers losses that exceed its NAV buffer.

Reduced investor yields. The NAV buffer likely would either directly or indirectly reduce the yield funds offer investors. For example, an NAV buffer funded through the issuance of buffer shares or a combination of the issuance of buffer shares and the retention of earnings would diminish the net yields paid to investors who hold the fund's redeemable shares. Although a sponsor-provided buffer would not directly reduce the fund's yield,[103] sponsors likely would pass on to investors some or all of the costs of providing the buffer. In addition, this may raise fairness concerns if MMF investors receive reduced yields in order to build a buffer that benefits subsequent investors.

Impact on sponsors. Sponsors that chose to provide NAV buffers for their MMFs also could be required to consolidate their MMFs on their balance sheets for accounting purposes. If the MMFs were consolidated on sponsor balance sheets or the sponsor provided explicit guarantees or liquidity facilities to their MMFs, this could have bank regulatory capital implications if the sponsor was affiliated with a bank or bank holding company.

Operational and technology costs. All three of the methods for funding the NAV buffer that are discussed above likely would involve operational and technology costs. These include the costs of raising capital for MMFs that issue buffer shares and for sponsors that obtain funding for their funds' NAV buffers in the capital markets. Capital-raising costs also would include legal, accounting, and issuance expenses (*e.g.,* road show costs). Funds also could incur one-time costs in seeking any shareholder approvals that may be necessary, such as authorization to issue buffer shares. MMFs that enhance buffers by retaining earnings would face additional tax costs. It is important to note, however, that some of these costs associated with capital raising may be reallocations of existing costs that have been borne indirectly by fund sponsors that have provided, or were prepared to provide, discretionary support.

Costs also would include one-time set-up costs (*e.g.,* reprogramming systems to fair value certain portfolio securities, rather than valuing them at their amortized cost, and reprogramming compliance systems to track NAV buffer levels). There also may be ongoing operational costs associated with the requirement to fair value a larger number of the securities in funds' portfolios.

The MBR also would involve operational and technology costs, which could be substantial, including to implement and maintain systems to track investors' High Water Marks, MBR shares that are subject to redemption

[101] Commenters have suggested that an NAV buffer could make MMFs less susceptible to runs. *See, e.g.,* Comment Letter of Fidelity Investments, Charles Schwab, and Wells Fargo, SEC File No. 4–619 (May 3, 2011). Some commenters, however, have argued for substantially larger buffers to accomplish this objective. *See, e.g.,* Comment Letter of the Squam Lake Group, SEC File No. 4–619 (Jan. 14, 2011).

[102] As one commenter explained, the NAV buffer, in contrast to the buffering effect of the rounded NAV, generally would increase in size as investors redeem, assuming there are no portfolio losses. *See* Comment Letter of Fidelity Investments, Charles Schwab, and Wells Fargo, SEC File No. 4–619 (May 3, 2011) (''[A] key feature of the NAV buffer is that a fund's market value per share would typically increase as shareholders redeem. This greatly reduces any incentive for shareholders to run on the fund.'')

[103] The escrow account, although it would not itself directly decrease a fund's yield, also would not increase it, because any yield earned on the instruments held in the account would be for the benefit of the fund's sponsor as the owner of the account.

delays, and any subordinated MBR shares. Institutional shareholders also could incur one-time operational costs to reprogram their cash management systems to take account of the MBR requirement.

Impact on derivatives clearing organizations and futures commission merchants. An MBR requirement could lead the Commodity Futures Trading Commission (CFTC) to reassess customer funds investment regulations as they pertain to MMFs other than Treasury MMFs. Investments in MMFs subject to an MBR would not satisfy the CFTC's requirements for investment of customer funds supporting futures and swaps positions. The CFTC's next-day redemption requirement provides that for such investments in MMFs, the MMF must be ''legally obligated to redeem an interest and to make payment in satisfaction thereof by the business day following a redemption request.'' [104] The next-day redemption requirement is intended to ensure that an investment of customer funds is sufficiently liquid, thereby permitting the reliable and timely flow of daily customer variation margin payments.

Impact on demand for MMFs. While this alternative likely would make MMFs more resilient, it also could make the funds less appealing in other respects by diminishing the net yields that the funds pay to investors and by placing constraints on the liquidity currently available to MMF shareholders. The MBR may be confusing to some investors, particularly initially, and may be unattractive to those who have come to expect full and immediate liquidity from their MMFs (potentially to the detriment of the investors who remain in the fund). Some investors may find the MBR inconvenient and may require significant operational changes. Institutional investors may not be willing to incur the operational costs necessary to accommodate an MBR.[105] The application of the MBR could be particularly complex as applied to fund shares sold through series of intermediaries in the MMFs' distribution chains.[106] Some investors therefore could reduce or eliminate their investments in MMFs subject to the NAV buffer and MBR requirements.[107] Some MMF sponsors may be less willing to offer MMFs subject to the NAV buffer and MBR requirements because they expect that demand for such funds might be limited and because of additional costs required to operate them.[108]

All of these considerations could reduce the size and assets of the MMF industry as funds exit the market to avoid the NAV buffer and MBR requirements or as investors choose other investment vehicles. This could lead to an increase in demand for other investment vehicles not subject to these requirements.

(iii) Questions

The Council requests comment on this alternative as well as on all aspects of the discussion presented above. The Council also requests any quantitative analysis or data from commenters relating to this alternative.

Would requiring most MMFs to maintain NAV buffers and MBRs make the funds less susceptible to runs? Would this alternative reduce the potential financial instability associated with MMFs?

Would this alternative make MMFs more resilient by replacing the rounding conventions currently provided by rule 2a–7 with a transparent and prefunded NAV buffer? Would the buffer requirement help foster discipline for fund managers? Would it reduce the uncertainty for investors caused by the current reliance on sponsor support to absorb minor losses in MMF portfolios? Would such uncertainty be maintained if sponsors, on a discretionary basis, provided financial support to prevent material decline of the required NAV buffer?

Should MMFs be required to maintain an NAV buffer of a different size? When combined with an MBR requirement, should the NAV buffer be larger or smaller? Should the NAV buffer requirements applicable to various types of MMF portfolio assets be different? Should funds have the flexibility to raise the NAV buffer through a variety of funding methods? If not, which methods should funds be required to use and why? What governance, incentive, and other concerns are raised by each method of funding a buffer? Are there additional funding methods that would require relief from the SEC, or particular methods that the SEC should preclude? Could additional types of buffer shares, other than equity securities, be used to create an NAV buffer? Would some sponsors' cost advantage in providing their funds' NAV buffers give competitive advantages to their MMFs? If so, how would this affect the financial instability associated with MMFs? How could the SEC design an NAV buffer requirement to mitigate any such competitive advantages? Should the SEC, for example, mandate that the NAV buffer could be raised only through a combination of the issuance of buffer shares and a fund's retention of earnings, because these methods of funding potentially would be available to all MMFs? Is the contemplated NAV buffer phase-in appropriate? If not, should it be shorter or longer?

Would the MBR requirement make MMFs more resilient by requiring some redeeming investors to remain partially invested in an MMF for 30 days? Would a 3 percent MBR be sufficiently large to mitigate the risk of runs on MMFs? Should be it be larger or smaller? Should the length of the redemption delay be longer or shorter than 30 days? Does a 3 percent MBR with a 30-day redemption delay appropriately balance the objectives of reducing the vulnerability of MMFs to runs without burdening unnecessarily the funds and their shareholders? Does it preserve the role of redemptions in providing market discipline for MMFs? Should each investor's MBR be a portion of its High Water Mark, a portion of the average of the investor's balance over the previous 30 days or some other period, or some other measure? Would an alternative

[104] Investment of Customer Funds, 17 CFR 1.25(c)(5)(i) (2012). For such investments, the MMF may postpone the redemption only in certain enumerated, extraordinary circumstances such as the non-routine closure of the Fedwire or the existence of an emergency situation (as determined under SEC rules).

[105] *See, e.g.,* Comment Letter of the Investment Company Institute, SEC File No. 4–619 (June 20, 2012) (providing an analysis of operational impacts of proposed redemption restrictions); Comment Letter of Treasury Strategies, SEC File No. 4–619 (Apr. 27, 2012) (providing an analysis on holdback requirements); Comment Letter of DST Systems, Inc., SEC File No. 4–619 (Mar. 2, 2012) (describing ''systems and operational impacts'' associated with a holdback requirement based on a stated percentage of an investor's average account balance over a 30-day period).

[106] *See, e.g.,* Comment Letter of DST Systems, Inc., SEC File No. 4–619 (Mar. 2, 2012) (''The omnibus accounting layers that exists in the mutual fund shareholder recordkeeping environment would provide further complexity with a minimum balance requirement.'').

[107] *See, e.g.,* Comment Letter of the Investment Company Institute, SEC File No. 4–619 (Apr. 19, 2012) (enclosing survey data reflecting that some investors would reduce their investments in MMFs, or stop using the funds, if MMFs had a holdback requirement); Comment Letter of Sungard Global Network, SEC File No. 4–619 (Mar. 16, 2012) (stating that ''88 percent of corporate treasurers and cash managers surveyed in the 2011 SunGard investment study cited immediate access to cash as a major requirement of their cash investment policies'') (emphasis in original).

[108] Comment Letter of the Investment Company Institute, SEC File No. 4–619 (June 20, 2012) (''[The costs of these changes [operational changes required to implement an MBR] could be prohibitive and * * * the industry would be unlikely to undertake them, particularly if the SEC's changes result in shrinking the asset base of money market funds.'').

approach toward subordination be more effective? [109]

Are the exemptions from the NAV buffer and MBR requirements for Treasury MMFs appropriate? Should the SEC provide exemptions for other types of funds?

Some retail investors—those with balances of less than $100,000—would not be subject to the MBR requirement because retail investors may be less likely to participate in a run. Are retail investors less likely to participate in a run? Would MMFs consisting primarily of retail investors not subject to an MBR requirement be at increased risk? Is it appropriate to define a retail investor for this purpose by reference to the size of the investor's account? If so, should the threshold be $100,000, or should it be higher or lower, and why? If not, what other characteristics would be more appropriate? How would MMFs apply this exemption to omnibus accounts? Should MMFs be required to have transparency through these accounts to apply the exemption?

Should the SEC provide an exemption from the MBR for redemptions made in accordance with a plan that a shareholder has provided to the fund in advance? If so, how far in advance should a shareholder be required to notify the MMF of the shareholder's redemptions plans in order to prevent the shareholder from using the exemption to avoid redemption delays when MMFs are under stress?

Are there ways to reduce the operational and other costs associated with implementing the NAV buffer and the MBR? What is a realistic timeframe for implementation of these changes from an operational perspective? Who would bear these one-time and recurring costs? Would these costs end up being absorbed by fund sponsors, financial intermediaries, or investors in these funds? To what extent would these costs affect MMF sponsors' willingness to offer non-Treasury MMFs under this alternative? To what extent are the costs associated with the NAV buffer new costs, as opposed to costs that have been borne by some fund sponsors?

How would the combined effects of any reduction in yield from the NAV buffer and inconvenience caused by restrictions on redemptions from the MBR affect investor demand for MMFs? To what extent and why would investors discontinue investing in MMFs subject to these requirements? If a reduction in demand is anticipated, to which other investment vehicles would investors most likely shift money? What would be the net effect on financial stability?

C. Alternative Three: NAV Buffer and Other Measures

Require MMFs to have a risk-based NAV buffer of 3 percent to provide explicit loss-absorption capacity that could be combined with other measures to enhance the effectiveness of the buffer and potentially increase the resiliency of MMFs. Other measures could include more stringent investment diversification requirements, increased minimum liquidity levels, and more robust disclosure requirements. The NAV buffer would have an appropriate transition period and could be raised through various methods. To the extent that it can be adequately demonstrated that more stringent investment diversification requirements, alone or in combination with other measures, complement the NAV buffer and further reduce the vulnerabilities of MMFs, the Council could include these measures in its final recommendation and would reduce the size of the NAV buffer required under this alternative accordingly.

Description of the Alternative

This alternative would incorporate a larger risk-based NAV buffer than Alternative Two, of 3 percent, that could be combined with other measures to enhance MMFs' loss-absorption capacity and mitigate the run vulnerabilities that would be addressed by the MBR in Alternative Two. To the extent that more stringent investment diversification requirements, alone or in combination with other measures, complement the NAV buffer and reduce MMFs' vulnerabilities, the Council could include them in its final recommendation. These measures could serve to reduce the size of the NAV buffer required under this alternative accordingly. The Council requests comment on how the other measures might be structured; how, if at all, they could complement the NAV buffer and reduce the vulnerabilities described in Section IV; and whether more stringent investment diversification requirements, alone or in combination with other measures, would increase MMFs' resiliency sufficiently to warrant a smaller NAV buffer requirement.

NAV Buffer

(i) Description

The NAV buffer would function as outlined in Alternative Two in most respects, including the various funding methods for the NAV buffer (such as an escrow account, subordinated buffer shares, and retained earnings), the exclusion for Treasury MMFs from the requirement, and the implications of depleting the buffer. However, in contrast to Alternative Two, the NAV buffer of 3 percent would be designed to provide greater loss-absorption capacity.

Buffer size. In Alternative Two, the NAV buffer is primarily designed to absorb day-to-day variations in the mark-to-market value of MMFs' portfolio holdings, and the MBR serves as the primary tool to reduce investors' incentive to redeem their shares when a fund encounters stress. In Alternative Three, the NAV buffer would serve as the primary tool to increase the resiliency of MMFs and reduce their vulnerability to runs. While the other measures described below would be designed to complement the NAV buffer, they would be unlikely to provide the same structural protections as the MBR described in Alternative Two. Given these considerations, the NAV buffer in this alternative must be significantly larger to provide greater capacity to absorb losses, lower the probability that a fund would fully deplete its buffer, and, accordingly, reduce the incentive of investors to run during times of stress.

As in Alternative Two, the required minimum size of a fund's NAV buffer would be tailored based on the riskiness of the fund's assets, using the following formula:

(i) No buffer requirement for cash, Treasury securities, and Treasury repos (*i.e.,* repos collateralized solely by cash or Treasury securities);

(ii) A 2.25 percent buffer requirement for other daily liquid assets (or for weekly liquid assets, in the case of tax-exempt funds); [110] and

(iii) A 3.00 percent buffer requirement for all other assets.[111]

If more stringent investment diversification requirements, possibly in combination with other measures outlined below, are determined to work in tandem with the NAV buffer and reduce MMFs' vulnerabilities, they could be included in this alternative in the Council's final recommendation and the level of this buffer requirement would be lowered accordingly. Similar to Alternative Two, Treasury MMFs would not be required to maintain an NAV buffer.

[109] *See* McCabe, Cipriani, Holscher, and Martin, 2012 for a discussion of a number of alternative methods of allocating first losses.

[110] The definitions of daily and weekly liquid assets are those provided by rule 2a–7. See Section II.

[111] Based on data reported to the SEC on Form N–MFP as of September 30, 2012, the average NAV buffer would be approximately 2.51 percent for prime funds; 2.39 percent for tax-exempt funds; and 2.10 percent for government funds.

Transition period. In order to allow sufficient time for funds to raise the larger NAV buffer, under this alternative a phase-in period would be provided for funds to reach the full buffer levels. An NAV buffer of one-sixth of the total amount would become effective after one year and an NAV buffer of one-third of the total amount would become effective after two years. A multi-year transition period would follow to allow the full implementation of the required NAV buffer levels contemplated in this alternative.

(ii) Benefits and Considerations

The main benefits and considerations associated with the NAV buffer were discussed in Alternative Two. However, given the absence of an MBR in this alternative, a brief discussion of the calibration of the buffer amount and transition period is warranted.

Additional loss-absorption capacity. A larger NAV buffer would provide funds with additional capacity to absorb fluctuations in the market value of portfolio securities and credit losses. While MMFs generally provide stable value and invest in lower-risk securities, experience has shown (as discussed in Section IV) that funds can experience losses exceeding the NAV buffer level of 1 percent contemplated in Alternative Two. In addition, based on the size of MMFs' largest single-name exposures (as discussed in Section V.B), the failure of any of these firms could result in losses potentially exceeding a buffer of such size. The additional loss-absorption capacity provided by the larger NAV buffer in this alternative could reduce the number of firms whose failure could fully deplete the fund's NAV buffer and decrease the likelihood that an MMF experiences losses that threaten the stable value per share. This may reduce the first-mover advantage and decrease the motivation for investors to redeem during periods of stress as long as they expect any losses to be less than the size of the buffer (discussed further below).

Reduced incentive for excessive risk-taking. Additionally, capital buffers can increase the cost of risk-taking *ex ante,* further reducing the probability of distress of an MMF or the MMF industry. For buffers raised through the sale of subordinated buffer shares, third parties purchasing shares may require higher dividends based on the perceived risks of the fund's portfolio securities, therefore limiting the yield benefit any increased risk-taking provides to the redeemable shares. For buffers provided by fund sponsors or retained earnings, the threat of losing this contributed capital may lead fund managers to internalize the cost of any increased risk-taking. This may reduce MMFs' incentive or ability to shift towards riskier assets in order to attract additional investments. The reduction in MMFs' incentive or ability to shift towards riskier assets could be more significant than under Alternative Two because of the increased size of the NAV buffer under this alternative.

Additional costs to MMFs, sponsors, or borrowers. The increased size of the buffer would likely impose additional costs on MMFs or the sponsors who would need to raise the capital.[112] Increasing the size of the NAV buffer may increase the costs of short-term funding, particularly for financial institutions, if MMFs demand higher yields. These costs could also be passed on to MMF investors, in whole or in part, in the form of reduced yield. They also could alter the financial returns for sponsors such that they contemplate exiting or reducing their MMF businesses.

Depending on the funding method chosen (such as an escrow account, subordinated buffer shares, or retained earnings), building higher levels of capital in periods of low interest rates, as exist today, may prove difficult or costly. Although a transition period may reduce the costs of implementing the buffer, it will also result in MMFs having NAV buffers that are smaller than deemed adequate during the transition period.

Reduced, but not eliminated, vulnerability to run. In addition, while the NAV buffer may reduce the probability that an MMF investor suffers losses, it is unlikely to be large enough to absorb all possible losses and may not be sufficient to prevent investors from redeeming when they expect possible losses in excess of the NAV buffer. For instance, the largest average exposure in prime MMFs to a single firm, when aggregating all affiliates and weighting by fund assets, was 4.5 percent.[113] Additionally, as noted in Section IV, prime MMF exposures may be heavily correlated. Therefore, if one firm were to fail, there is a higher probability that additional firms would also fail concurrently, potentially resulting in multiple MMF portfolio losses.

(iii) Questions for Comment

The Council requests comment on this alternative as well as on all aspects of the discussion presented above. The Council also requests any quantitative analysis or data from commenters relating to this alternative.

The Council seeks comment on the size of the NAV buffer. Should the NAV buffer be larger or smaller? Does a larger NAV buffer address the structural vulnerabilities described in Section IV? What type of analysis of MMF portfolio exposures should be undertaken when considering an appropriate size for the NAV buffer?

How would this higher NAV buffer impact investors, short-term financing markets, and long-term economic growth? How would the NAV buffer requirement, and particular MMF's choices of buffer funding methods, affect MMFs' yields? To what extent would an NAV buffer funded solely through buffer shares and the retention of earnings affect a MMF's yield? Could it cause a prime MMF's yield to decrease below those offered by government or Treasury MMFs? In what circumstances could this occur and how likely is it to occur?

The Council also requests comment on the design and duration of the transition period to implement the NAV buffer. How long should the transition period be? Should the transition period be based on economic or market conditions rather than a pre-determined phase-in deadline?

How would the larger NAV buffer in Alternative Three, alone or combined with investment diversification requirements and other measures as discussed below, affect investor demand for MMFs? To what extent and why would investors discontinue investing in MMFs subject to these requirements? Where would investors shift their investments and how would this mitigate or increase risks to financial stability?

When considering the larger NAV buffer in Alternative Three, what mix of other measures described below can most effectively complement the NAV buffer? To the extent that more stringent investment diversification requirements reduce MMFs' vulnerabilities, as discussed below, could such requirements be combined with a lower minimum NAV buffer and, if so, what would be the appropriate minimum? Could other measures be combined with more stringent investment diversification requirements to provide additional protections? Should the

[112] *See, e.g.,* Comment Letter of the Investment Company Institute, SEC File No. 4–619 (May 16, 2012) (enclosing an analysis of certain implications of capital buffers for MMFs); Christopher Payne, Capital Buffer for Money Market Funds Not as Costly as Predicted, Bloomberg Government Study (Sept. 20, 2012).

[113] Based on data reported to the SEC on Form N–MFP as of September 30, 2012 among 243 prime MMFs that filed form N–MFP with the SEC. Analysis excludes exposures through repo backed by U.S. government securities and sponsored ABCP conduits.

Council consider additional risk-based tailoring of the NAV buffer, for instance, based on specific types of MMF assets? Should the required NAV buffer be larger for MMFs with more concentrated exposures, particularly those to financial institutions?

Other Measures

Description. Alternative Three contemplates possible additional measures that may complement the NAV buffer in mitigating run vulnerabilities. These include more stringent investment diversification requirements, increased minimum liquidity levels, and more robust disclosure requirements. These measures individually would likely not significantly alter the activities and practices that make MMFs vulnerable to runs. To the extent that it can be adequately demonstrated that more stringent investment diversification requirements, alone or in combination with other measures, complement the NAV buffer and further reduce MMFs' risks and increase their resiliency, the Council's final recommendation could include these additional measures with the NAV buffer requirement, and the size of the NAV buffer would be reduced accordingly.

More Stringent Investment Diversification Requirements

(i) Description

As noted above, prime MMFs generally have numerous large exposures to individual firms' securities. Rule 2a–7 currently provides that an MMF, other than a single-state fund, ''shall not have [immediately after the acquisition of any security] invested more than 5 percent of its Total Assets in securities issued by the issuer of the security.'' The Council requests comment on two proposed modifications to this provision: (i) Reducing the 5 percent limitation; and (ii) revising the definition of ''issuer'' in this context to include all affiliates of a consolidated group.

(ii) Benefits and Considerations

More stringent investment diversification requirements, particularly when paired with a material NAV buffer, could allow MMFs to potentially weather the default of securities issued by large firms.

Lower maximum loss from default of one firm. A lower limit on exposure to a single firm, when combined with an NAV buffer of 3 percent, would reduce the likelihood that losses from the failure of a single firm would threaten a fund's stable NAV. Similar requirements are utilized in other contexts, including risk management for financial institutions and central clearing parties.

Modifying the calculation to aggregate all related affiliates would align more closely the rule 2a–7 limits with traditional credit analysis concepts. For instance, it is highly likely that material distress at a financial holding company would occur at the same time that its bank or broker-dealer subsidiary was experiencing similar distress, and these interrelationships would have implications for the obligations of both entities.

Reduced funding and less creditworthy investments. However, tightening the investment diversification requirements could materially reduce the amount of funding that MMFs can provide to larger issuers. It also could result in MMFs investing in less creditworthy issuers if MMFs are required to reduce their largest exposures and invest in other firms, or it could cause MMFs to withdraw funding from the financial system and instead invest in less-risky securities (such as Treasury securities) that are not subject to issuer diversification requirements.

(iii) Questions

What impact would these changes have on large issuers and on the short-term funding markets? To the extent that MMF investments are constrained or reduced in response to these restrictions, in what types of securities would MMFs invest?

At what level should the issuer diversification requirements be set? Does adopting a ''cover one'' methodology—whereby each MMF would have sufficient loss absorption capacity to mitigate the failure of its largest investment—provide adequate protection to MMFs? How should these standards be compared to those used in other regulatory contexts?

Should these standards be applied differently to different types of funds (for instance, prime MMFs, government MMFs, and tax-exempt MMFs)? What changes, if any, should be made with respect to the diversification requirements for demand features and guarantees? Should diversification limits apply to credit enhancements other than guarantees and demand features?

What changes should be made, if any, to the definition of ''issuer'' in the context of issuer diversification requirements? Are there other changes to the issuer diversification calculations that would further strengthen these reforms? For example, should diversification requirements for asset-backed securities generally treat as the issuer of the securities the special purpose entity that issued them, the sponsor of the asset-backed securities, or the issuers of the securities underlying the asset-backed securities?

Are there other credit exposure limits that should be tightened to reduce MMFs' risks? For example, should certain types of exposures, such as financial-sector exposures, be subject to limitations? If so, what should the limits be? How should such exposures be defined? Should limits on second-tier securities be tightened? If so, how? Should collateral requirements be more stringent? How should that be accomplished?

Should diversification requirements for providers of demand features and guarantees be tightened? How and to what extent? How might more stringent diversification requirements for providers of demand features and guarantees affect securities markets (particularly markets for tax-exempt securities) in which demand features and guarantees are important? Should limitations on other credit or liquidity enhancements be tightened?

Increased Minimum Liquidity Levels

(i) Description

As discussed in Section II, MMFs are required to maintain liquidity buffers in the form of minimum levels of daily and weekly liquid assets. These liquidity buffers could be increased, for instance, by raising the required level of daily liquidity from the current level of 10 percent to 20 percent, and the minimum weekly liquidity requirement from the current level of 30 percent to 40 percent. While these liquidity requirements would be a significant increase over the current requirements, which were adopted in 2010, they are below the liquidity levels many funds have maintained since Form N–MFP reporting began in late 2010.

As under existing rule 2a–7, if a fund falls below the minimum liquidity requirement, it would be prohibited from acquiring any securities other than daily liquid assets until it is in compliance with the requirement. Tax-exempt funds would remain exempt from the daily liquidity requirement.

Investor transparency. Additional ''know-your-investor'' requirements could be implemented to provide MMFs with increased visibility into omnibus accounts to improve their ability to understand their shareholder base and to predict investors' redemption activity. Today, many MMF shares are held by financial intermediaries on behalf of their customers—the MMF's

beneficial owners—making it difficult for MMFs to obtain information about their beneficial owners and predict their redemption activity. Requiring MMFs to obtain more information about their beneficial owners could help MMFs better understand and predict those investors' behavior, and allow the funds to better manage their liquidity to meet anticipated redemption requests.

(ii) Benefits and Considerations

Increased minimum liquidity levels may limit MMFs' investment risks and increase an MMF's ability to meet heightened redemption requests without selling portfolio securities.

Improved ability to meet redemption requests. Increased minimum liquidity levels may improve a fund's ability to convert portfolio holdings into cash to pay redeeming shareholders. Absent a sufficient supply of liquid assets, heavy redemptions could force a fund to sell less-liquid assets at a discount or at fire-sale prices, not only imposing losses on the fund's remaining shareholders but also potentially causing losses for other funds that hold similar securities. Increased minimum liquidity levels may increase the effectiveness of the NAV buffer and reduce the likelihood that periods of stress force fire sales that deplete MMFs' buffers.

Enhanced liquidity management. Know-your-investor requirements may improve the ability of MMFs to predict and manage investor liquidity needs. This could reduce the likelihood that unexpected redemptions would force MMFs to sell assets, which may cause losses, particularly during times of stress.

Reduced investment risk. Shifting the composition of MMFs' investment portfolios may decrease the risk of losses. The shorter-duration investments would reduce MMFs' exposure to interest rate risk and, to the extent these requirements cause MMFs to increase their investments in U.S. Treasury obligations, this may also reduce their overall credit risk.

Decreased investor yields. If funds shift their investments into shorter-duration, lower-yielding assets, this may decrease the return they provide to investors. In addition, the current level and slope of the yield curve may have led funds to hold higher levels of short-duration assets than they might otherwise. In future periods in which interest rates are higher and there is a greater interest-rate premium paid for longer-duration assets, funds may be less likely to maintain this level of daily and weekly liquid assets if increased liquidity requirements are not implemented.

Reduced term funding. While the increased liquidity requirements may improve funds' ability to meet redemption requests, they may also reduce the supply of term funding in certain markets in which MMFs invest. Borrowers, particularly financial institutions, may need to shift to funding at shorter durations, making their exposure to short-term markets more pronounced and potentially increasing the fragility of the financial system.

Modified nature of MMFs. Enhanced liquidity requirements would reduce MMFs' ability to invest in longer-dated or higher-risk instruments, which would impact the ability of MMFs, particularly prime MMFs, to serve their traditional role as a financial intermediary and potentially change the nature of the product.

(iii) Questions

Would enhanced liquidity requirements mitigate the impact of increased redemptions on a fund? Are the proposed minimum liquidity requirements sufficient for funds to meet redemption requests during times of stress? Would higher or lower requirements be more appropriate? Rather than increasing both the daily and weekly liquid asset requirements, are there greater benefits or costs associated with increasing one or the other? Should tax-exempt funds continue to be exempt from any daily liquidity requirement?

What harmful impacts would higher liquidity requirements have? How might they impact the funding markets in which MMFs participate? Would these requirements result in the institutions that borrow from MMFs shifting to shorter-term borrowing, increasing the risk that they may be unable to refinance their outstanding debt when necessary? If so, how might this impact financial stability? How would this impact the ability of borrowers to address new liquidity and stable funding requirements contemplated in Basel III?

The current definitions of MMFs' ''weekly'' and ''daily'' liquid assets used in the minimum liquidity requirements include all assets that can be converted into cash within pre-defined timeframes, including unsecured and secured exposures to financial institutions. An alternative would be to exclude all non-government securities (and repo backed by non-government securities) from these definitions. This would potentially reduce the risk of credit or liquidity strains in the securities counted towards these buffers. This may also alleviate the concern, discussed above of, of potential unintended consequences such as pushing financial institutions into shorter duration borrowing. Should such a change to the definitions of daily and weekly assets be made? If so, should this be in place of, or in addition to, higher minimum liquidity requirements?

Should MMFs be required to gather more information about their beneficial owners? MMFs also could be required to perform certain risk management procedures and consider information about beneficial owners' historical redemption behavior when stress testing their funds. To what extent can MMFs currently increase investor transparency? If regulatory changes would be necessary to facilitate this level of transparency, how could this be done most effectively by the SEC under its current statutory authority?

Should MMFs be prohibited from having too concentrated an investor base, or should additional limitations apply if a fund has a concentrated investor base? For example, should an MMF investor be limited to owning no more than a specified percentage of any particular MMF? What limit would be appropriate?

How might higher minimum liquidity levels complement the NAV buffer? Would they reduce the risks present in MMFs' investment portfolios? Would they reduce the probability that an MMF investor would redeem its shares based upon concerns about the MMF's portfolio liquidity?

More Robust Disclosure Requirements

(i) Description

An NAV buffer could also be accompanied by enhanced disclosure requirements that would increase investors' ability to monitor MMFs' investment risks. Rule 2a–7 requires MMFs to disclose information about their portfolio holdings each month on their Web sites within five business days. MMFs are also required to provide to the SEC monthly filings, on Form N–MFP, containing more detailed information regarding their portfolio holdings, including their mark-to-market NAV per share. This information is then publicly released 60 days after the end of the month for which the information was reported.

The transparency of MMF portfolio holdings could be increased by enhancing the level or frequency of required disclosures. This could include more frequent (*e.g.,* daily or weekly) public reporting of portfolio information such as daily and weekly liquidity levels and mark-to-market per share

valuations. These adjustments also could include reducing or eliminating the current delay before public disclosure. This could be supplemented with additional disclosure of MMFs' valuation methodologies and the factors that their boards of directors (or the boards' delegates) take into account, or the processes they follow, when assessing whether a portfolio security poses minimal credit risk. MMFs could also be required to disclose any instances of sponsor support, including purchases of distressed portfolio securities.

(ii) Benefits and Considerations

More robust disclosure requirements may improve investors' ability to monitor the portfolio holdings and the risk of an MMF.

Improved investor monitoring of MMFs' risks. More robust disclosure requirements would provide investors greater transparency into the risks of the investments held by the MMFs in which they invest and important indicators of its health, including the fund's liquidity and NAV buffer levels. This may allow investors, particularly in times of stress, to differentiate MMFs based on the quality and stability of their investments, potentially preventing uninformed, across-the-board runs. This also may impose additional investor discipline on MMFs and reduce their ability to take increased risks, potentially enhancing the effectiveness of the NAV buffer.

Increased volatility of MMFs' flows. There is a risk that more frequent reporting of portfolio information may make investors quicker to redeem when these indicators show signs of deterioration. In addition, more frequent reporting of portfolio information such as daily mark-to-market per share values or liquidity levels could increase the volatility of MMFs' flows, even when the funds are not under stress, if investors are highly sensitive to changes in those levels. More frequent disclosure of portfolio holdings may also limit funds' ability to utilize differentiated investment strategies.

(iii) Questions

Would more frequent reporting of the portfolio holdings, mark-to-market NAVs, and liquidity levels help investors and others differentiate among MMFs? If so, what would be the appropriate frequency (*e.g.,* daily or weekly)? How might investors respond to daily changes in an MMF's mark-to-market NAV or liquidity levels? Should MMFs be required to disclose the mark-to-market value of their investments? Would enhanced disclosure decrease or increase the probability of indiscriminate runs across MMFs? Would MMFs be adversely affected by the need to provide enhanced disclosure of their portfolio holdings? Would enhanced transparency have unintended consequences?

Should MMFs be required to notify their investors and the public each time they receive support from their sponsors? This would include, for example, purchases of distressed securities under rule 17a–9 under the Investment Company Act, if that rule is not rescinded in connection with any structural reforms. What other kinds of support warrant disclosure? Would this kind of disclosure help investors and others better understand and appreciate the risks in particular MMFs? How should this disclosure be made (*e.g.,* on an MMF's Web site or in its prospectus)? Should MMFs be required to disclose their performance absent sponsor support? Where SEC relief is required for sponsor support, should the SEC no longer entertain requests for the relief? Should the SEC otherwise prohibit sponsor support?

Should MMFs be required to provide increased disclosure on their valuation methodologies? Should MMFs be required to provide greater information about the factors that their boards of directors (or the boards' delegates) take into account, or the processes they follow, when assessing whether a security poses minimal credit risk? How might more robust disclosure requirements complement the NAV buffer? Would they reduce the risks present in MMFs' investment portfolios or improve investors' ability to differentiate between funds?

D. Request for Comment on Other Reforms

The policy alternatives discussed in the proposed recommendations described above aim to address the structural vulnerabilities inherent in MMFs and reduce their susceptibility to runs. The alternatives are not mutually exclusive but could potentially be implemented in combination. For example, sponsors could manage funds that have floating NAVs as well as stable NAV funds with the appropriate enhanced structural protections.

The Council recognizes that there may be other reforms it could consider that are not mentioned above that may mitigate risks to financial stability by providing a substantial reduction in the susceptibility of MMFs to runs. Accordingly, in addition to the request for feedback on the proposed recommendations above, the Council also solicits comment on other possible reforms of MMFs that the Council should consider for its final recommendation.

Analysis of other reforms. Any comments submitted under this section should discuss how such reforms would address the structural vulnerabilities inherent in MMFs and mitigate the risk of runs and the threat they pose to financial stability. The comments also should address the potential impacts to the MMF industry, shareholders, and long-run economic growth.

Liquidity fees and/or gates. For example, some market participants and other stakeholders have suggested alternative features that only would be implemented during times of market stress to reduce MMFs' vulnerability to runs. Specifically:

(i) *Standby liquidity fees* that, when triggered, may directly charge shareholders who redeem their shares to compensate MMFs and the remaining MMF investors for the potential cost of withdrawing this liquidity from the fund; or

(ii) *Temporary restrictions on redemptions,* or ''gates'' that, when triggered, would prohibit investors from redeeming and provide a period of time for a fund to restore its health.

The Council welcomes views on such features and how they, alone or in combination with other reforms, could provide a substantial reduction in the susceptibility of MMFs to runs. These proposals may provide some benefits by limiting investors' ability or motive to redeem during periods of stress and by potentially helping to restore a fund's NAV or NAV buffer. Some of these benefits may include fairer treatment of redeeming and non-redeeming investors, giving investors unfettered access to liquidity except during times of stress, and imposing additional discipline on fund managers, who would be motivated to manage their funds to avoid triggering a fee or a gate.

However, members of the Council are concerned that standby liquidity fees and temporary gates may not adequately address—and in fact may further increase—the potential for industry-wide runs in times of stress. Standby liquidity fees and temporary gates may increase the risk of preemptive runs by investors who would be motivated to redeem before a fee or gate is triggered. Such fees or gates may also increase contagion risk, because the triggering of fees or gates in one MMF could encourage shareholder redemptions in other MMFs. Additionally, these proposals in isolation do not provide explicit loss-absorption capacity and may not significantly alter the activities

and practices of MMFs discussed in Section IV.

Description of fees or gates. Standby liquidity fees or gates could provide targeted redemption restrictions that would only be implemented once a pre-determined threshold, intended to indicate stress in the fund, has been breached. While a variety of features have been proposed, the below discussion outlines several possible design considerations.

Trigger. Standby liquidity fees or gates could be imposed automatically based on specific measures indicating stress on an MMF's condition, such as a decline in the fund's NAV or in the fund's holdings of daily or weekly liquid assets below a certain level. For example, some have suggested imposing fees or gates if an MMF's shadow NAV fell below $0.9975 per share or if its level of weekly liquid assets fell below 7.5 percent.[114] Alternatively, the trigger could be at the discretion of an MMFs' board.

Duration. The fee or gate could apply to any redemption until the health of the MMF has improved and the trigger measure, such as the fund's NAV or liquid assets, returns to levels required under rule 2a–7. The length of the temporary fee or gate could be limited to a prescribed period, such as 30 days, after which the MMF would allow redemptions or liquidate.

Fee level. The level of a fee could be based on the level of stress in the fund. As the level of the stress grows, so would the size of the fee. For example, the fee size could be based on the size of the decline in the fund's NAV or its liquid assets. Alternatively, the fee could be structured as a fixed percentage of the amount sought to be redeemed. In either case, the fee would be intended to shift the cost of liquidity to redeeming shareholders and help relieve potential strains on the fund.[115]

Gate operation. While rule 22e–3 allows a fund's board to suspend redemptions if the fund has broken the buck or is in danger of breaking the buck, the board must first irrevocably approve the liquidation of the fund and notify the SEC of its decision to liquidate and suspend redemptions. The gates discussed here, in contrast, would be temporary and could provide the MMF a short period of time to increase its liquidity levels to meet redemption requests and could allow the fund to remain in operation after the gates are lifted.

Sequencing. If paired together, standby liquidity fees and temporary gates could be structured such that the fees are triggered before or after gates. If standby liquidity fees are triggered first, this may reduce the likelihood that gates are needed. If standby liquidity fees are imposed after gates are triggered, this may allow funds to permit redemptions if they determine that the liquidity fee would reduce the risk these redemptions pose to the fund.

Enhanced Transparency. MMFs could be required to disclose information on their financial condition more frequently so investors could monitor if an MMF was approaching its triggers.

Questions on liquidity fees and gates. Would investors' concerns about the potential triggering of a standby liquidity fee or gate increase the likelihood of preemptive runs? Would one fund imposing fees or gates lead to runs at other funds? Would a fee, as some have suggested, serve as a sufficient deterrent to investor redemptions such that MMFs' liquidity buffers would prove able to absorb shareholder redemptions in times of stress?

Should the trigger be based on a fund's NAV, levels of daily and weekly liquid assets, or both? At what levels and why? Are there other triggers that would be more effective?

What would be the appropriate size of a standby liquidity fee? Should the fee's size be based on the magnitude of losses or liquidity costs, or should it be a fixed percentage of the investor's redemption? How would they affect the composition of funds' portfolios and funds' risk-taking? Would a flat fee based on the size of the investor's redemptions fairly allocate liquidity costs?

Should standby liquidity fees or gates be applied automatically based on pre-determined thresholds or instead at the discretion of the fund's board of directors (or its independent directors)? Would a fund's board fail to impose a fee or gate even when it would benefit the fund and its shareholders? How could such discretion be structured to make it more likely that it would be imposed when appropriate?

Would a gate be more effective combined with a liquidity fee? If so, how should the combination be structured? For example, should a fund impose a liquidity fee first, allowing investors to continue to redeem, but impose a gate if the fund is unable to sufficiently recover and reaches a higher level of stress? How would investors view gates?

Should there be exemptions to a fee or a gate based on the type of fund or investor? For example, should retail accounts or funds be exempt? If so, should such an exemption be based on account size? How could such exemptions work with omnibus accounts? Should there be exemptions for very small withdrawals? If so, what size? Should there be exemptions for Treasury or government MMFs?

The Council also requests comment on how a standby liquidity fee or gate would alter investors' view of MMFs.[116] How might it impact the size of the MMF industry? How would the impact be different if the fee were mandatory or discretionary?

VI. Consideration of the Economic Impact of Proposed Reform Recommendations on Long-Term Economic Growth

Under Section 120 of the Dodd-Frank Act, the Council is required to ''take costs to long-term economic growth into account'' when recommending new or heightened standards and safeguards for a financial activity. If the SEC accepts the Council's recommendation, it is expected that the SEC would implement the recommendation through a rulemaking, subject to public comment, that would consider the economic consequences of the implementing rule as informed by the SEC staff's own economic study and analysis.[117]

[114] *See* Blackrock Viewpoint, ''Money Market Funds: A Path Forward'' (2012) (recommending this trigger for the automatic imposition of a liquidity fee as opposed to a temporary gate), *available at http://www2.blackrock.com/global/home/PublicPolicy/ViewPoints/index.htm;* Comment Letter of HSBC Global Asset Management on the European Commission's Green Paper on Shadow Banking (May 28, 2012), *available at http://ec.europa.eu/internal_market/consultations/2012/shadow/individual-others/hsbc_en.pdf.*

[115] For MMF shares held through omnibus accounts, the financial intermediary would need to ensure that any standby liquidity fees apply to the ultimate beneficial owners to prevent unfair results, just as they must do today when other types of mutual funds impose redemption fees.

[116] On the one hand, *see* Comment Letter of Fidelity Investments, SEC File No. 4–619 (Feb. 3, 2012) (stating that in a survey of their retail money market fund customers 43 percent stated that they would stop using a money market fund with a 1 percent non-refundable redemption fee charged if the fund's NAV per share fell below $0.9975 and 27 percent would decrease their use of such a fund). But *see* Comment Letter of BlackRock on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 28, 2012) (''based on our client discussions, standby liquidity fees are less likely to cause clients to abandon the product in large numbers.'').

[117] The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) provides that whenever an agency is required by 5 U.S.C. 553, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency must either provide an initial regulatory flexibility analysis or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Because these proposed recommendations are not a ''rule'' for purposes of the RFA, neither an initial regulatory flexibility analysis nor certification by the Council is required. However, in any case, these proposed recommendations would not have a significant economic impact on

Continued

The financial crisis demonstrated that MMFs' activities and practices make them susceptible to runs that can have destabilizing implications for financial markets and the broader economy. If investors perceive a risk of even small losses, MMFs' lack of explicit loss-absorption capacity, the first-mover advantage enjoyed by redeeming investors, investor uncertainty regarding sponsor support, and the similarity of MMFs' portfolios can incite widespread runs on MMFs. Due to the significant role MMFs play in the short-term credit markets, an industry-wide run on MMFs can reduce the availability of credit to borrowers. During the financial crisis, despite government intervention, the run on the MMF industry led to rapid disinvestment by MMFs of short-term instruments which severely exacerbated stress in already strained financial markets.

The Council expects that the proposed recommendations would significantly reduce the risk of runs on MMFs and, accordingly, lower the risk of a significant long-term cost to economic growth.[118] Specifically, the proposed recommendations could bolster the resilience and stability of MMFs during periods of financial stress, and reduce the severity of financial crises. Given the large adverse effects of financial crises on real GDP, such reductions imply important expected benefits. At the same time, the proposed recommendations described in Section V could lead to an increase in the cost of lending that MMFs provide, which could reduce economic growth in normal periods.[119] However, even assumptions that would tend to overstate these potential costs suggest a very small increase in the weighted-average cost of credit for U.S. businesses, households, and state and local governments, with commensurately small potential costs to long-term economic growth.

The Council's consideration of the cost to long-term economic growth is based on the potential effects of the proposed recommendations on the rates at which MMFs would lend to borrowers and the consequent effects of such higher borrowing costs on investment and other spending by U.S. businesses, households, and governments. The consideration assesses the cost of financing an NAV buffer for MMFs and how this could increase the lending rates of MMFs. For example, Alternatives Two and Three contemplate MMFs raising NAV buffers that would replace some short-term claims with longer-term, subordinated claims to absorb fluctuations in the value of the fund's assets. The longer-term, subordinated claims may raise costs because providers of the NAV buffer will require a higher return for their greater term, credit, and liquidity risk. This assumes a required return for NAV buffers based on historical experience in the United States for claims subject to similar risks and duration. This assumed return is used to estimate an implied increase in the rates at which MMF would lend if they were to raise an NAV buffer. Although the NAV buffer would diminish the risks associated with MMF shares it is assumed that the required returns on those claims (net yields paid to shareholders) would not decline.

In addition, for the purposes of this consideration, the Council has assumed that borrowers will not shift borrowing away from MMFs and as a result will be forced to fully absorb this higher cost. If substitution toward other sources of credit were considered, the estimated cost to economic growth likely would be smaller. In particular, if MMFs are not able to pass through their higher costs, and instead were forced to absorb some of the costs in the form of reduced profits for sponsors or lower yields for MMF shareholders, the costs to economic growth through the borrowing-cost channel would be lower. There may be economic impacts associated with lower profits for MMF sponsors if they are unable to pass through initial transition costs or higher operating costs, but the impact of such costs on long-term economic growth are likely to be less direct and smaller than the costs that affect borrowing rates.

There are substantial uncertainties around estimates of both the benefits and the costs to long-term economic growth. Moreover, both the benefits and costs to economic growth would vary for the different alternatives set forth in section V.

Estimated costs to long-term economic growth. The cost of a 3 percent NAV buffer in Alternative Three is the component of the proposed recommendations that may have the most direct and largest effect on lending costs. The cost of financing a 3 percent NAV buffer would depend on providers' required return for absorbing first losses from any fluctuations in the value of MMF portfolios, particularly the declines in value that might result from credit losses. To put this required return in context, a range of riskier investment returns are considered. The yield on a ten-year BBB-rated corporate bond has averaged 6.5 percent since 1997, while prime MMF gross yields have averaged 3.2 percent over the same period, indicating an estimate of a spread for longer-term claims of 3.3 percentage points over the past 15 years. Another estimate of the additional required return is based on the long-run required return to equity, which is estimated to be about 9.0 percent since 1997, suggesting a spread to prime MMF gross yields of 5.8 percentage points. These calculations suggest reasonable assumptions for the additional required return can range from 3.3 percentage points to 5.8 percentage points. Hence, the remainder of this discussion of lending costs assumes a 5 percentage point additional required return.

Under the assumption that MMFs would fully pass on this additional cost to borrowers, the rate at which MMFs would lend would increase by 0.05 percentage points for each percentage point of short-term claims replaced by subordinated, longer-term claims. To the extent that higher costs result in lower net yields for MMF shareholders, and as a result are not passed on fully to borrowers, the estimated impact on costs to long-term economic growth through borrowing costs would be smaller.

This increased lending rate would impact economic growth through its effect on the weighted-average borrowing costs of U.S. businesses,

a substantial number of small entities because the proposed recommendations would directly impact only the SEC, and any rulemakings by the SEC imposing the recommended standards would be expected to apply only to MMFs, of which few, if any, are believed to be small entities.

[118] In the consideration herein, long-term economic growth refers to the average rate of change of overall economic activity, as measured by the rate of change in real GDP (that is, GDP measured in constant dollars) over an extended period. Specifically, we consider expected costs and benefits over a horizon sufficient to include a transition period and the potential costs and benefits with respect to long-term capital formation and a diminished probability and severity of future financial crises. As such, these costs and benefits are likely to accrue over a period of a decade or substantially longer. The potential benefits of the proposed recommendations, in terms of long-term economic growth, arise from the higher level of economic activity expected to prevail from a reduction in the likelihood or severity of a financial crisis and the consequent adverse effects on investment and overall spending; similarly, the potential costs in terms of long-term economic growth stem from the reduced level of spending that may accompany higher costs of financing investment and other outlays. Such positive or negative effects on the level of real GDP would raise or lower the growth rate of economic activity in future years relative to the levels expected to prevail absent adoption of the recommendations.

[119] Policymakers with responsibility for mitigating systemic risks may face an economic tradeoff between accepting higher costs in normal times in order to significantly reduce the costs of financial crises. Systemic risks are an externality that individual firms would not, on their own, seek to mitigate efficiently, because they would bear the full costs of doing so while the benefits would accrue to the broader financial system and the economy.

households, and state and local governments that obtain financing, directly or indirectly, from MMFs. However, while MMFs provide such financing through a variety of channels and play a significant role in a number of credit markets (as discussed in Section IV), the total credit that they supply is relatively small compared to aggregate nonfederal, nonfinancial debt outstanding.

As of June 30, 2012, the financing provided by MMFs included their holdings of $35 billion in domestic nonfinancial unsecured CP and $341 billion in municipal securities. MMFs also held $117 billion in ABCP, which is often backed by loans to businesses and households (for example, credit card and other receivables),[120] and $60 billion in other notes and instruments issued by U.S. firms. In addition, MMFs purchase the debt of financial institutions and government agencies that themselves provide credit to businesses, households, and state and local governments, including $56 billion in securities issued by U.S. financial institutions, $396 billion of securities issued by U.S. government agencies and government-sponsored enterprises (''GSEs''), and $323 billion in repo backed by such securities. MMFs also held $71 billion in repo backed by securities other than U.S. government securities, which may include nonfinancial business debt and asset-backed securities.[121]

Under the assumption that MMF financing for financial institutions, government agencies, and GSEs is ultimately used to provide credit to businesses, households, and state and local governments, this data suggests that MMFs provided direct and indirect credit of as much as $1,400 billion to businesses, households, and state and local governments. While significant, this amount represented only 5 percent of the total debt outstanding of U.S. businesses, households, and state and local governments, which was $27,874 billion as of June 30, 2012.[122]

Based on this share of total debt outstanding and the estimated 0.05 percentage point increase in MMF lending rates per percentage point of capital, this implies that the weighted-average cost of credit for businesses, households, and state and local governments would increase 0.0075 percentage points if the required NAV buffer were 3 percent.[123] As already noted, this estimate assumes that the costs of the buffer are passed on entirely to businesses, households, and state and local governments that ultimately obtain credit directly or indirectly from MMFs, rather than absorbed by MMF shareholders, asset management firms, or other financial intermediaries. This assumption leads to a larger estimated increase in borrowing costs for the nonfinancial sector than would occur if MMF shareholders or others absorbed some of the cost. The estimate also assumes that other providers of short-term funding do not increase their lending rates.

The small estimated increment to borrowing costs implies that the potential costs to long-term economic growth also would be small. An illustration of the magnitude of such effects can be derived using recent analyses that model the effects of higher interest spreads on economic activity. For example, the Macroeconomic Assessment Group (established by the Financial Stability Board and the Basel Committee on Banking Supervision) examined the impact of higher borrowing costs on aggregate output. Based on that group's standard approach, an increase in borrowing spreads of 15 basis points was associated with median expected reductions in GDP for 32 quarters ahead (the longest horizon considered in the report) of 0.10 percent.[124] Importantly, these estimates incorporated reduced loan volumes as well as higher lending spreads. Scaling these estimates, the 0.0075 percentage point increment in borrowing costs for U.S. businesses, households, and state and local governments translates into an 0.005 percent reduction in output 32 quarters after the capital requirement is imposed. In terms of per-year economic growth, this level effect is very small.

Estimated benefits for long-term economic growth. As noted in Section IV, several activities and practices of MMFs combine to make them vulnerable to runs. Because of MMFs' lack of loss-absorption capacity, the first-mover advantage enjoyed by redeeming investors, and investor uncertainty regarding sponsor support, a run on a single MMF can spread quickly to other funds, as MMF investors seek to minimize losses in funds with potentially correlated portfolio holdings. Due to the fact that MMFs are large and highly interconnected with the rest of the financial system and can act as a channel for transmission of risks and contagion, a run on MMFs can create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies, nonbank financial companies, and U.S. financial markets.

By reducing the likelihood of runs on MMFs, the proposed recommendations would be expected to diminish the severity of financial crises. The Council acknowledges the inherent difficulty in assigning a probability to runs on MMFs and how such runs could contribute to a financial crisis. Nonetheless, the very high degree of interconnectedness of MMFs and other parts of the financial system indicates that runs on MMFs and subsequent disruptions to financing are likely to occur at the same time when other parts of the financial system also are under stress, so runs on MMFs would be expected to increase the severity of a crisis. Indeed, the run in September 2008 exacerbated already severe strains in financial markets and contributed to a broader curtailment in the availability of credit. In addition, as described in section IV, some evidence suggests that institutional investors have become more attuned to MMF risks in the aftermath of the financial crisis, which may make them more prone to runs.

Reducing the likelihood of financial crises or the damage that they cause would have large salutary effects on long-term economic growth. A recent review of multiple studies documents extensive evidence that financial crises have large adverse effects on economic activity over an extended period. Estimated costs of financial crises ranged from about 20 percent to more

[120] Based on data reported to the SEC on Form N–MFP. This total includes all ABCP held by MMFs, not just paper issued by ABCP programs with U.S. sponsors, since foreign-sponsored ABCP conduits purchase the obligations of U.S. businesses and households.

[121] This total includes all such repo held by MMFs, not just repo conducted with U.S. counterparties, since repo with foreign counterparties may be used to finance the obligations of U.S. businesses and households.

[122] Based on the Flow of Funds Accounts of the United States. A similar analysis focusing only on business debt indicates that financing provided by MMFs represented less than 3 percent of all nonfinancial business debt at the end of June 2012. Indeed, relatively few firms rely heavily on short-term financing through the types of instruments held by MMFs. See Paolo Colla, Filippo Ippolito, and Kai Li, ''Debt specialization,'' Working Paper, University of British Columbia (2011) (showing that, among a sample of roughly 3,000 publicly traded firms, 0.1 percent of firms obtained more than 90 percent of their total debt financing from CP, but 26 percent of firms obtained more than 90 percent of their debt financing from senior bonds and notes).

[123] This figure reflects the assumption that MMF lending rates would increase 0.15 percentage points in total and the fact that MMF lending could represent as much as 5 percent of overall borrowing for these entities.

[124] There is considerable uncertainty around these estimates. Nonetheless, the overall effects remain modest across the range of assumptions considered in this study. For a discussion of this range, see Macroeconomic Assessment Group, ''Interim Report: Assessing the macroeconomic impact of the transition to stronger capital and liquidity requirements,'' Bank for International Settlements (Aug. 2010), *at* 18.

than 150 percent of real GDP, depending on whether the effects of the crisis are transitory or permanent, with a central tendency of about 60 percent of real GDP.[125] Given these large costs, reforms that even modestly reduce the probability or severity of a financial crisis would have considerable benefits in terms of greater expected economic activity and, therefore, higher expected economic growth.

Effects of other alternatives. This consideration of the impact on long-term economic growth of the proposed recommendations in Section V focuses on the significant NAV buffer in Alternative Three because, among the different alternatives set forth in section V, that component would have the most direct potential effect on borrowing costs. Alternative Two would require a smaller NAV buffer than Alternative Three, so the direct effect on MMF lending rates under Alternative Two would be smaller. However, the 3 percent MBR in Alternative Two would reduce the liquidity of investments in MMFs for large investors. While the effects of such a reduction in investors' liquidity on borrowing costs are less clear, they are not likely to exceed those associated with financing a larger NAV buffer.[126] Because the Council views both Alternatives Two and Three as means of reducing the structural vulnerabilities of MMFs, Alternative Two's smaller NAV buffer and 3 percent MBR could be expected to have similar benefits for long-term economic growth as Alternative Three.

Alternative One, which would mandate that MMFs adopt a floating NAV, would not require that MMFs have an NAV buffer or other protections that would be required of MMFs under Alternatives Two or Three. When evaluated using the methodology described above, Alternative One likely would have a smaller direct impact on borrowing costs and hence smaller costs to long-term economic growth than the other alternatives. However, the adoption of Alternative One in isolation, and hence a requirement that all MMFs adopt a floating NAV, could prompt shifts by MMF shareholders away from MMFs to alternative cash-management or investment products that maintain stable NAVs. Such a shift could reduce the expected benefits if the alternative products were vulnerable to runs.

The scope of the reform package that is adopted will affect investors' demand for MMFs and the costs to long-term economic growth. A package of reforms that allows asset managers to offer different types of MMFs would allow investors to choose the MMF that best suits their preferences. For example, if the range of options includes both floating NAV and stable NAV funds (with additional protection provided by an NAV buffer, an MBR, or a portfolio that is limited to Treasury securities or Treasury repo), investors who are willing to sacrifice some principal stability might choose the floating NAV funds, those willing to sacrifice some yield might choose a Treasury-only MMF or a fund with a significant NAV buffer, and those willing to sacrifice some liquidity might prefer a fund with an MBR.[127] Hence, a broad range of options could reduce the likely impact of the recommended reforms on demand for all MMFs while preserving the net benefits to long-term economic growth that would result from the reduced vulnerability of MMFs to destabilizing runs.

Uncertainty regarding estimates of costs and benefits for long-term economic growth. There are substantial uncertainties around the estimates of costs to long-term economic growth. Several assumptions noted above, including a full pass-through of higher costs to borrowers, attempt to produce a conservative estimate of the costs to long-term economic growth. To the extent that borrowers substitute away from the short-term financing provided by MMFs, for example, and sell short-term instruments directly to investors or to other types of cash-management vehicles, costs to long-term economic growth could be smaller. As noted above, however, such substitution would reduce expected benefits for long-term economic growth if investors move money to products that are vulnerable to runs.

Of course, some factors could lead to larger estimated costs to economic growth. For example, the estimated effects on the weighted-average cost of credit could be larger if short-term funding markets were to become less liquid, raising the costs of short-term funding provided by other lenders. But the overall effect of a broader increase in short-term rates on the weighted-average cost of capital would still be minimal, given the small share of business, household, and state and local government debt that is short-term. For example, commercial paper outstanding accounted for just 1.1 percent of domestic nonfinancial business debt on June 30, 2012.[128] There could be costs that are associated with lower profits or shrinkage for MMF sponsors if they are not able to fully pass on higher costs or are capital constrained and cannot quickly and economically build an NAV buffer. However, lower profits and transition costs associated with building the buffer are not likely to have a significant direct effect on long-term economic growth. In addition, the estimates from the macroeconomic studies cited above suggest some uncertainty about the drag on economic activity from higher borrowing costs.

Expected benefits could be diminished if investors switched to alternative cash-management vehicles because MMFs become less attractive. If those cash-management vehicles are themselves vulnerable to runs and are also interconnected with other parts of the financial system, the benefits to long-term economic growth that result from mitigating the probability and severity of financial crises could be reduced. Nonetheless, the expected reductions in the probability or severity of crises associated with MMF reform would imply a sizable net benefit in terms of higher expected economic growth, given the very large costs of financial crises on economic output. Moreover, the Council and its members intend to use their authorities, where appropriate and within their jurisdictions, to reduce or eliminate regulatory gaps to address any risks to financial stability that may arise from dissimilar standards for other cash-management products with risks similar to MMFs.

Questions

How can the assumptions used to estimate costs to long-term economic growth be further refined?

For each of the alternative reform proposals, what do you estimate would be the effect on the total AUM in MMFs? For each of your estimates, what are your underlying assumptions? Given these estimates, what would be the effect on long-term economic growth of such change in the total AUM of MMFs?

Which features, if any, of the alternatives would potentially make MMFs less attractive to investors? If MMFs became less attractive to potential shareholders, where would

[125] *See* Basel Committee on Banking Supervision, ''An assessment of the long-term economic impact of stronger capital and liquidity requirements,'' Bank for International Settlements (Aug. 2010), *at* 12–13.

[126] In the extreme, each investor subject to an MBR that desired to maintain full liquidity might maintain an extra balance of approximately 3 percent to main that liquidity, so MMF shareholders themselves effectively would provide a buffer equal to the size of the MBR.

[127] Such investor sorting may indeed be beneficial, since the most risk-averse, run-prone investors would likely invest in Treasury funds or MMFs with substantial NAV buffers or other protections.

[128] Based on the Flow of Funds Accounts of the United States.

they invest their funds? Would institutional customers or retail investors be more likely to withdraw funds? What alternative cash-management vehicles would investors likely move to? Would this affect the expected benefits of MMF reform? What impact would this have upon the credit markets in which MMFs invest? How should the role of other financial intermediaries be considered? What risks could that pose for financial stability?

If MMFs became less attractive to potential borrowers, how might they change their financing methods? Would this affect the expected costs or benefits of MMF reform for long-term economic growth?

Would yields on redeemable MMF shares decline, in light of reductions in risk? Would there be additional costs to long-term economic growth from reduced yields to MMF shareholders? If yes, what would they be?

Would a reduction in profits for MMFs sponsors absorb some of the increase in costs? How would their reduced profits affect long-term economic growth?

Are there factors other than borrowing costs, reduced yields to shareholders, and reduced profits for MMF sponsors that may be expected to impact long-term economic growth?

Would higher short-term borrowing rates from MMFs affect other short-term borrowing rates? Are BBB corporate rates and the equity risk premium appropriate proxies for the returns likely to be demanded by providers of the NAV buffer? How should reductions in the structural vulnerability of MMFs impact the potential probability of a financial crisis? The severity of such a crisis? What additional benefits to long-term economic growth might result from reductions in the structural vulnerability of MMFs?

Dated: November 13, 2012.

Rebecca H. Ewing,

Executive Secretary, Department of the Treasury.

[FR Doc. 2012–28041 Filed 11–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007; Docket 2012–0076; Sequence 59]

Federal Acquisition Regulation; Information Collection; Summary Subcontract Report

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning summary subcontract report.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before January 18, 2013.

ADDRESSES: Submit comments identified by *Information Collection 9000–0007, Summary Subcontract Report,* by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0007, Summary Subcontract Report''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0007, Summary Subcontract Report'', on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0007, Summary Subcontract Report.

Instructions: Please submit comments only and cite Information Collection 9000–0007, Summary Subcontract Report, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Karlos Morgan, Procurement Analyst, Office of Governmentwide Acquisition Policy, GSA, (202) 501–2364 or via email at *karlos.morgan@gsa.gov.*

SUPPLEMENTARY INFORMATION:

I. Purpose

In accordance with Federal Acquisition Regulation 19.702, any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, small disadvantaged business, historically underutilized business zone (HUBZone) small business, veteran-owned small business, service-disabled veteran-owned small business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. Further, contractors receiving a contract or a modification to a contract expected to exceed $650,000 ($1,500,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for the above named concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR Subpart 19.7.

In conjunction with the subcontracting plan requirements, contractors must submit an annual summary (semi-annual for DOD and NASA) of subcontracts awarded by prime and subcontractors for a specific Federal Government agency that required an Individual Subcontracting plan for the previous fiscal year. This is accomplished through the use of the Standard Form 295, Summary Subcontract Report, or the Summary Subcontract Report (SSR), the electronic equivalent of the of the Standard Form 295, submitted through the Electronic

Subcontracting Reporting System (eSRS).

Contractors must use the SSR in lieu of the SF 295, with the exception of those contracts noted in FAR 4.606(c)(5) which requires that actions, pursuant to other authority, will not be entered in Federal Procurement Data System (e.g., reporting of the information would compromise national security). Those contract actions noted in FAR 4.606(c)(5) will continue to use the Standard Form 295.

II. Annual Reporting Burden

Based on information from eSRS and an estimate of the use of eSRS, an upward adjustment is being made to the number of respondents, but a downward adjustment is being made to the average burden hours for reporting and recordkeeping per response. As a result, a downward adjustment is being made to the estimated annual reporting burden since the notice regarding an extension to this clearance published in the **Federal Register** at 75 FR 9603, on March 3, 2010.

Respondents: 129,009.

Responses per Respondent: 1.

Total Responses: 129,009.

Average Burden Hours per Response: 9.0.

Total Burden Hours: 1,161,081.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control Number 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: November 8, 2012.

William Clark,

Acting Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–28067 Filed 11–16–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting will be open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should email *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Thursday, November 29, 2012 from 9:00 a.m. to 5:00 p.m. and Friday, November 30, 2012 from 9:00 a.m. to 1:00 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Avenue, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882, Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during these meetings will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at this meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least seven (7) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business November 26, 2012.

Dated: November 9, 2012.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health.

[FR Doc. 2012–27988 Filed 11–16–12; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–13–0008]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call (404) 639–7570 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Emergency Epidemic Investigations (0920–0008)—Revision—Scientific Education and Professional Development Program Office (SEPDPO), Office of Surveillance, Epidemiology, and Laboratory Services (OSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics, and protect the population from public health crises such as human-made or natural biological disasters and chemical emergencies. CDC meets this objective, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures cost-effective health care and enhances health promotion and disease prevention.

The purpose of the Emergency Epidemic Investigation data collection

project is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations data collection project is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health, and occupational problems.

Each investigation contributes to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account knowledge gained during similar situations in the past. Some questionnaires have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations data collection project provides a range of data on the characteristics of outbreaks and those affected by outbreaks. Data collected include demographic characteristics of the affected population, exposure to the causative agent(s), transmission patterns, and severity of the outbreak. These data, together with trend data, may be used to monitor the effects of change in the health care system, plan health services, improve the availability of medical services, and assess the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to, Epidemic Intelligence Service (EIS) officers of the CDC, who investigate the patterns of disease or injury, the level of risky behaviors, causative agents, the transmission of the condition, and the impact of interventions. EIS is a two-year program of training and service in applied epidemiology through CDC, primarily for persons holding doctoral degrees.

Predicting the number of epidemic investigations that might occur in any given year is difficult. The previous three years' experience shows an annualized burden of 3,750 hours and respondent total of 15,000. After completion of the Epi-Aid investigation, using the Epi-Aid Satisfaction Survey for Requesting Officials, data are collected from 100 state and local health officials for an annualized total of 25 burden hours. For this clearance, CDC is requesting 3,775 total burden hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Requestors of Epi-Aids	Epi-Aid Satisfaction Survey for Requesting Official.	100	1	15/60
General Public	Emergency Epidemic Investigations	15,000	1	15/60

Dated: November 13, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–28083 Filed 11–16–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–13–13BU]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 or send comments to Ron Otten, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Determining Causes of Sudden, Unexpected Infant Death: A National Survey of U.S. Medical Examiners and Coroners—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Each year in the United States, approximately 4,200 infants die suddenly without any cause that is immediately obvious. Half of these sudden unexpected infant deaths (SUID) are attributed to Sudden Infant Death Syndrome (SIDS), which is the leading cause of death in infants between one and twelve months of age. Reducing deaths caused by SIDS and other SUID such as accidental suffocation are important public health priorities.

Between 1990 and 2001, the rate of SIDS in the U.S. decreased from 1.3 per 1,000 live births to 0.56 deaths per 1,000 live births. The 50% decline in SIDS is attributed to the success of the ''Back to Sleep'' campaign, launched in 1994, during which prone sleeping for infants decreased from about 75% in 1992 to 12% in 2002. SIDS has continued to decline slightly and in 2009 was estimated to be 0.525 deaths per 1,000, however, post-neonatal mortality due to other causes increased, particularly in 1999–2001. Further examination of the cause-specific age at death and month of

death distributions suggested that cases once reported as SIDS were subsequently being reported as accidental suffocation and strangulation in bed or as cause unknown/unspecified. Because SIDS, by definition, is nonspecific, there is substantial variation in how these deaths are reported by the medical examiner or coroner in the jurisdiction of record. Some variation in the classification of infant deaths may be due to inconsistent use of terms and definitions, and some variation may reflect limitations of investigation and documentation. Uncertainties in classification negatively impact understanding of the causes of infant mortality and the ability to develop appropriate public health responses.

CDC requests OMB approval to conduct the first national, geographically representative survey of medical examiners and coroners that concerns SUID diagnostic and reporting practices. Information will be collected to elucidate how medical examiners and coroners interpret and report SUID and the extent to which their interpretation and reporting practices vary. The proposed activity is part of CDC's mission, as described in Section 241 of the Public Health Service Act [42 U.S.C. 241].

CDC's data collection contractor will draw a sample of medical examiners and coroners as follows. First, U.S. counties will be selected (with replacement) with probability proportional to the number of SUID-related deaths reported from 2005–2009. A sampling frame will be established for each county and the appropriate number of names will be randomly selected from the list. An interviewer will telephone approximately 800 offices to verify the name and contact information of the individual responsible for certifying infant deaths. Paper questionnaires will then be distributed to approximately 80 medical examiners and 720 coroners by mail. CDC expects to receive approximately 64 completed questionnaires from medical examiners and 576 completed questionnaires from coroners.

Questionnaires will take about 30 minutes to complete and will contain questions about each respondent's reporting jurisdiction, reporting practices and training, knowledge and opinions about topics related to sudden unexpected and unexplained infant death, demographic characteristics, and jurisdiction-specific training and resource needs. Respondents will also review hypothetical infant death case descriptions and indicate how they would classify the cause of death for those cases. The questionnaire does not request the respondent's name, and response data will be de-linked from the information used for recruitment purposes. Data analysis will be conducted using de-identified responses.

Survey findings will be used to develop educational publications and presentations aimed at improving the consistent use of standardized terms and definitions in determining the cause of unexpected infant deaths. Findings may also be applicable to the development of public health programs aimed at reducing unexpected infant deaths.

OMB approval is requested for one year. Participation is voluntary and there are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
Receptionist or Operator	Telephone Screener	800	1	5/60	67
Medical Examiner	National Survey of Medical Examiners and Coroners.	64	1	30/60	32
Coroner	National Survey of Medical Examiners and Coroners.	576	1	30/60	288
Total					387

Dated: November 13, 2012.

Ron A. Otten,

Director, Office of Scientific Integrity (OSI), Office of the Associate Director for Science (OADS), Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2012–28079 Filed 11–16–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH or Advisory Board), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), and pursuant to the requirements of 42 CFR 83.15(a), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned committee:

Board Public Meeting Times and Dates (All times are Eastern Time): 8:15 a.m.–5:45 p.m., December 11, 2012. 8:15 a.m.–12:30 p.m., December 12, 2012.

Public Comment Times and Dates (All times are Eastern Time): 6:00 p.m.–7:00 p.m.,* December 11, 2012.

* Please note that the public comment periods may end before the times indicated, following the last call for comments. Members of the public who wish to provide public comments should plan to attend public comment sessions at the start times listed.

Place: Hilton Knoxville, 501 West Church Avenue, Knoxville, Tennessee 37902; Phone: 865–251–2573; Fax: 865–546–1716. Audio Conference Call via FTS Conferencing. The USA toll-free, dial-in number is 1–866–659–0537 with a pass code of 9933701.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 150 people.

Background: The Advisory Board was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Advisory Board include providing advice on the development of probability of causation guidelines which have been promulgated by the Department of Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add

classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Advisory Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, renewed at appropriate intervals, and will expire on August 3, 2013.

Purpose: This Advisory Board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the Advisory Board meeting includes: NIOSH Program Update; Department of Labor Program Update; Department of Energy Program Update; Update on 10-Year Review Implementation; SEC petitions for: Hanford (1987–1989; petition #155), Battelle Laboratories—King Avenue (Columbus, OH), Savannah River Site, General Steel Industries (Granite City, IL), Baker Brothers (Toledo, OH), and Joslyn Manufacturing and Supply Co. (Fort Wayne, IN); SEC Petitions Status Update; and Board Work Sessions.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted in accordance with the redaction policy provided below. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Policy on Redaction of Board Meeting Transcripts (Public Comment): (1) If a person making a comment gives his or her name, no attempt will be made to redact that name. (2) NIOSH will take reasonable steps to ensure that individuals making public comment are aware of the fact that their comments (including their name, if provided) will appear in a transcript of the meeting posted on a public Web site. Such reasonable steps include: (a) A statement read at the start of each public comment period stating that transcripts will be posted and names of speakers will not be redacted; (b) A printed copy of the statement mentioned in (a) above will be displayed on the table where individuals sign up to make public comments; (c) A statement such as outlined in (a) above will also appear with the agenda for a Board Meeting when it is posted on the NIOSH Web site; (d) A statement such as in (a) above will appear in the **Federal Register** Notice that announces Board and Subcommittee meetings. (3) If an individual in making a statement reveals personal information (e.g., medical information) about themselves that information will not usually be redacted. The NIOSH FOIA coordinator will, however, review such revelations in accordance with the Freedom of Information Act and the Federal Advisory Committee Act and if deemed appropriate, will redact such information. (4) All disclosures of information concerning third parties will be redacted. (5) If it comes to the attention of the DFO that an individual wishes to share information with the Board but objects to doing so in a public forum, the DFO will work with that individual, in accordance with the Federal Advisory Committee Act, to find a way that the Board can hear such comments.

Contact Person for More Information: Theodore Katz, Executive Secretary, NIOSH, CDC, 1600 Clifton Road, MS E–20, Atlanta GA 30333, telephone: (513) 533–6800, toll free: 1–800–CDC–INFO, email: *dcas@cdc.gov.*

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 9, 2012.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2012–28023 Filed 11–16–12; 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

Proposed Projects:

Title: Child Care and Development Fund Annual Financial Report (ACF–696T) for Tribes.

OMB No.: 0970–0195.

Description: Tribes use the Financial Report Form ACF–696T to report Child Care and Development Fund (CCDF) expenditures. Authority to collect and report this information is found in Section 658G of the Child Care and Development Block Grant Act of 1990, as revised. In addition to the Program Reporting Requirements set forth in 45 CFR Part 98, Subpart H, the regulations at 45 CFR 98.65(g) and 98.67(c)(1) authorize the Secretary to require financial reports as necessary.

Tribal grantees submit the ACF–696T report on an annual basis on behalf of the Tribal Lead Agency administering the Child Care and Development Fund (CCDF).

The collection will not duplicate other information.

Respondents: Tribes and Tribal Organizations that are CCDF grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T CCDF Financial Reporting Form for Tribes	272	1	6	1,632

Estimated Total Annual Burden Hours: 1,632.

In compliance with the requirements of Section 506(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: ACF Reports Clearance Officer. Email address: *infocollection@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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2012–28061 Filed 11–16–12; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–1045]

Medical Devices; Custom Devices; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration Safety and Innovation Act (FDASIA), which was signed into law on July 9, 2012, amended the Federal Food, Drug, and Cosmetic Act (the FD&C Act). The Food and Drug Administration (FDA) is in the process of developing an implementation strategy and policy for the custom device exemption criteria in the FD&C Act amended by FDASIA. FDA is seeking information on appropriate uses of the custom device exemption.

DATES: Submit either electronic or written comments by January 18, 2013.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville MD 20852.

FOR FURTHER INFORMATION CONTACT: Bryan Benesch, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 3424, Silver Spring, MD 20993–0002, 301–796–5506.

SUPPLEMENTARY INFORMATION:

I. Background

Section 520(b) of the FD&C Act (21 U.S.C. 360j(b), as amended by section 617 of FDASIA (Pub. L. 112–144), sets forth the requirements that must be met in order for a device to qualify for a custom device exemption (Ref. 1). Section 520(b) of the FD&C Act exempts ''custom devices'' from performance standard or premarket approval requirements under sections 514 and 515 of the FD&C Act (21 U.S.C. 360d and 360e), if these devices meet the enumerated statutory requirements, including, among others, the following for each device: (1) Is ''created or modified in order to comply with the order of an individual physician or dentist (or any other specially qualified person designated under regulations promulgated by the Secretary after an opportunity for an oral hearing)''; (2) must not be ''generally available in the United States in finished form through labeling or advertising by the manufacturer, importer, or distributor for commercial distribution''; (3) must be for the purpose of treating a ''unique pathology or physiological condition that no other device is domestically available to treat''; and (4) must be manufactured for the ''special needs of such physician or dentist (or other specially qualified person so designated) in the course of the professional practice of the physician or dentist (or other specially qualified person so designated)'' or by an individual patient named in such order.

In addition to these new requirements for establishing a custom device, manufacturers will have limitations for use of a custom device only for the purpose of treating a ''sufficiently rare condition, such that conducting clinical investigations on such device would be impracticable'' and production of the device must be limited to no more than five units per year of a particular device type. Lastly, manufacturers will be required to submit an annual report explaining their use of the custom device exemption under section 617 of FDASIA.

FDA is seeking information on and examples of appropriate uses of the custom device exemption identified in section 520(b) of the FD&C Act. FDA encourages all stakeholders, including patients, physicians, dentists, and manufacturers, to submit comments on the appropriate use of this statutory provision.

FDA is particularly interested in receiving information relating to:

1. Input from patients, manufacturers, dentists, or physicians on where use of the custom device exemption is appropriate.
2. Specific instances where manufacturers, dentists, or physicians have used, would have liked to use, or plan to use the custom device exemption for treatment of a sufficiently rare condition.
3. Product areas other than orthopedic and dental devices where the custom device exemption may be useful.
4. The type of information manufacturers intend to require a physician, dentist, or other qualified person to submit to them when ordering a custom device.
5. How often a custom device is ordered due to unusual anatomical features of the individual physician/dentist, or due to a unique need in the physician's/dentist's practice not shared by health professionals of the same specialty (i.e., a special need of a physician or dentist).

This notice provides the first opportunity for the public to comment on these issues. The public will have a second opportunity to provide input when the Agency announces the availability of a draft guidance document and a draft regulation for implementing section 520(b) of the FD&C Act.

II. Comments

Interested persons may submit either written comments regarding this document to the Division of Dockets Management (see **ADDRESSES**) or electronic comments to *http://www.regulations.gov*. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

III. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*.

1. The Food and Drug Administration Safety and Innovation Act, available at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm20027187.htm*.

Dated: November 14, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–28042 Filed 11–16–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3356–EM; Docket ID FEMA–2011–0001]

Pennsylvania; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Pennsylvania (FEMA–3356–EM), dated October 29, 2012, and related determinations.

DATES: *Effective Date:* October 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2012, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Pennsylvania resulting from Hurricane Sandy beginning on October 26, 2012, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Pennsylvania.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. McCool, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Pennsylvania have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for all counties in the Commonwealth of Pennsylvania.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–28063 Filed 11–16–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3359–EM;Docket ID FEMA–2011–0001]

Virginia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Virginia (FEMA–3359–EM), dated October 29, 2012, and related determinations.

DATES: *Effective Date:* October 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2012, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the Commonwealth of Virginia resulting from Hurricane Sandy beginning on October 26, 2012, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Virginia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Donald L. Keldsen, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Virginia have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for all counties and independent cities in the Commonwealth of Virginia.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant;

97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–28053 Filed 11–16–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3358–EM; Docket ID FEMA–2011–0001]

West Virginia; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of West Virginia (FEMA–3358–EM), dated October 29, 2012, and related determinations.

DATES: *Effective Date:* October 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2012, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of West Virginia resulting from Hurricane Sandy beginning on October 29, 2012, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of West Virginia.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of West Virginia have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for all counties in the State of West Virginia.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–28054 Filed 11–16–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3357–EM; Docket ID FEMA–2011–0001]

Delaware; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Delaware (FEMA–3357–EM), dated October 29, 2012, and related determinations.

DATES: *Effective Date:* October 29, 2012.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 29, 2012, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in the State of Delaware resulting from Hurricane Sandy beginning on October 27, 2012, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Delaware.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that

pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Regis Leo Phelan, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Delaware have been designated as adversely affected by this declared emergency:

Emergency protective measures (Category B), limited to direct federal assistance, under the Public Assistance program for all counties in the State of Delaware.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2012–28062 Filed 11–16–12; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. DHS–2012–0068]

Privacy Act of 1974: System of Records; Secure Flight Records

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice to alter an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security (DHS), Transportation Security Administration (TSA) is altering and republishing an existing system of records notice (SORN) titled Department of Homeland Security/Transportation Security Administration 019 (DHS/TSA–019), Secure Flight Records, for the passenger and non-traveler screening program known as Secure Flight. TSA is republishing this SORN to reflect additions to TSA's screening capabilities designed to better focus enhanced passenger screening efforts on individuals likely to pose a threat to civil aviation, and to facilitate the secure and efficient travel of the vast majority of the traveling public by distinguishing them from individuals on federal government watch lists. This SORN includes modifications in the following areas of the SORN: Categories of individuals, categories of records, purpose(s), routine uses, disclosure to consumer reporting agencies, data retention and disposal, notification procedure, records access procedures, and the record source categories.

DATES: Submit comments on modifications to routine use 3 on or before December 19, 2012. This updated system will be effective upon publication except that the change to routine use 3 will be effective 30 days after date of publication in the **Federal Register**.

ADDRESSES: You may submit comments, identified by docket number DHS–2012–0068 by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received, please visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Peter Pietra, Director, Privacy Policy and Compliance, TSA–36, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6036; email: *TSAPrivacy@dhs.gov;* or Jonathan R. Cantor, Acting Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528; email: *privacy@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Notice

You may obtain an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for ''Research Center'' at the top of the page.

In addition, copies are available by writing or emailing the TSA Privacy Office in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this notice.

Background

The Transportation Security Administration is responsible for security in all modes of transportation and performs passenger and baggage screening at the Nation's airports. Prior to the implementation of the TSA Secure Flight program, this screening was supplemented by aircraft operators who performed passenger watch list matching against the federal No Fly and Selectee Lists, as required under security directives issued by TSA in 2002. Aircraft operators also conducted this watch list matching process for certain non-traveling individuals [1] authorized to enter the sterile area [2] of an airport.

The National Commission on Terrorist Attacks Upon the United States (the 9/11 Commission) recommended that watch list matching be performed by TSA using the ''larger set of watch lists maintained by the Federal Government.'' [3] In response, under section 4012(a)(1)–(2) of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA),[4] Congress directed TSA and DHS to assume from aircraft operators the function of comparing airline passenger information to data in the Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC).[5] Consistent with this statutory

[1] ''Non-traveling individual'' or ''non-traveler'' means an individual to whom a covered aircraft operator or covered airport seeks to issue an authorization to enter the sterile area of an airport in order to escort a minor or passenger with disabilities or for some other purpose permitted by TSA. The term does not include employees or agents of an airport or aircraft operators or other individuals whose access to a sterile area is governed by another TSA requirement. 49 CFR 1560.3.

[2] ''Sterile area'' means a portion of an airport defined in the airport security program that provides passengers access to boarding aircraft and to which the access generally is controlled by TSA, an aircraft operator, or a foreign air carrier through the screening of persons and property. 49 CFR 1504.5.

[3] ''National Commission on Terrorist Attacks Upon the United States,'' page 393 (July 22, 2004).

[4] Public Law 108–458, 118 Stat. 3638 (December 17, 2004).

[5] The TSC was established by the Attorney General in coordination with the Secretary of State, the Secretary of Homeland Security, the Director of the Central Intelligence Agency, the Secretary of the Treasury, and the Secretary of Defense. The

Continued

directive, TSA promulgated the Secure Flight Final Rule [6] for the purpose of enhancing the security of air travel in the United States and to support the federal government's counter-terrorism efforts by assisting in the detection of individuals on federal government watch lists who seek to travel by air, and to facilitate the secure travel of the public. By November 2010, TSA fully assumed the watch list matching function from aircraft operators and air carriers.

TSA established the Secure Flight system of records and published the SORN in the **Federal Register** on August 23, 2007.[7] TSA altered and republished the SORN in the **Federal Register** on November 9, 2007.[8] TSA is amending the Secure Flight SORN again to reflect additions to TSA's screening capabilities as discussed below.

TSA uses Secure Flight to conduct watch list matching against the No Fly and Selectee List components of the TSDB. Where warranted by security considerations, Secure Flight also matches against the full TSDB and other government databases. In addition, Secure Flight matches against the list of individuals whom the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) has identified to DHS as persons who should not be permitted to board an aircraft due to public health concerns.[9]

TSA also uses Secure Flight to match air travelers and other individuals seeking access to airport sterile areas against a list of individuals who have each been assigned a unique redress number by the DHS Traveler Redress Inquiry Program (TRIP).[10] TSA also may collect and use a passenger's ''Known Traveler Number'' if available. A Known Traveler Number is a unique number assigned to Known Travelers for whom the federal government has conducted a security threat assessment and determined do not pose a security threat.[11] TSA did not use this capability when it initially assumed responsibility for passenger screening using Secure Flight. In October 2011, however, TSA announced the TSA Pre✓™ pilot program.[12] TSA initiated TSA Pre✓™ as a proof of concept at four U.S. airports, starting with individuals enrolled within U.S. Customs and Border Protection (CBP) Trusted Traveler programs [13] and certain airline frequent flyer program members.[14] The purpose of the proof of concept was to evaluate capabilities to identify air travelers who are lower risk and eligible for expedited security screening at the airport checkpoints, and to test expedited screening processes. The Known Travelers participating in the proof of concept volunteered information that permitted TSA to make risk assessments before the individual arrives at the airport.

Earlier this year, TSA began the transition of the TSA Pre✓™ program—including individuals in CBP Trusted Traveler programs and certain airline frequent flyer program members—from proof of concept to an operational status.[15] TSA is expanding the availability of TSA Pre✓™ to additional U.S. airports and populations, such as eligible members of the U.S. Armed Forces and certain active security clearance holders.[16] By identifying passengers who are low risk and providing them expedited screening, TSA Pre✓™ enables the agency to better focus its screening efforts on individuals who are more likely to pose a threat to civil aviation.

As part of the effort to identify individuals that are low risk, TSA also is creating and maintaining a watch list of individuals who are disqualified from eligibility from TSA Pre✓™, for some period of time or permanently, because they have been involved in violations of security regulations of sufficient severity or frequency. Disqualifying violations of aviation security regulations may involve violations at the airport or on board aircraft, such as a loaded firearm that is discovered in carry-on baggage at the checkpoint, or a threat to use a destructive device against a transportation conveyance, facilities, or personnel. The TSA Pre✓™ Disqualification List will be generated by TSA's Performance and Results Information System (PARIS).[17]

Consistent with its ongoing efforts to focus on passengers who are more likely to pose a threat to civil aviation, and following the failed terrorist attack on an international flight bound for Detroit on December 25, 2009, the Secure Flight program began matching passengers on international flights bound for the United States against a list of individuals requiring enhanced screening that is generated through CBP's Automated Targeting System (ATS).[18] ATS uses threat-based intelligence scenarios designed to identify international travelers who are more likely to pose a threat and for whom enhanced screening is appropriate. TSA receives from CBP a continuously updated list of individuals identified through these scenario rules for use in Secure Flight passenger screening. Oversight is exercised by the DHS Offices of Privacy, Civil Rights and Civil Liberties, and General Counsel to ensure that the threat-based intelligence is appropriately applied. After they arrive in the United States, some of these international travelers also may receive enhanced screening prior to

Attorney General, acting through the Director of the Federal Bureau of Investigation (FBI), established the TSC in support of Homeland Security Presidential Directive 6 (HSPD–6), dated September 16, 2003, which required the Attorney General to establish an organization to consolidate the Federal Government's approach to terrorism screening and to provide for the appropriate and lawful use of terrorist information in screening processes. The TSC maintains the Federal government's consolidated and integrated terrorist watch list, known as the TSDB.

[6] 73 FR 64018 (Oct. 28, 2008).

[7] 72 FR 48392.

[8] 72 FR 63711.

[9] To accomplish this list matching function, Secure Flight ingests copies of these lists of individuals identified on other government systems to minimize the processing time when Secure Flight receives passenger travel data.

[10] *http://www.dhs.gov/files/programs/gc_1169673653081.shtm.*

[11] *See* 49 CFR 1560.3.

[12] *See TSA Pre✓™ Pilot Starts Today at Select Airports to Further Enhance Security,* TSA Office of Public Affairs (October 4, 2011), *www.tsa.gov/press/releases/2011/1004.shtm.*

[13] CBP Trusted Traveler programs include Global Entry, SENTRI, and NEXUS. *See www.cbp.gov/xp/cgov/travel/trusted_traveler.* For individuals in the CBP Trusted Traveler programs, TSA receives from CBP a list of eligible travelers that is ingested into Secure Flight to minimize the processing time when Secure Flight receives passenger travel data. Eligible members of these programs provide their Known Traveler number to aircraft operators for transmittal to Secure Flight.

[14] For airline frequent flyers, TSA has developed eligibility criteria and partnered with aircraft operators that identify frequent flyers who meet those criteria. Those frequent flyers are given the opportunity to opt into the TSA Pre✓™ program. When those passengers' travel data are submitted by the aircraft operators to Secure Flight, the aircraft operator also includes a designator code that identifies the passenger as eligible for expedited screening. See *www.tsa.gov/what_we_do/escreening.shtm.*

[15] *See TSA Pre✓™ Screening Benefits Expanding to Additional Airports,* TSA Office of Public Affairs (March 30, 2012), *www.tsa.gov/press/releases/2012/0330.shtm*; DHS/TSA/PIA–018(e)—Secure Flight Program Update, *www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_secureflight_update018(e).pdf.*

[16] As additional populations are added to the TSA Pre✓™ program, additional lists of eligible individuals will be ingested by Secure Flight. The Secure Flight Privacy Impact Assessment (PIA) will be updated to reflect that information. See *www.dhs.gov/xlibrary/assets/privacy/privacy_pia_tsa_secureflight_update018(e).pdf.*

[17] PARIS is an enforcement and inspections system for all modes of transportation for which TSA has security related duties, and maintains records related to the investigation or prosecution of violations or potential violations of Federal, State, local, or international criminal law. For additional information, *see* DHS/TSA–001 Transportation Security Administration Transportation Security Enforcement Record System (TSERS), 75 FR 28042 (May 19, 2010).

[18] *See Secretary Napolitano Announces New Measures to Strengthen Aviation Security,* DHS Office of the Press Secretary (April 2, 2010).

subsequent domestic and international outbound flights for a period of time, again based on threat-based, intelligence-driven scenario rules.

TSA receives from CBP an Electronic System for Travel Authorization (ESTA) status code for international travelers. ESTA is an automated system used by CBP to determine the eligibility of visitors to travel to the United States under the Visa Waiver Program and whether the traveler poses any law enforcement or security risk. In order to eliminate multiple messages to the airlines from CBP and TSA on a single passenger, Secure Flight transmits the ESTA status code for international travelers to the aircraft operator as part of the boarding pass printing result.

Finally, TSA is adding a clause to subsection (a) of the Category of Individuals to ensure that, when requested by a U.S. government agency or institution, TSA may use Secure Flight to vet passengers on U.S. government operated, chartered, or leased flights. A corresponding change to routine use (3) is being made to permit disclosure of information to the U.S. government agency for screening status or operational response.

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, DHS/TSA is altering and republishing DHS/TSA SORN DHS/TSA–019, titled Secure Flight Records (72 FR 63711, November 9, 2007). Consistent with the discussion above, the following modifications are being made to the DHS/TSA–019 Secure Flight Records system of records:

- The Categories of Individuals section is updated as follows:
  - We have added a category of individuals to subsection (a) to ensure that U.S. government operated flights are covered, including flights leased or chartered by the U.S. government.
  - We have rewritten subsection (c) to clarify that it addresses individuals involved with chartered or leased aircraft ''with a maximum take-off weight'' over 12,500 pounds; and
  - We have added a new subsection (f) to expressly include individuals who are identified as Known Travelers.
- The Categories of Records section is updated as follows:
  - We have amended subsection (a) to note that TSA receives from aircraft operators the designator code used to verify certain travelers' frequent flyer status.
  - Subsection (a) also was amended to clarify that Secure Flight may receive Secure Flight Passenger Data (SFPD)[19] for individuals who seek to charter, lease, operate, or be transported on aircraft ''with a maximum take-off weight'' over 12,500 pounds, and owners and/or operators of such aircraft,
  - We have revised subsection (d) to reflect that matching analyses and results may include lists generated by other classified and unclassified government watchlists. As discussed above such lists include CBP ATS, the TSA Pre✓™ Disqualification list, and the CDC Do Not Board list.
  - We have inserted a new subsection (h) to expressly include the Electronic System for Travel Authorization (ESTA) status code for international travelers as a category of records,
  - We have inserted a new subsection (i) to expressly include records about Known Travelers.
- The Purpose(s) section is updated to reflect that, in addition to assisting in the detection of individuals identified on federal government watch lists who seek to travel by air, Secure Flight also is used to identify air travelers who are lower risk and eligible for expedited security screening at the airport checkpoints.
- The Routine Uses section is updated as follows:
  - We have rewritten routine use (2) to conform to a standard DHS routine use pertaining to the sharing of information with contractors when necessary.
  - We have amended routine use (3) to more accurately reflect that TSA discloses the passenger screening status, not the watch list matching status, to airlines, airports, and the Department of Transportation, and to reflect that passenger screening information may be disclosed to U.S. government agencies that operate, charter, or lease aircraft. This would permit, for example, the Department of Defense (DoD) to request that passengers on a DoD operated or chartered flight be vetted through Secure Flight.
  - We have amended routine use (4) to make it consistent with routine use (3) providing for disclosure regarding individuals who pose or are suspected of posing a risk to transportation or national security.
  - We have deleted from routine use (9) the reference to the DHS Office of Inspector General since such disclosures would be accomplished pursuant to the Privacy Act under 5 U.S.C. 552a(b)(1) rather than pursuant to a routine use.
- The Disclosure to Consumer Reporting Agencies section is being changed to reflect that disclosures in connection with the Debt Collection Act of 1982 (Pub. L. 97–365) are not part of this system of records. Routine use 12 remains in place to permit disclosures in the event of a data breach.
- The Retention and Disposal section is amended to reflect that the retention schedule was approved by NARA. This section also was amended to reflect that lists of individuals in Secure Flight, such as Known Traveler lists and the TSA Pre✓™ Disqualification list, will be deleted or destroyed when superseded.
- The System Manager and Notification Procedure section has been updated to reflect updated contact information.
- The Records Access Procedures section has been updated to reflect the correct zip code for the TSA Freedom of Information Act Office.
- The Records Access Procedures section also was revised to clarify that individuals who believe they have been improperly denied entry by CBP may submit a redress request through DHS TRIP.
- The Record Source Categories section is updated to clarify that Secure Flight may receive information from all three branches of the Federal government, as well as from private entities (*e.g.,* airlines) that participate in the Known Traveler program.
- The Exemptions Claimed for the System category is updated to include non-travelers to whom a covered aircraft operator or covered airport seeks to issue an authorization to enter the sterile area of an airport.

Privacy Act

The Privacy Act embodies fair information practice principles in a statutory framework governing the means by which the federal government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined to encompass U.S. citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals when systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may

[19] SFPD is the following information regarding a passenger or non-traveling individual: Full name, date of birth, gender, redress number or Known Traveler Number, passport information, reservation control number, record sequence number, record type, passenger update indicator, traveler reference number, and itinerary information. 49 CFR 1560.3.

request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to their records are put, and to assist individuals to more easily find such files within the agency. Below is the description of the DHS/TSA–019 Secure Flight Records system of records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

SYSTEM OF RECORDS

DHS/TSA–019

SYSTEM NAME:

Secure Flight Records.

SECURITY CLASSIFICATION:

Unclassified; Sensitive Security Information.

SYSTEM LOCATION:

Records are maintained at the Transportation Security Administration (TSA), 601 South 12th Street, Arlington, VA, and at other secure TSA facilities in Annapolis Junction, Maryland and Colorado Springs, Colorado. Records also may be maintained at the secured facilities of contractors or other parties that perform functions under the Secure Flight program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(a) Individuals who attempt to make reservations for travel on, have traveled on, or have reservations to travel on a flight operated by a U.S. aircraft operator, or a flight into, out of, or overflying the United States that is operated by a foreign air carrier, or flights operated by the U.S. government, including flights chartered or leased by the U.S. government;

(b) Non-traveling individuals who seek to obtain authorization from an aircraft or airport operator to enter the sterile area of an airport;

(c) For flights that TSA grants a request by the operators of leased or charter aircraft with a maximum take-off weight over 12,500 pounds to screen the individuals using Secure Flight, the following individuals: (1) Individuals who seek to charter or lease an aircraft with a maximum take-off weight over 12,500 pounds or who are proposed to be transported on or operate such charter aircraft; and (2) owners and/or operators of such chartered or leased aircraft;

(d)(1) Known or suspected terrorists identified in the Terrorist Screening Database (TSDB) maintained by the Terrorist Screening Center (TSC); and (2) individuals identified on classified and unclassified governmental databases such as law enforcement, immigration, or intelligence databases;

(e) Individuals who have been distinguished from individuals on a watch list through a redress process, or other means; and

(f) Individuals who are identified as Known Travelers for whom the federal government has conducted a security threat assessment and determined do not pose a security threat.

CATEGORIES OF RECORDS IN THE SYSTEM:

(a) Records containing passenger and flight information (*e.g.,* full name, date of birth, gender, redress number, Known Traveler Number, passport information, frequent flyer designator code or other identity authentication/verification code obtained from aircraft operators, and itinerary); records containing information about non-traveling individuals seeking access to an airport sterile area for a purpose approved by TSA; and records containing information about individuals who seek to charter, lease, operate or be transported on aircraft with a maximum take-off weight over 12,500 pounds if TSA grants the request of an aircraft owner or operator to use Secure Flight;

(b) Records containing information from an individual's form of identification or a physical description of the individual;

(c) Records obtained from the TSC of known or suspected terrorists in the TSDB; and records regarding individuals identified on classified and unclassified governmental watch lists;

(d) Records containing the matching analyses and results of comparisons of individuals to the TSDB and other classified and unclassified governmental watch lists;

(e) Records related to communications between or among TSA and aircraft operators, airport operators, owners and/or operators of leased or charter aircraft with a maximum take-off weight over 12,500 pounds, TSC, law enforcement agencies, intelligence agencies, and agencies responsible for airspace safety or security, regarding the screening status of passengers or non-traveling individuals and any operational responses to individuals identified in the TSDB;

(f) Records of the redress process that include information on known misidentified persons, including any Redress Number assigned to those individuals;

(g) Records that track the receipt, use, access, or transmission of information as part of the Secure Flight program;

(h) Electronic System for Travel Authorization status code generated by U.S. Customs and Border Protection (CBP) for international travelers; and

(i) Records containing information about individuals who are identified as Known Travelers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 114, 40113, 44901, 44903, and 44909.

PURPOSE(S):

The Secure Flight Records system will be used to identify and protect against potential and actual threats to transportation security and support the federal government's counterterrorism efforts by assisting in the identification of individuals who warrant further scrutiny prior to boarding an aircraft or seek to enter a sterile area or who warrant denial of boarding or denial of entry to a sterile area on security grounds. It also will be used to identify individuals who are lower risk and therefore may be eligible for expedited security screening at the airport checkpoints. Both of these functions are designed to facilitate the secure travel of the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

(1) To the TSC in order to: (a) Determine whether an individual is a positive identity match to an individual identified as a known or suspected terrorist in the watch list; (b) allow redress of passenger complaints; (c) facilitate an operational response, if one is deemed appropriate, for individuals who are a positive identity match to an individual identified as a known or suspected terrorist in the watch list; (d) provide information and analysis about terrorist encounters and known or suspected terrorist associates to appropriate domestic and foreign government agencies and officials for counterterrorism purposes; and (e) perform technical implementation functions necessary for the Secure Flight program.

(2) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative

agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

(3) To aircraft operators, foreign air carriers, airport operators, the Department of Transportation, and the Department of Defense or other U.S. government agencies or institutions, to communicate individual screening status and facilitate an operational response, where appropriate, to individuals who pose or are suspected of posing a risk to transportation or national security.

(4) To owners or operators of leased or charter aircraft to communicate individual screening status and facilitate an operational response, when appropriate, to individuals who pose or are suspected of posing a risk to transportation or national security.

(5) To the appropriate federal, state, local, tribal, territorial, foreign, or international agency regarding or to identify individuals who pose, or are under reasonable suspicion of posing, a risk to transportation or national security.

(6) To the Department of Justice (DOJ) or other Federal agency for purposes of conducting litigation or administrative proceedings, when: (a) The Department of Homeland Security (DHS), or (b) any employee or former employee of DHS in his/her official capacity, or (c) any employee or former employee of DHS in his/her individual capacity where the DOJ or DHS has agreed to represent the employee, or (d) the United States or any agency thereof, is a party to the litigation or proceeding or has an interest in such litigation or proceeding.

(7) To the National Archives and Records Administration (NARA) or other Federal agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

(8) To a congressional office in response to an inquiry from that congressional office made at the request of the individual.

(9) To the Government Accountability Office or other agency, organization, or individual for the purposes of performing authorized audit or oversight operations, but only such information as is necessary and relevant to such audit and oversight functions.

(10) To the appropriate federal, state, local, tribal, territorial, foreign, or international agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order regarding a violation or potential violation of civil or criminal law, regulation, or order when such disclosure is proper and consistent with the performance of the official duties of the person making the disclosure.

(11) To international and foreign governmental authorities in accordance with law and formal or informal international agreements when such disclosure is proper and consistent with the performance of the official duties of the person making the disclosure.

(12) To appropriate agencies, entities, and persons when (a) TSA suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) TSA has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by TSA or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with TSA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

(13) To appropriate federal, state, local, tribal, or foreign governmental agencies or multilateral governmental organizations, including the World Health Organization, for purposes of assisting such agencies or organizations in preventing exposure to or transmission of communicable or quarantinable disease or for combating other significant public health threats; appropriate notice will be provided of any identified health threat or risk.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained at the Transportation Security Administration, 601 South 12th Street, Arlington, VA, and at other secure TSA facilities in Annapolis Junction, Maryland and Colorado Springs, Colorado. Records also may be maintained at the secured facilities of contractors or other parties that perform functions under the Secure Flight program. The records are stored on magnetic disc, tape, digital media, and CD–ROM, and may also be retained in hard copy format in secure file folders or safes.

RETRIEVABILITY:

Data are retrievable by the individual's name or other identifier, as well as non-identifying information such as itinerary.

SAFEGUARDS:

All records are protected from unauthorized access through appropriate administrative, physical, and technical safeguards. The system is also protected through a multi-layer security approach. The protective strategies are physical, technical, administrative, and environmental in nature. The system has role-based access control to sensitive data, physical access control to DHS facilities, auditing software, and confidentiality of communications, including encryption, authentication of sending parties, compartmentalizing databases. Personnel is conducted screening to ensure that all personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

Information in this system is safeguarded in accordance with applicable rules and policies, including any applicable TSA and DHS automated systems security and access policies. The system will be in compliance with Office of Management and Budget and National Institute of Standards and Technology guidance. Access to the computer system containing the records in this system of records is limited to those individuals who require it to perform their official duties. The computer system also maintains a real-time audit of individuals who access the system.

RETENTION AND DISPOSAL:

Records relating to an individual determined by the automated matching process to be neither a match nor or potential match to a watchlist will be destroyed within seven days after completion of the last leg of the individual's directional travel itinerary. Records relating to an individual determined by the automated matching process to be a potential watch list match will be retained for seven years after the completion of the individual's directional travel itinerary. Records relating to an individual determined to be a confirmed watchlist match will be retained for 99 years after the date of match confirmation.

Lists of individuals stored in Secure Flight, such as individuals identified as Known Travelers and individuals who

have been disqualified from eligibility to receive expedited screening as a result of their involvement in certain security incidents, will be deleted or destroyed when superseded by an updated list.

SYSTEM MANAGER(S) AND ADDRESS:

Secure Flight Mission Support Branch Manager, Transportation Security Administration, TSA–19, 601 South 12th Street, Arlington, VA 20598–6019.

NOTIFICATION PROCEDURE:

To determine whether this system contains records relating to you, write to the Freedom of Information Act Office, Transportation Security Administration, TSA–20, 601 South 12th Street, Arlington, VA 20598–6020.

RECORDS ACCESS PROCEDURES:

Requests for records access must be in writing and should be addressed to the Freedom of Information Act Office, Transportation Security Administration, TSA–20, 601 South 12th Street, Arlington, VA 20598–6020. Requests should conform to the requirements of 6 CFR Part 5, Subpart B, which provides the rules for requesting access to Privacy Act records maintained by DHS. The envelope and letter should be clearly marked ''Privacy Act Access Request.'' The request should include a general description of the records sought and must include the requester's full name, current address, and date and place of birth. The request must be signed and either notarized or submitted under penalty of perjury. Some information may be exempt from access provisions. An individual who is the subject of a record in this system may access those records that are not exempt from disclosure. A determination whether a record may be accessed will be made at the time a request is received.

Individuals who believe they have been improperly denied entry by CBP, refused boarding for transportation, or identified for additional screening may submit a redress request through the DHS Traveler Redress Program (''TRIP'') (see 72 FR 2294, January 18, 2007). TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs—like airports and train stations or crossing U.S. borders. Through TRIP, a traveler can correct erroneous data stored in Secure Flight and other data stored in other DHS databases through one application. Additionally, for further information on the Secure Flight program and the redress options please see the accompanying Privacy Impact Assessment for Secure Flight published on the DHS Web site at *www.dhs.gov/privacy.* Redress requests should be sent to: DHS Traveler Redress Inquiry Program (TRIP), TSA–901, 601 South 12th Street, Arlington, VA 20598–6036 or online at *http://www.dhs.gov/trip.*

CONTESTING RECORDS PROCEDURES:

Same as ''Notification Procedure'' and ''Record Access Procedure'' above.

RECORD SOURCE CATEGORIES:

Information contained in the system is obtained from U.S. aircraft operators, foreign air carriers, the owners and operators of leased or charter aircraft with a maximum take-off weight over 12,500 pounds who request TSA screening, the TSC, TSA employees, airport operators, Federal executive branch agencies, Federal judicial and legislative branch entities, State, local, international, and other governmental agencies, private entities for Known Traveler program participants, and the individuals to whom the records in the system pertain.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

No exemption will be asserted with respect to identifying information, or flight information, obtained from passengers, non-travelers, and aircraft owners or operators.

This system, however, may contain records or information recompiled from or created from information contained in other systems of records that are exempt from certain provisions of the Privacy Act. For these records or information only, in accordance with 5 U.S.C. 552a(j)(2) and (k)(2), TSA claims the following exemptions for these records or information from subsections (c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1), (2), (3), (4)(G) through (I), (5), and (8); (f); and (g) of the Privacy Act of 1974, as amended, as necessary and appropriate to protect such information. Certain portions or all of these records may be exempt from disclosure pursuant to these exemptions.

Dated: November 6, 2012.

Jonathan R. Cantor,

Chief Privacy Officer, Acting, Department of Homeland Security.

[FR Doc. 2012–28058 Filed 11–16–12; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–81]

Notice of Submission of Proposed Information Collection to OMB; OneCPD Technical Assistance and Capacity Building Needs Assessment

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The OneCPD Needs Assessment will enhance a grantee's awareness of their functional capacity to effectively and efficiently administer and manage programs funded by CPD and enable HUD and the TA provider to better understand the scope of assistance needed by each grantee and to target appropriate TA resources to grantees. It will also enable HUD to identify trends in TA needs across grantees and assist in prioritizing the development of tools, products and group learning activities to benefit CPD grantees and subrecipients. Members of the affected public: Grantees and subrecipient organizations receiving funding to operate and manage programs administered by the Office of Community Planning and Development (CPD).

DATES: *Comments Due Date:* December 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506-New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a

request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: OneCPD Technical Assistance and Capacity Building Needs Assessment.

OMB Approval Number: 2506-New.

Form Numbers: None.

Description of the need for the information and proposed use: The OneCPD Needs Assessment will enhance a grantee's awareness of their functional capacity to effectively and efficiently administer and manage programs funded by CPD and enable HUD and the TA provider to better understand the scope of assistance needed by each grantee and to target appropriate TA resources to grantees. It will also enable HUD to identify trends in TA needs across grantees and assist in prioritizing the development of tools, products and group learning activities to benefit CPD grantees and subrecipients. Members of the affected public: Grantees and subrecipient organizations receiving funding to operate and manage programs administered by the Office of Community Planning and Development (CPD).

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 180 respondents × 176.4 average hours per response = 31,752 hours annually.

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 13, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–28084 Filed 11–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–82]

Notice of Submission of Proposed Information Collection to OMB; Funding Availability for OneCPD Technical Assistance and Capacity Building Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application information is needed to determine competition winners, i.e., those technical assistance providers best able to assist CPD grantees and communities to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

DATES: *Comments Due Date:* December 19, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–New) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov;* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov*, or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposed: Funding Availability for OneCPD Technical Assistance and Capacity Building Program.

OMB Approval Number: 2506–New.

Form Numbers: SF–424, SF–424CB, SF–424CBW, LLL, 2880.

Description of the need for the information and proposed use: Application information is needed to determine competition winners, i.e., those technical assistance providers best able to assist CPD grantees and communities to develop efficient and effective programs and projects that increase the supply of affordable housing units, prevent and reduce homelessness, improve data collection and reporting, and use coordinated neighborhood and community development strategies to revitalize and strengthen their communities.

	Number of respondents	Number of responses per respondent annually	Total annual responses	Hours per response	Total annual hours
Application	35	1	35	100	3,500
Work Plans	15	17	255	18	4,590

	Number of respondents	Number of responses per respondent annually	Total annual responses	Hours per response	Total annual hours
Reports	15	16	240	6	1,440
Recordkeeping	15	12	180	6	960
Total			710		10,490

Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 13, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–28077 Filed 11–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5374–N–44]

Buy American Exceptions Under the American Recovery and Reinvestment Act of 2009

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: In accordance with the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–05, approved February 17, 2009) (Recovery Act), and implementing guidance of the Office of Management and Budget (OMB), this notice advises that certain exceptions to the Buy American requirement of the Recovery Act have been determined applicable for work using Capital Fund Recovery Formula and Competition (CFRFC) grant funds. Specifically, an exception was granted to the Chesapeake Redevelopment and Housing Authority for the purchase and installation of gas fired tankless hot water heaters for the Schooner Cove and Peaceful Village projects.

FOR FURTHER INFORMATION CONTACT: Donald J. LaVoy, Deputy Assistant Secretary for Office of Field Operations, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4112, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number); or Dominique G. Blom, Deputy Assistant Secretary for Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4130, Washington, DC 20410–4000, telephone number 202–402–8500 (this is not a toll-free number). Persons with hearing- or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 1605(a) of the Recovery Act provides that none of the funds appropriated or made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. Section 1605(b) provides that the Buy American requirement shall not apply in any case or category in which the head of a Federal department or agency finds that: (1) Applying the Buy American requirement would be inconsistent with the public interest; (2) iron, steel, and the relevant manufactured goods are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality, or (3) inclusion of iron, steel, and manufactured goods will increase the cost of the overall project by more than 25 percent. Section 1605(c) provides that if the head of a Federal department or agency makes a determination pursuant to section 1605(b), the head of the department or agency shall publish a detailed written justification in the **Federal Register**.

In accordance with section 1605(c) of the Recovery Act and OMB's implementing guidance published on April 23, 2009 (74 FR 18449), this notice advises the public that, on October 17, 2012, upon request of the Chesapeake Redevelopment and Housing Authority, HUD granted an exception to applicability of the Buy American requirements with respect to work, using CFRFC grant funds, in connection with the Schooner Cove and Peaceful Village projects. The exception was granted by HUD on the basis that the relevant manufactured goods (gas fired tankless water heaters) are not produced in the U.S. in sufficient and reasonably available quantities or of satisfactory quality.

Dated: November 9, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2012–28071 Filed 11–16–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–11584; 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 20, 2012. Pursuant to § 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 December 4, 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 23, 2012.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Mobile County

Africatown Historic District, Bounded by Jakes Ln., Paper Mill, & Warren Rds., Chin, & Railroad Sts., Mobile, 12000990

COLORADO

Jefferson County

Staunton Ranch Rural Historic Landscape, 11559 Upper Ranch Dr., Pine, 12000991

FLORIDA

Broward County

Council Oak Tree Site on the Hollywood Seminole Indian Reservation, Address Restricted, Hollywood, 12000992

MARYLAND

Prince George's County

Old Town College Park, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by Yale & Columbia Aves., Calvert Rd., & UM Campus, College Park, 12000993

MASSACHUSETTS

Hampshire County

Northampton Veterans Administration Hospital Historic District, (United States Second Generation Veterans Hospitals MPS), 421 N. Main St., Northampton, 12000994

MONTANA

Flathead County

Conrad, C.E., Memorial Cemetery, 641 Conrad Dr., Kalispell, 12000995

NEW YORK

Erie County

Elmwood Historic District—West, Roughly Ashland, Auburn, Bird, Claremont, Elmwood, Forest, Highland, Hodge, Lafayette, Lexington, Norwood Aves., Buffalo, 12000996

Hamburg Main Street Historic District, 11 through 235 Main St., Hamburg, 12000997

Niagara County

Taylor, William, House, 97 S. Main St., Middleport, 12000998

TEXAS

Comanche County

Cunningham, Captain James & Susannah, Homestead, 19601 TX 16 S., Comanche, 12000999

Harris County

San Jacinto Senior High School, 1300 Holman St., Houston, 12001000

Hill County

Nolan River Bridge 303–4 of the Gulf, Colorado and Santa Fe Railway, Cty. Rd. 1127 at Nolan R., Blum, 12001001

Jack County

Jack County Courthouse, 100 N. Main St., Jacksboro, 12001002

Potter County

Fisk Medical Arts Building, 724 S. Polk St., Amarillo, 12001003

Tarrant County

Farmers and Mechanics National Bank, 714 Main St., Fort Worth, 12001004

Van Zandt Cottage, 2900 Crestline Rd., Fort Worth, 12001005

[FR Doc. 2012–27991 Filed 11–16–12; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–804]

Certain LED Photographic Lighting Devices and Components Thereof; Notice of the Commission's Determination To Review in Part the Final Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') on September 7, 2012, finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Amanda S. Pitcher, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2737. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 7, 2011, based on a complaint filed by Litepanels, Inc. and Litepanels, Ltd. (collectively, ''Litepanels''). 76 FR 55416 (Sept. 7, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe certain claims of U.S. Patent Nos. 7,429,117 (terminated from the investigation); 7,510,290 (terminated from the investigation); 7,972,022 (''the '022 patent''); 7,318,652 (''the '652 patent''); and 6,948,823 (''the '823 patent''). The Notice of Institution named respondents Flolight, LLC. of Campbell, California; Prompter People, Inc. of Campbell, California; IKAN Corporation of Houston, Texas; Advanced Business Computer Services, LLC d/b/a Cool Lights, USA of Reno, Nevada; Elation Lighting, Inc. of Los Angeles, California; Fotodiox, Inc. of Waukegan, Illinois; Fuzhou F&V Photographic Equipment Co., Ltd. of Fujian, China; Yuyao Lishuai Photo-Facility Co., Ltd. of Zhejiang Province, China; Yuyao Fotodiox Photo Equipment Co., Ltd. of Zhejiang Province, China; Shantou Nanguang Photographic Equipment Co., Ltd. of Guangdong Province, China; Visio Light, Inc. of Taipei, Taiwan; Tianjin Wuqing Huanyu Film and TV Equipment Factory of Tianjin, China; Stellar Lighting Systems of Los Angeles, California; and Yuyao Lily Collection Co., Ltd. of Yuyao, China. The Commission Investigative Attorney (''IA'') of the Office of Unfair Import Investigations also participated in this investigation.

On September 7, 2012, the ALJ issued the subject final ID finding a violation of section 337. The ALJ held that a violation occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe one or more of claims 1, 57–58, and 60 of the '022 patent; claims 1, 2, 5, 16, 18, 19, 25 and 27 of the '652 patent; and claim 19 of the '823 patent. ID at ii. The ALJ further held that no violation of section 337 occurred in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain LED photographic lighting devices and components thereof that infringe claims 17 and 28 of the '823 patent because claims 17 and 28 are anticipated. *Id.* at ii, 81.

Litepanels petitions for review of the ALJ's construction of the preamble of claim 17 of the '823 patent and asserts that the ALJ incorrectly found that independent claim 17 and dependent claim 28 of the '823 patent were invalid based on his incorrect construction. The IA petitioned for review of the ALJ's finding that claims 17, 19 and 28 of the '823 patent are infringed based on the construction of the term ''an integrated power source'' of independent claim 17. Respondents petitioned for review of most of the ALJ's invalidity findings (including public use, and obviousness), the construction of ''focusing element'' of claim 1 of the '652 patent, and the exclusion of claim charts.

The Commission has determined to review the ID in part. The Commission has determined to review (1) the ALJ's construction of the preamble of the asserted independent claims of the '652 patent, the '823 patent and the '022 patent; (2) the ALJ's findings of infringement; (3) the ALJ's findings of obviousness and anticipation; (4) the ALJ's construction of ''an integrated power source'' of claim 17 of the '823 patent; and (5) the ALJ's findings on the technical prong of domestic industry. The Commission has determined not to review the remainder of the ID.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

(1) If the Commission were to determine that the preambles of the asserted independent claims of the '652 patent, the '823 patent and the '022 patent are limitations and should be interpreted based on their plain and ordinary meaning (*see* ID at 44), what impact, if any, does this have on the ALJ's findings regarding anticipation and obviousness for the asserted patents? Please cite to record evidence that supports your position.

(2) If the Commission were to determine that the preambles of the asserted independent claims of the '652 patent, the '823 patent and the '022 patent are limitations and should be interpreted based on their plain and ordinary meaning (*see* ID at 44), do the accused products and domestic industry products meet the preamble limitation of each of the asserted independent claims? Please cite to record evidence to support your position. Have the Respondents waived the ability to challenge a finding that the preambles of the asserted independent claims, interpreted based on their plain and ordinary meaning, are met by the accused products?

In connection with the final disposition of this investigation, the Commission may issue an order that could result in the exclusion of the subject articles from entry into the United States. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. The Commission is particularly interested in responses to the following questions:

(1) Please discuss the technical and qualitative interchangeability of Litepanels and its licensees' products with the products that would be excluded under a general exclusion order. Please discuss the evidence that supports your position.

(2) Discuss whether Litepanels and its licensees have sufficient capability to meet the demand for any products that would be excluded under a general exclusion order. Please discuss the evidence that supports your position, including evidence regarding current manufacturing capacity and product interchangeability.

(3) What lead time would be required for existing manufacturers to modify their allegedly infringing products to be noninfringing? Please discuss the evidence that supports your position.

(4) Please discuss specific evidence pertaining to any specialized requirements of the film, video, photographic industries, or any other industries, that cannot be met by the products of Litepanels or its licensees, but are only met by the products that would be excluded under a general exclusion order.

(5) Please provide specific evidence regarding the impact, if any, of a general exclusion order on public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers.

If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding, as well as respond to the questions posed herein relating to remedy and the public interest. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and IA are also requested to submit proposed remedial orders for the Commission's consideration.

Complainant is also requested to state the dates that the '853, '022 and '652 patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Wednesday, November 28, 2012. Reply submissions must be filed no later than the close of business on Wednesday, December 5, 2012. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section

210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number (''Inv. No. 337–TA–804'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with the any confidential filing. All non-confidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

Issued: November 13, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–28064 Filed 11–16–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–809]

Certain Devices for Mobile Data Communication; Determination Not To Review an Initial Determination Granting a Motion By Complainant To Terminate the Investigation in Its Entirety Based Upon Withdrawal of the Complaint; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 60) of the presiding administrative law judge (''ALJ'') granting a motion by complainant to terminate the investigation in its entirety based upon withdrawal of the complaint.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 13, 2011, based on a complaint filed by Openwave Systems Inc. of Redwood City, California (''Openwave''). 76 FR 63657–58 (Oct. 13, 2011). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for mobile data communication by reason of infringement of certain claims of United States Patent Nos. 6,233,608; 6,289,212; 6,405,037; 6,430,409; and 6,625,447. The notice of investigation named Research In Motion Ltd. of Ontario, Canada; Research In Motion Corp. of Irving, Texas; and Apple Inc. of Cupertino, California as respondents. During pendency of the investigation, Openwave changed its name to Unwired Planet, Inc.

On October 12, 2012, Openwave filed an unopposed motion to terminate the investigation in its entirety based upon withdrawal of the complaint. No responses to the motion were filed.

That same day, the ALJ issued the subject ID (Order No. 60) terminating the investigation. The ALJ found that the motion complied with the requirements of Commission Rule 210.21(a) (19 CFR 210.21(a)) and that no extraordinary circumstances prohibited granting the motion. None of the parties petitioned for review of the ID. The Commission has determined not to review the ID.

The Commission notes that in Order No. 57 the ALJ denied a request by the parties to terminate the investigation prior to the evidentiary hearing based upon Openwave's stipulation that, under the ALJ's claim construction, the accused products do not infringe the asserted claims. The Commission clarifies that it encourages early disposition of investigations on dispositive issues, when possible, before the evidentiary hearing in the interest of mitigating litigation costs and conserving resources of the parties and the Commission. *See, e.g., Certain Drill Bits and Products Containing the Same,* Inv. No. 337–TA–844, 77 *FR* 51825–26 (Aug. 27, 2012) (affirming grant of summary determination of no importation on the merits and terminating investigation).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: November 13, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–27989 Filed 11–16–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–698 (Enforcement Proceeding)]

Certain DC–DC Controllers and Products Containing Same; Decision To Affirm-in-Part, Reverse-in-Part, Modify-in-Part, and Vacate-in-Part an Enforcement Initial Determination Finding a Violation of the August 13, 2010 Consent Order; Issuance of Modified Consent Order and Civil Penalty; and Termination of Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to affirm-in-part, reverse-in-part, modify-in-part, and vacate-in-part an enforcement initial determination (''EID'') of the presiding administrative law judge (''ALJ'') finding a violation of the

August 13, 2010 consent order (''Consent Order'') by respondent uPI Semiconductor Corp. (''uPI'') of Hsinchu, Taiwan, and has issued a modified consent order and civil penalty order in the amount of $620,000 directed against uPI.

FOR FURTHER INFORMATION CONTACT: Clint A. Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov/*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this enforcement proceeding on September 6, 2011, based on an enforcement complaint filed by Richtek Technology Corp. of Hsinchu, Taiwan and Richtek USA, Inc. of San Jose, California (collectively ''Richtek''). 76 *FR* 55109–10. The complaint alleged violations of the August 13, 2010 consent orders issued in the underlying investigation by the continued practice of prohibited activities such as importing, offering for sale, and selling for importation into the United States DC–DC controllers or products containing the same that infringe one or more of U.S. Patent Nos. 7,315,190 (''the '190 patent''); 6,414,470 (''the '470 patent''); and 7,132,717 (''the '717 patent''); or that contain or use Richtek's asserted trade secrets. The Commission's notice of institution of enforcement proceedings named uPI and Sapphire Technology Limited (''Sapphire'') of Shatin, Hong Kong as respondents.

On April 11, 2012, the Commission issued notice of its determination not to review the ALJ's ID terminating the investigation as to Sapphire based on a settlement agreement.

On June 8, 2012, the ALJ issued his EID finding a violation of the Consent Order by uPI. He found importation and sale of accused products that infringe all asserted claims of the patents at issue, and importation and sale of formerly accused products that contain or use Richtek's asserted trade secrets. He found that uPI's products developed after the consent order issued did not misappropriate Richtek's asserted trade secrets. Also, he recommended enforcement measures for uPI's violation that included the following: (1) Modifying the Consent Order to clarify that the Order applies (and has always applied) to all uPI affiliates, past, present, or future; and (2) imposing a civil penalty of $750,000 against uPI. On June 25, 2012, uPI and Richtek each filed a petition for review of the EID; on July 3, 2012, Richtek, uPI, and the Commission investigative attorney (''IA'') each filed a response to the opposing party's petition.

On August 9, 2012, the Commission issued notice of its determination to review the following: (1) The ALJ's finding of infringement of the '470 patent; (2) the ALJ's finding of infringement of the '190 patent; and (3) the ALJ's determination that uPI violated the Consent Order on 75 days. 77 FR 49022–23 (Aug. 15, 2012). The determinations made in the EID that were not reviewed became final determinations of the Commission by operation of rule. *See* 19 CFR 210.75(b)(3). The Commission also requested the parties to respond to certain questions concerning the issues under review and requested written submissions on the issues of remedy, the public interest, and bonding from the parties and interested non-parties.

On August 23 and 30, 2012, respectively, complainant Richtek, respondent uPI, and the IA each filed a brief and a reply brief on the issues for which the Commission requested written submissions.

Having reviewed the record in this investigation, including the EID and the parties' written submissions, the Commission has determined to affirm-in-part, reverse-in-part, modify-in-part, and vacate-in-part the EID's findings under review. Specifically, the Commission has affirmed the ALJ's finding that uPI violated the consent order, and determined that the number of violation days is 62 days. The Commission has also affirmed the ALJ's finding of direct infringement of claims 1–11 and 26–27 of the '190 patent with respect to uPI's formerly accused products. In addition, the Commission has vacated the ALJ's finding that uPI does not induce infringement of claims 1–11 and 26–27 of the '190 patent.

The Commission has also determined to reverse the ALJ's finding that claims 29 and 34 of the '470 patent are directly infringed by respondent uPI's accused DC–DC controllers and products containing the same, and has determined that Richtek waived any allegations of indirect infringement with respect to the '470 patent. This action results in a finding of no violation of the Consent Order with respect to the '470 patent.

Further, the Commission has vacated as moot the portion of the EID relating to the '717 patent because the asserted claims 1–3 and 6–9 have been cancelled following issuance of Ex Parte Reexamination Certificate No. U.S. 7,132,717 C1 on October 3, 2012.

Further, the Commission has made its determination on the issues of remedy, the public interest, and bonding. The Commission has determined to impose a civil penalty of $620,000 on respondent uPI for violation of the Consent Order on 62 days. The Commission has also determined to modify the Consent Order to clarify that the consent order applies (and has always applied) to all uPI affiliates, past, present, or future. Further, the Commission has modified the Consent Order to remove the portions relating to the '717 patent based on issuance of the reexamination certificate.

The Commission has terminated the enforcement proceeding. The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.75 of the Commission's Rules of Practice and Procedure, 19 CFR 210.75.

Issued: November 14, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–28101 Filed 11–16–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On November 13, 2012, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Iowa, Davenport, in the lawsuit entitled *United States* v. *Roquette America, Inc.,* Civil Action No. 3:12–cv–00131–JEG–RAW.

The Consent Decree resolves the United States' complaint for civil penalties and injunctive relief against Roquette America, Inc., associated with its corn-milling facility in Keokuk, Iowa, pursuant to sections 309(b) and (d) of the Clean Water Act for violations of

RAI's National Pollutant Discharge Elimination System permits under sections 301 and 402 of the CWA. Under this settlement RAI will pay a civil penalty of $4.1 million and perform injunctive relief upgrading various portions of the facility. The estimated cost of the injunctive relief exceeds $17 million.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *Roquette America, Inc.* D.J. Ref. No. 90–5–1–1–10177. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted by either email or mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded for free at the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611.

Please enclose a check or money order for $10.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Robert E. Maher, Jr.,

Acting Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–27982 Filed 11–16–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

TIME AND DATE: 8:00 a.m.–4:30 p.m. on Monday, December 10, 2012, 8:00 a.m.–12:00 p.m. on Tuesday, December 11, 2012.

PLACE: Federal Bureau of Prisons, 500 First Street NW., Washington, DC 20534, (202) 514–4222.

MATTERS TO BE CONSIDERED: Directors Report; review of outcomes of August 22–23, 2012 Advisory Board Hearing (Balancing Fiscal Challenges, Performance Based Budgeting, and Public Safety), presentations, future planning.

CONTACT PERSON FOR MORE INFORMATION: Shaina Vanek, Executive Assistant, (202) 514–4222.

Morris L. Thigpen, Sr.,

Director, National Institute of Corrections.

[FR Doc. 2012–27933 Filed 11–16–12; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection on the ETA 218, Benefit Rights and Experience Report, Extension Without Revisions

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data on the ETA 218, Benefit Rights and Experience Report, which expires June 30, 2013.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before January 18, 2013.

ADDRESSES: Submit written comments to Scott Gibbons, Office of Unemployment Insurance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3008 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Email: *gibbons.scott@dol.gov.* A copy of the proposed information collection request (ICR) can be obtained by contacting Mr. Gibbons.

SUPPLEMENTARY INFORMATION:

I. Background

Attachment to the labor force, usually measured as amount of past wages earned, is used to determine eligibility for state unemployment compensation programs. The data in the ETA 218, Benefit Rights and Experience Report, includes numbers of individuals who were and were not monetarily eligible, those eligible for the maximum benefits, those eligible based on classification by potential duration categories, and those exhausting their full entitlement as classified by actual duration categories. These data are used by the National Office in solvency studies, cost estimating and modeling, and assessment of state benefit formulas.

II. Review Focus

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension without changes.

Title: Benefit Rights and Experience Report.

OMB Number: 1205–0177.

Affected Public: State Workforce Agencies.

Total Annual Burden Cost for Respondents: There is no burden cost for respondents.

Instruments	Respondents	Hours per response	Annualized responses	Annualized hours
ETA 218 for Regular Program Claimants	53	0.5 hours	4	106
ETA 218 for Federal-State Extended Benefit Program ETA 218 Claimants	7	0.5 hours	4	14
ETA 218 for Emergency Unemployment Compensation 2008 Claimants	53	0.5 hours	4	106
Unduplicated Totals	53		12	226

Signed in Washington, DC, this 23rd day of October, 2012.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2012–28099 Filed 11–16–12; 8:45 am]

BILLING CODE 4510–FW–P

OFFICE OF MANAGEMENT AND BUDGET

Calendar Year 2012 Cost of Outpatient Medical and Dental Services Furnished by Department of Defense Medical Treatment Facilities; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: By virtue of the authority vested in the President by section 2(a) of Public Law 87–603 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget (OMB) by the President through Executive Order No. 11541 of July 1, 1970, the rates referenced below are hereby established. These rates are for use in connection with the recovery from tortiously liable third persons for the cost of outpatient medical and dental services furnished by military treatment facilities through the Department of Defense (DoD). The rates were established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The outpatient medical and dental rates referenced are effective upon publication of this notice in the **Federal Register** and will remain in effect until further notice. Pharmacy rates are updated periodically. Previously published inpatient rates remain in effect until further notice. A full disclosure of the rates is posted at the DoD's Uniform Business Office Web Site: *http://www.tricare.mil/ocfo/_docs/CY%202012%20Outpt%20Med%20Den%20CS%20Rates%20dtd%206%2025%2012.pdf.* The rates can be found at *http://www.tricare.mil/ocfo/mcfs/ubo/mhs_rates/outpatient.cfm.*

Jeffrey Zients,

Deputy Director for Management.

[FR Doc. 2012–27990 Filed 11–16–12; 8:45 am]

BILLING CODE P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Emergency Reinstatement of Previously Approved Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice of emergency reinstatement.

SUMMARY: The Merit Systems Protection Board (MSPB) is requesting approval from the Office of Management and Budget (OMB) to reinstate Information Collection Request (ICR) 3124–0009, E-Appeal/US Merit Systems Protection Board Appeal Form which expired on March 31, 2012. This ICR is necessary for individuals who file appeals with MSPB. The form serves as a guide to appellants in providing all needed information. The MSPB is requesting emergency reinstatement approval from OMB by November 27, 2012. A revised version of the MSPB Appeal Form (Form 185) was approved by OMB on November 5, 2012. At this time, MSPB is requesting public comments on the previous version of Form 185, which is available for review on MSPB's Web site at *http://www.mspb.gov/appeals/forms.htm.*

DATES: Written comments must be received on or before November 23, 2012.

ADDRESSES: Submit comments on the collection of information to the Office of Management and Budget, Attn: Desk Officer for MSPB, via fax at 202–395–6974 or email at *OIRA_Submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419; telephone 202–653–7200; fax 202–653–7130; or email *mspb@mspb.gov.* Persons without Internet access may request a paper copy of the MSPB Appeal Form from the Office of the Clerk of the Board.

Previous Version of MSPB Appeal Form 185

A revised version of Form 185 was included in the **Federal Register** notice published on October 29, 2012. (See 77 FR 65586.) That ICR request was approved by OMB on November 5, 2012. The MSPB now requests emergency reinstatement of the same ICR but with the previous version of Form 185.

We are concerned that the abrupt implementation of the revised version of the form will be confusing to the parties appearing before MSPB. Indeed, if we implement the revised version only to modify it further following the requisite notice-and-comment periods under the Paperwork Reduction Act, we believe that it will add to any confusion and result in inefficiencies in processing appeals. Most significantly, it will take longer than anticipated to implement a revised form in our e-Appeal Online filing system. This delay will create further confusion for e-filers. Upon approval of this ICR by OMB, we will publish a 60-day notice in the **Federal Register** seeking pubic comment on the revised version of Form 185 and begin the process of incorporating and testing the revisions in a non-production environment with e-Appeal Online.

Estimated Reporting Burden

In accordance with the requirements of the Paperwork Reduction Act of 1995, MSPB is soliciting comments on the public reporting burden for this information collection. The public reporting burden for this collection of information is estimated to vary from 20 minutes to 4 hours, with an average of 60 minutes per response, including time for reviewing the form and instructions, searching existing data sources, gathering the data necessary, and completing and reviewing the collection of information.

Specifically, MSPB invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility;

(2) the accuracy of MSPB's estimate of 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.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR parts	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201.24, 1208.13, 1208.23, and 1209.6	7,150	1	7,150	1.0	7,150

William D. Spencer,

Clerk of the Board.

[FR Doc. 2012–27995 Filed 11–16–12; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 12–098]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of under parental/adult supervision its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Ms. Frances Teel, JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA Clearance Officer, NASA Headquarters, 300 E Street SW., JF0000, Washington, DC 20546, *Frances.C.Teel@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

In accordance with Executive Order 13506 establishing the White House Council on Women and Girls, the Women@NASA Program was created to provide mentoring opportunities in science, technology, engineering, and math (STEM) disciplines for female students. To support the White House *Educate To Innovate* campaign, the Women@NASA Program was expanded to offer an equivalent program for young males called NASA Building Outstanding Young Scientists (BOYS). Both programs are designed to engage underrepresented rising 5th–8th grade students in a one-on-one virtual mentoring experience, under parental/adult supervision, one hour per week for a five-week period. Participants will be selected from a diverse set of geographical locations across the USA.

This clearance request pertains to the collection of information associated with the administration of electronic application forms, parental consent forms, and pre and post parent/student surveys. Surveys are designed to gauge participant interest in STEM subjects before and after the virtual mentoring experience, measure the program impact, access the effectiveness of the virtual mentoring approach and identify opportunities for improvement.

II. Method of Collection

Electronic.

III. Data

Title: NASA Girls and Boys Virtual Mentoring Program.

OMB Number: 2700–XXXX.

Type of review: New Information Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,800.

Estimated Time per Response: Variable.

Estimated Total Annual Burden Hours: 2,600.

Estimated Total Annual Cost: $170,000.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Frances Teel,

NASA PRA Clearance Officer.

[FR Doc. 2012–28019 Filed 11–16–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: LIGO Operations Proposal and Annual Review in Physics (1208).

Date and Time: Tuesday, December 4, 2012; 8:30 a.m.–6:15 p.m.; Wednesday, December 5, 2012 8:30 a.m.–5:00 p.m.; Thursday, December 6, 2012 8:30 a.m.–3:00 p.m.

Place: California Institute of Technology in Pasadena, CA.

Type of Meeting: Partially closed.

Contact Person: Dr. Thomas Carruthers, Program Director for LIGO Facility, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7373.

Purpose of Meeting: To provide advice and recommendations concerning the LIGO Operations Proposal and Annual Review.

Agenda: To review and evaluate the LIGO Operations proposal review, as part of the selection process.

Tuesday, December 4, 2012

8:30a–12:30p Introductions, Status, Overview Open
Advanced LIGO and Beyond
1:15p–4:45p Astrophysics and Data Analysis Open
Observatory Operations
Role of LIGO Engineering
Computing
4:45p–6:15p Panel Executive Session Closed
6:15p Panel presents questions for Day 2 sessions Open

Wednesday, December 5, 2012

8:30a–9:00a Panel Executive Session Closed
9:00a–10:45a Management and Oversight Open
Scientific Collaboration
Role in the Global Scene: Emphasis on LIGO-India
10:45a–5:00p Executive Sessions—Program Reviews Closed

Thursday, December 6, 2012

8:30a–3:00p Panel Executive Session, Panel Executive Summary, LIGO Response Closed

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b (c) and (6) of the Government in the Sunshine Act.

Dated: November 14, 2012.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2012–28094 Filed 11–16–12; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2012–0165]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on July 27, 2012 (77 FR 44291).

1. *Type of submission, new, revision, or extension:* Extension.
2. *The title of the information collection:* Reports Concerning Possible Non-Routine Emergency Generic Problems.
3. *Current OMB approval number:* 3150–0012.
4. *The form number if applicable:* N/A.
5. *How often the collection is required:* On occasion.
6. *Who will be required or asked to report:* Nuclear power reactor licensees, non-power reactors, and materials applicants and licensees.
7. *An estimate of the number of annual responses:* 339.
8. *The estimated number of annual respondents:* 235.
9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 85,900.
10. *Abstract:* The NRC is requesting approval authority to collect information concerning possible non-routine generic problems which would require prompt action from the NRC to preclude potential threats to public health and safety.

The public may examine and have copied for a fee publicly available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by December 19, 2012. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Chad Whiteman, Desk Officer, Office of Information and Regulatory Affairs (3150–0012), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Chad_S_Whiteman@omb.eop.gov* or submitted by telephone at 202–395–4718.

The NRC Clearance Officer is Tremaine Donnell, 301–415–6258.

Dated at Rockville, Maryland, this 8th day of November, 2012.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2012–27998 Filed 11–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–219; NRC–2010–0200]

Exelon Generation Company, LLC., Oyster Creek Nuclear Generating Station; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on April 7, 2011 (76 FR 19488), that incorrectly described Sections 3.9.2 and 3.18.2, ''Detection, Control, and Extinguishment.'' This action is necessary to correct erroneous information.

FOR FURTHER INFORMATION CONTACT: John G. Lamb, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–3100, email: *John.Lamb@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 19497, in the first column, in the third complete paragraph, it is corrected to read from ''The licensee stated that RB–FZ–1E has an area-wide smoke detection system and an automatic fixed deluge water spray system installed over cable trays and open hatches. The deluge suppression system protecting safety-related cable trays is automatically activated by a cross-zoned detection system consisting of linear heat detection wire located on top of the cables in each original safety-related cable trays and smoke detectors are located in each beam pocket at the ceiling'' to, ''The licensee stated that RB–FZ–1E has a smoke detection system and an automatic fixed deluge water spray system installed over cable trays and open hatches. The deluge suppression system protecting safety-related cable trays is automatically activated by a cross-zoned detection system.''

On page 19505, in the first column, in the first complete paragraph, it is corrected to read from ''The licensee stated that a closed head automatic sprinkler and spray systems protect the

south end basement area and the hydrogen seal oil unit'' to ''The closed head automatic sprinkler system in the condenser bay area was designed, installed and tested in accordance with NFPA 13, 1976 Edition, which was the latest edition of this code at the time of design.''

Dated in Rockville, Maryland, this 9th 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. 2012–28074 Filed 11–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Project No. 753; NRC–2012–0280]

Proposed Model Safety Evaluation for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition To Address Advanced Fuel Designs''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on the proposed model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–535, Revision 0, ''Revise Shutdown Margin Definition to Address Advanced Fuel Designs.''

DATES: Comment period expires on December 19, 2012. Comments received after this date will be considered, if it is practical to do so, but the Commission 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 publically available, by searching on *http://www.regulations.gov* under Docket ID NRC–2012–0280. 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–2012–0280. 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. Michelle C. Honcharik, Senior Project Manager, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone 301–415–1774 or email at *Michelle.Honcharik@nrc.gov.* For technical questions please contact Mr. Ravinder Grover, Reactor Systems Engineer, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–2166 or email at *Ravinder.Grover@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2012–0280 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- Federal Rulemaking Web Site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0280.
- 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.* TSTF–535, Revision 0, includes a model application and is available under ADAMS Accession Number ML112200436. The proposed model SE for plant-specific adoption of TSTF–535, Revision 0, is also available under ADAMS Accession Number ML12219A145.
- 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–2012–0280 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 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.

Background

TSTF–535, Revision 0, is applicable to all boiling water reactor (BWR) power plants. The proposed change revises the Standard Technical Specification (STS), NUREG–1433, ''Standard Technical Specifications General Electric Plants BWR/4,'' and NUREG–1434, ''Standard Technical Specifications General Electric Plants, BWR/6.'' Specifically, the proposed change revises the STS definition of shutdown margin (SDM) to require calculation of SDM at the reactor moderator temperature corresponding to the most reactive state throughout the operating cycle (68 °F or higher). The purpose is to address newer BWR fuel designs, which may be more reactive at shutdown temperatures above 68 °F. This STS improvement is part of the consolidated line item improvement process (CLIIP).

Additional Details

This notice provides an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the

proposed changes and reconsider the changes or announce the availability of the changes for adoption by licensees as part of the CLIIP. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE, and the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed change does not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–535, Revision 0. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–535, Revision 0.

Dated at Rockville, Maryland, this 2nd day of November 2012.

For the Nuclear Regulatory Commission.

Sheldon D. Stuchell,

Acting Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2012–28078 Filed 11–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0096]

Inservice Inspection of Prestressed Concrete Containment Structures With Grouted Tendons

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to Regulatory Guide (RG) 1.90, ''Inservice Inspection of Prestressed Concrete Containment Structures with Grouted Tendons.'' This guide describes a method that the NRC staff considers acceptable for use in developing an appropriate surveillance program for prestressed concrete containment structures with grouted tendons.

ADDRESSES: Please refer to Docket ID NRC–2011–0096 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly-available, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0096. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. Revision 2 of Regulatory Guide 1.90 is available in ADAMS under Accession No. ML11249A008. The regulatory analysis may be found in ADAMS under Accession No. ML11249A009.
- 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.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mekonen Bayssie, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–251–7489; email: *Mekonen.Bayssie@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of RG 1.90 was issued with a temporary identification as Draft Regulatory Guide, DG–1197. The recommendations described in this guide constitute an approach that the NRC staff finds acceptable for satisfying the requirements of General Design Criterion (GDC) 53, ''Provisions for Containment Testing and Inspection,'' of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' and 10 CFR 50.55a'' Codes and Standards'' Paragraph (g)(4) ''Inservice Inspection Requirements.''

The previous Revision 1 of this RG was published in 1977. Since this publication, the industry and the NRC have been involved in research and testing to determine and evaluate the effectiveness of containment inservice inspection (ISI) programs, particularly the reliability of installed instrumentation and the use of periodic pressure tests. In addition, the NRC has reviewed containment tendon ISI programs as part of license applications. Revision 2 of RG 1.90 is a result of these efforts. It provides an ISI program that is based on a real-time, multiple-strategy approach (i.e., appropriate grout design and installation, installed instrumentation, periodic pressure tests, and visual examination).

II. Further Information

DG–1197 was published in the **Federal Register** on April 28, 2011 (76 FR 23845) for a 60-day public comment period. The public comment period closed on June 26, 2011. Public comments on DG–1197 and the NRC staff responses to the public comments are available under ADAMS Accession No. ML11249A010.

III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action does not constitute backfitting as defined in 10 CRF 50.109(a)(1) or is otherwise inconsistent with the applicable issue finality provision in 10 CFR Part 52, inasmuch as such

applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in Part 52.

Dated at Rockville, Maryland, this 8th day of November, 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–28075 Filed 11–16–12; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2012–0223]

Combining Modal Responses and Spatial Components in Seismic Response Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 to Regulatory Guide (RG) 1.92, ''Combining Modal Responses and Spatial Components in Seismic Response Analysis'' as an administratively changed guide in which there are minor corrections with no substantive changes in the Staff Regulatory Guidance. This guide describes a method that the NRC staff considers acceptable for combining modal responses and spatial components in seismic response analysis of nuclear power plant structures, systems, and components that are important to safety.

ADDRESSES: Please refer to Docket ID NRC–2012–0223 when contacting the NRC about the availability of information regarding this document. You may access information related to this document, which the NRC possesses and are publicly available, using any of the following methods:

- *Federal Rulemaking Web site*: Go to *http://www.regulations.gov* and search for Docket ID NRC–2012–0223. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.*
- *NRC's Agencywide Documents Access and Management System (ADAMS)*: You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* Revision 3 of Regulatory Guide 1.92 is available in ADAMS under Accession No. ML12220A043. The regulatory analysis may be found in ADAMS under Accession No. ML122020A044.
- *NRC's Public Document Room*: You may examine and purchase copies of public documents at the NRC's Public Document Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Edward O'Donnell, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–251–7455; email: *Edward.ODonnell@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing an administrative to an existing guide in the NRC's ''Regulatory Guide'' series. The Regulatory Guides were developed to describe and make available to the public information methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses. The NRC typically seeks public comment on a draft version of a regulatory guide by announcing its availability for comment in the **Federal Register**. However, as explained on page 7 of NRC Management Directive 6.6 ''Regulatory Guides,'' (ADAMS Accession Number ML110330475) the NRC may directly issue a final regulatory guide without a draft version or public comment period if the changes to the regulatory guide are non-substantive, including changes to the Staff Regulatory Guidance section. Issuance of regulatory guides using this direct final process reduces processing time and review costs. A regulatory guide revised using this process is called an Administratively Changed Guide (ACG).

II. Submitting Comments

Although Revision 3 of RG 1.92 is being issued as an administratively changed guide without public comment, comments are welcome on any final regulatory guide at any time. The input from the public and stakeholders will be considered in future updates and enhancements of the regulatory guide. Comments can be submitted by the form available online at *http://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.*

III. Further Information

The NRC is issuing Revision 3 of RG 1.92 directly as a final regulatory guide because the changes between Revision 2 and Revision 3 are non-substantive. The current revision was published in 2006. In the course of a periodic review of the guide, the staff noted that some minor corrections were needed that would result in no substantive change in the Staff Regulatory Guidance. Among the corrections are the addition of missing ADAMS accession numbers for some of the references, and insertion of the language currently used for the Implementation Section. That section was revised subsequent to issuance of Revision 2 in 2006 to clarify that compliance with the Regulatory Guide is voluntary and that the NRC staff does not intend any backfitting of the guidance.

IV. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in § 50.109 of Title 10 of the *Code of Federal Regulations* (10 CFR) (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this regulatory guide, the NRC has no current intention to impose this regulatory guide on holders of current operating licenses or combined licenses.

This regulatory guide may be applied to applications for operating licenses and combined licenses docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future applications for operating licenses and combined licenses submitted after the issuance of the regulatory guide. Such action does not constitute backfitting as defined in 10 CFR 50.109(a)(1) and is not otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by the Backfit Rule or the relevant issue finality provisions in 10 CFR part 52.

Dated at Rockville, Maryland, this 7th day of November 2012.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2012–28076 Filed 11–16–12; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 17j–1.
OMB Control No. 3235–0224, SEC File No. 270–239.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350l–3520), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Conflicts of interest between investment company personnel (such as portfolio managers) and their funds can arise when these persons buy and sell securities for their own accounts (''personal investment activities''). These conflicts arise because fund personnel have the opportunity to profit from information about fund transactions, often to the detriment of fund investors. Beginning in the early 1960s, Congress and the Securities and Exchange Commission (''Commission'') sought to devise a regulatory scheme to effectively address these potential conflicts. These efforts culminated in the addition of section 17(j) to the Investment Company Act of 1940 (the ''Investment Company Act'') (15 U.S.C. 80a–17(j)) in 1970 and the adoption by the Commission of rule 17j–1 (17 CFR 270.17j–1) in 1980.[1] The Commission proposed amendments to rule 17j–1 in 1995 in response to recommendations made in the first detailed study of fund policies concerning personal investment activities by the Commission's Division of Investment Management since rule 17j–1 was adopted. Amendments to rule 17j–1, which were adopted in 1999, enhanced fund oversight of personal investment activities and the board's role in carrying out that oversight.[2] Additional amendments to rule 17j–1 were made in 2004, conforming rule 17j–1 to rule 204A–1 under the Investment Advisers Act of 1940 (15 U.S.C. 80b), avoiding duplicative reporting, and modifying certain definitions and time restrictions.[3] Section 17(j) makes it unlawful for persons affiliated with a registered investment company (''fund'') or with the fund's investment adviser or principal underwriter (each a ''17j–1 organization''), in connection with the purchase or sale of securities held or to be acquired by the investment company, to engage in any fraudulent, deceptive, or manipulative act or practice in contravention of the Commission's rules and regulations. Section 17(j) also authorizes the Commission to promulgate rules requiring 17j–1 organizations to adopt codes of ethics.

In order to implement section 17(j), rule 17j–1 imposes certain requirements on 17j–1 organizations and ''Access Persons''[4] of those organizations. The rule prohibits fraudulent, deceptive or manipulative acts by persons affiliated with a 17j–1 organization in connection with their personal securities transactions in securities held or to be acquired by the fund. The rule requires each 17j–1 organization, unless it is a money market fund or a fund that does not invest in Covered Securities,[5] to: (i) Adopt a written codes of ethics, (ii) submit the code and any material changes to the code, along with a certification that it has adopted procedures reasonably necessary to prevent Access Persons from violating the code of ethics, to the fund board for approval, (iii) use reasonable diligence and institute procedures reasonably necessary to prevent violations of the code, (iv) submit a written report to the fund describing any issues arising under the code and procedures and certifying that the 17j–1 entity has adopted procedures reasonably necessary to prevent Access Persons form violating the code, (v) identify Access Persons and notify them of their reporting obligations, and (vi) maintain and make available to the Commission for review certain records related to the code of ethics and transaction reporting by Access Persons.

The rule requires each Access Person of a fund (other than a money market fund or a fund that does not invest in Covered Securities) and of an investment adviser or principal underwriter of the fund, who is not subject to an exception,[6] to file: (i) Within 10 days of becoming an Access Person, a dated initial holdings report that sets forth certain information with respect to the Access Person's securities and accounts; (ii) dated quarterly transaction reports within 30 days of the end of each calendar quarter providing certain information with respect to any securities transactions during the quarter and any account established by the Access Person in which any securities were held during the quarter; and (iii) dated annual holding reports

[1] Prevention of Certain Unlawful Activities with Respect to Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) (45 FR 73915 (Nov. 7, 1980)).

[2] Personal Investment Activities of Investment Company Personnel, Investment Company Act Release No. 23958 (Aug. 20, 1999) (64 FR 46821–01 (Aug. 27, 1999)).

[3] Investment Adviser Codes of Ethics, Investment Advisers Act Release No. 2256 (Jul. 2, 2004) (69 FR 41696 (Jul. 9, 2004)).

[4] Rule 17j–1(a)(1) defines an ''access person'' as ''Any Advisory Person of a Fund or of a Fund's investment adviser. If an investment adviser's primary business is advising Funds or other advisory clients, all of the investment adviser's directors, officers, and general partners are presumed to be Access Persons of any Fund advised by the investment adviser. All of a Fund's directors, officers, and general partners are presumed to be Access Persons of the Fund.'' The definition of Access Person also includes ''Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.'' Rule 17j–1(a)(1).

[5] A ''Covered Security'' is any security that falls within the definition in section 2(a)(36) of the Act, except for direct obligations of the U.S. Government, bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements, and shares issued by open-end funds. Rule 17j–1(a)(4).

[6] Rule 17j–1(d)(2) contains the following exceptions: (i) An Access Person need not file a report for transactions effected for, and securities held in, any account over which the Access Person does not have control; (ii) an independent director of the fund, who would otherwise be required to report solely by reason of being a fund director and who does not have information with respect to the fund's transactions in a particular security, does not have to file an initial holdings report or a quarterly transaction report; (iii) an Access Person of a principal underwriter of the fund does not have to file reports if the principal underwriter is not affiliated with the fund (unless the fund is a unit investment trust) or any investment adviser of the fund and the principal underwriter of the fund does not have any officer, director, or general partner who serves in one of those capacities for the fund or any investment adviser of the fund; (iv) an Access Person to an investment adviser need not make quarterly reports if the report would duplicate information provided under the reporting provisions of the Investment Adviser's Act of 1940; (v) an Access Person need not make quarterly transaction reports if the information provided in the report would duplicate information received by the 17j–1 organization in the form of broker trade confirmations or account statements or information otherwise in the records of the 17j–1 organization; and (vi) an Access Person need not make quarterly transaction reports with respect to transactions effected pursuant to an Automatic Investment Plan.

providing information with respect to each Covered Security the Access Person beneficially owns and accounts in which securities are held for his or her benefit. In addition, rule 17j–1 requires investment personnel of a fund or its investment adviser, before acquiring beneficial ownership in securities through an initial public offering (IPO) or in a private placement, to obtain approval from the fund or the fund's investment adviser.

The requirements that the management of a rule 17j–1 organization provide the fund's board with new and amended codes of ethics and an annual issues and certification report are intended to enhance board oversight of personal investment policies applicable to the fund and the personal investment activities of Access Persons. The requirements that Access Persons provide initial holdings reports, quarterly transaction reports, and annual holdings reports and request approval for purchases of securities through IPOs and private placements are intended to help fund compliance personnel and the Commission's examinations staff monitor potential conflicts of interest and detect potentially abusive activities. The requirement that each rule 17j–1 organization maintain certain records is intended to assist the organization and the Commission's examinations staff in determining if there have been violations of rule 17j–1.

We estimate that annually there are approximately 75,496 respondents under rule 17j–1, of which 5,496 are rule 17j–1 organizations and 70,000 are Access Persons. In the aggregate, these respondents make approximately 107,780 responses annually. We estimate that the total annual burden of complying with the information collection requirements in rule 17j–1 is approximately 387,599 hours. This hour burden represents time spent by Access Persons that must file initial and annual holdings reports and quarterly transaction reports, investment personnel that must obtain approval before acquiring beneficial ownership in any securities through an IPO or private placement, and the responsibilities of rule 17j–1 organizations arising from information collection requirements under rule 17j–1. These include notifying Access Persons of their reporting obligations, preparing an annual rule 17j–1 report and certification for the board, documenting their approval or rejection of IPO and private placement requests, maintaining annual rule 17j–1 records, maintaining electronic reporting and recordkeeping systems, amending their codes of ethics as necessary, and, for new fund complexes, adopting a code of ethics.

We estimate that there is an annual cost burden of approximately $5,000 per fund complex, for a total of $4,160,000, associated with complying with the information collection requirements in rule 17j–1. This represents the costs of purchasing and maintaining computers and software to assist funds in carrying out rule 17j–1 recordkeeping.

These burden hour and cost estimates are based upon the Commission staff's experience and discussions with the fund industry. The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

Compliance with the collection of information requirements of the rule is mandatory and is necessary to comply with the requirements of the rule in general. 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 control number. Rule 17j–1 requires that records be maintained for at least five years in an easily accessible place.[7]

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimate of the burden of the collections of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burdens 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 in writing within 60 days of this publication.

Please direct your written comments to Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, VA 22312; or send an email to: *PRA_Mailbox@sec.gov.*

[7] If information collected pursuant to the rule is reviewed by the Commission's examination staff, it will be accorded the same level of confidentiality accorded to other responses provided to the Commission in the context of its examination and oversight program. See section 31(c) of the Investment Company Act (15 U.S.C. 80a–30(c)).

Dated: November 13, 2012.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28016 Filed 11–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30260; File No. 812–14037]

Columbia ETF Trust, et al.; Notice of Application

November 13, 2012.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order pursuant to sections 6(c) and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 17(a) of the Act permitting certain transactions.

SUMMARY OF THE APPLICATION: Applicants request an order (the ''Order'') that would permit registered investment companies for which certain direct or indirect wholly owned subsidiaries of Ameriprise Financial, Inc. (''Ameriprise'') act as an investment adviser to engage in certain primary and secondary market principal transactions in fixed income instruments (the ''Transactions'') with Merrill Lynch, Pierce, Fenner and Smith Incorporated (''MLPF&S'') and Bank of America, N.A. (''BANA''), including an internal division of BANA (''BANA (Dealer Unit)'') as well as affiliates of MLPF&S and BANA (each, a ''BAC Trading Entity,'' together, the ''BAC Trading Entities'').

APPLICANTS: Columbia Management Investment Advisers, LLC (''CMIA'') and Columbia Wanger Asset Management, LLC (''CWAM'') (each, an ''Adviser'', together, the ''Advisers'') and Columbia ETF Trust, Columbia ETF Trust I, Columbia Funds Master Investment Trust, LLC, Columbia Funds Series Trust, Columbia Funds Series Trust I, Columbia Funds Series Trust II, Columbia Funds Variable Insurance Trust, Columbia Funds Variable Insurance Trust I, Columbia Funds Variable Series Trust II, Columbia Seligman Premium Technology Growth Fund, Inc., Tri-Continental Corporation, Columbia Acorn Trust, Wanger Advisors Trust and Ameriprise Certificate Company (each a ''Fund'', collectively, the ''Funds''), Bank of America Corporation (''BAC''), BANA and MLPF&S.

DATES: *Filing Dates:* The application was filed on June 1, 2012, and amended on

October 3, 2012. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

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 December 10, 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, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants, c/o Robert M. Kurucza, Esq. and Marco E. Adelfio, Esq., Goodwin Procter LLP, 901 New York Avenue NW., Suite 9000, Washington, DC 20001; Scott R. Plummer, Esq. and Paul B. Goucher, Esq., Ameriprise Financial, Inc., 5228 Ameriprise Financial Center, Minneapolis, MN 55474; Glen A. Rae, Esq., Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bank of America Tower, NY1–100–05–01, One Bryant Park, 5th Floor, New York, NY 10036; Brian D. McCabe, Esq., Ropes & Gray LLP, Prudential Tower, 800 Boylston Street, Boston, MA 02199–3600; Steve Chaiken, Esq., Bank of America, N.A., Merrill Lynch, Pierce, Fenner & Smith Inc., 50 Rockefeller Plaza, New York, NY 10020 and Steve Chaiken, Esq., Bank of America Corporation, Bank of America Corporate Center, 100 North Tryon Street, Charlotte, NC 28255.

FOR FURTHER INFORMATION CONTACT: Laura L. Solomon, Senior Counsel, at (202) 551–6915, or Daniele Marchesani, Branch Chief, 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 Fund, except as explained below, is an open-end management investment company registered under the Act and is organized as a statutory trust, business trust, limited liability company or corporation under the laws of Delaware, Maryland or Massachusetts or is a series thereof. Columbia Seligman Premium Technology Growth Fund, Inc. and Tri-Continental Corporation are closed-end registered investment companies. Columbia ETF Trust and Columbia ETF Trust I are exchange-traded funds and Ameriprise Certificate Company is a face-amount certificate company. The Funds have a variety of investment objectives, but each may to a greater or lesser degree invest a portion of its assets in fixed-income instruments. The fixed-income instruments in which the Funds may invest include, but are not limited to, government securities, municipal securities, tender option bonds, taxable and tax-exempt money market securities, repurchase agreements, asset- and mortgage-backed securities, corporate bonds and other issues and syndicated loans (including assignments thereof and participations therein), each as the Funds' respective investment policies allow.

2. CMIA and CWAM, the Advisers, are direct or indirect wholly-owned subsidiaries of Ameriprise, a Delaware corporation. Each Adviser is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act''). The Advisers act as investment advisers to the Funds and, in certain cases, have oversight over one or more affiliated or unaffiliated sub-advisers engaged by certain Funds.[1]

3. BANA is a national banking association and a wholly owned indirect subsidiary of BAC. BANA (Dealer Unit) is an internal division of BANA, which is exempt from registering as a broker-dealer pursuant to the Securities Exchange Act of 1934 (''1934 Act''). MLPF&S, a Delaware corporation, is also a wholly owned indirect subsidiary of BAC that is registered as a broker-dealer with the Commission under the 1934 Act. Each of BANA and MLPF&S as well as the affiliates of MLPF&S and BANA listed in Schedule C to the application (each, a ''BAC Trading Entity,'' and, collectively, the ''BAC Trading Entities'') act as dealers and/or underwriters of fixed-income instruments. The BAC Trading Entities listed in Schedule C are registered broker-dealers or entities exempt from registration.

4. On April 30, 2010, BANA sold a portion of the asset management business of its wholly owned subsidiary Columbia Management Group, LLC (''CMG'') to Ameriprise (the ''Columbia Sale''), including the management of some of the Funds. The Columbia Sale also included CMG's own subsidiary, Columbia Wanger Asset Management, L.P. (now CWAM), the investment adviser to certain Funds. After the Columbia Sale, RiverSource Investments, LLC changed its name to Columbia Management Investment Advisers, LLC (CMIA). CMIA became the investment adviser for all Funds, including legacy RiverSource Funds and the former long-term Columbia Funds, other than those advised by CWAM.

5. Following the Columbia Sale the Advisers are not under the control (within the meaning of section 2(a)(9) of the Act) of BAC and are not under common control with the BAC Trading Entities. However, certain fiduciary accounts maintained by BANA's trust department (''BANA (US Trust)'')[2] for the principals or beneficiaries of such accounts are invested in the Fund's securities (''fiduciary account investments''). BANA (US Trust) has discretionary authority over, but no pecuniary interest in, such investments.[3] Because of these investments, there may be affiliations between the BAC Trading Entities and the Funds.

6. Applicants state that, because of consolidation in the financial services

[1] Certain of the Funds have (or may, in the future, have) sub-advisers that provide sub-advisory services (each, a ''Sub-Adviser,'' collectively, the ''Sub-Advisers''). Applicants request the order cover any such Sub-Advisers, provided that any Sub-Adviser that relies on the order complies with the conditions of the order as though it were an Adviser, unless otherwise stated.

[2] BANA (US Trust) includes Bank of America, U.S. Trust Private Wealth Management, including U.S. Trust Company of Delaware, the Retirement and Philanthropic Services unit, and the Merrill Lynch Trust Company division and any successors. The term ''successor'' is limited to an entity that results from a reorganization into another jurisdiction, a change in the type of business organization or a combination, consolidation or reorganization of any of the entities covered by the Order, including any such combination, consolidation or reorganization effected through the use of a ''shell'' entity controlled by any of the entities covered by the Order, provided that such combination, consolidation or reorganization does not result in a change of direct or indirect control of such entities.

[3] Applicants note that there may be some instances in which BAC or an entity, including a division thereof, controlled by BAC (each, a ''BAC Affiliate,'' collectively, the ''BAC Affiliates'') might be deemed to own, control or hold with power to vote less than five percent of the outstanding voting securities of a Fund otherwise than through fiduciary account investments (a ''<5% holding''). References to potential affiliations arising ''solely by reason of'' fiduciary account investments above certain levels may include situations where fiduciary account investments exceed such levels only when added to a <5% holding.

industry, a few major broker-dealers account for a large percentage of the market share in connection with trading in various asset classes, including fixed income instruments. Applicants state that the decline in the number of broker-dealers and banks trading in the fixed-income instruments in which the Funds seek to invest and the increasing significance of the few remaining institutions demonstrate the importance to the Funds of their relationships with such entities, including the BAC Trading Entities. Applicants further represent that the BAC Trading Entities were the top-ranked underwriters in the following categories of fixed-income instruments in 2011: Investment grade-credit; U.S. leveraged loans; residential mortgage-backed securities; asset-backed securities; and U.S. commercial paper. Applicants also represent that the BAC Trading Entities were the second or third-ranked dealers or underwriters in 2011 in the following categories of fixed-income instruments: high-yield corporate credit; investment grade-credit; collateralized mortgage obligations; asset-backed securities; and municipal securities. As described more fully in the application, BAC Trading Entities had similar levels of market share in 2009 and 2010 and were a significant trading partner of the legacy RiverSource funds prior to the Columbia Sale.

7. Applicants assert that prohibiting the Funds from engaging in the Transactions with the BAC Trading Entities would become increasingly detrimental to the ongoing interests of Fund shareholders by limiting the Funds' access to important trading counterparties that have very significant market shares in many of the types of instruments that the Funds purchase. Applicants submit that prohibiting the Funds from engaging in Transactions with the BAC Trading Entities unnecessarily reduces the opportunities available to the Funds to obtain competitive pricing and execution and to access the markets for particular fixed-income instruments that are available from only a few dealers. Applicants assert that precluding a Fund from trading with a BAC Trading Entity may harm the Fund by, among other things, preventing it from obtaining the best pricing, terms and quality of services otherwise available in the market.

8. Applicants, therefore, request the Order, pursuant to sections 6(c) and 17(b) of the Act exempting Transactions entered into in the ordinary course of business by a Fund with BAC Trading Entities, under the circumstances described in the application, from the provisions of section 17(a) of the Act.[4] The ''Transactions'' that are the subject of the Order include primary and secondary market transactions in fixed-income instruments executed on a principal basis between a Fund and a BAC Trading Entity.

The Order would be available only where the BAC Trading Entity is deemed to be a first-tier or a second-tier affiliate of a Fund solely by reason of fiduciary account investments in the voting securities of an Owned Fund, as defined below. In particular, the Order would be available only in circumstances in which the BAC Trading Entity might be deemed to be (i) An affiliated person (''first-tier affiliate''), in the case of BANA (Dealer Unit), or an affiliated person of a first-tier affiliate (a ''second-tier affiliate'') of a Fund solely by reason of BANA (US Trust), being deemed to own, control or hold with power to vote through fiduciary account investments five percent or more of the Fund's total outstanding voting securities (each, a ''5% Fund''); (ii) a first-tier affiliate of a Fund solely by reason of BANA (US Trust) being deemed to beneficially own through the fiduciary account investments more than twenty-five percent of the Fund's total outstanding voting securities or, by virtue of such fiduciary account investments, to control the Fund (each, a ''25% Fund,'' together with the 5% Funds, the ''Owned Funds''); and/or (iii) a second-tier affiliate of any Fund other than an Owned Fund (each, an ''Other Fund'') solely by reason of BANA (US Trust) being considered to own, control or hold with power to vote a 5% Fund's securities as described in (i) or being deemed to beneficially own a 25% Fund's securities as described in (ii), through fiduciary account investments.

9. Applicants seek to have the Order cover (i) The Funds and any investment company registered under the Act or series thereof, whether now existing or organized in the future, that is managed, advised or sub-advised by any Adviser or by any existing or future entity that is controlling, controlled by or under common control with CMIA and/or CWAM or controlled by Ameriprise and registered as an investment adviser under the Advisers Act; (ii) the Advisers and/or any existing or future investment adviser controlling, controlled by or under common control with CMIA and/or CWAM or controlled by Ameriprise; and (iii) the BAC Trading Entities and any successor entities; provided that any entity that relies on the Order complies with the terms and conditions of the Order as though it were an applicant.

10. Applicants request relief only for Transactions that would be prohibited by section 17(a) because of affiliations, if any, arising solely by reason of BANA (US Trust) being deemed to own, control or hold with the power to vote voting securities of an Owned Fund through fiduciary account investments. The relief would not be available where a BAC Trading Entity is a first-tier affiliate or a second-tier affiliate of a Fund for other reasons. The relief would not be available for Transactions between a Fund and any trading entity under common control with the Fund's Adviser. The relief would also not be available for primary market Transactions in fixed-income instruments, other than repurchase agreements and variable rate demand notes, of which BAC (or any successor) or any entity controlled by BAC (or any successor), including any BAC Trading Entity, is the primary obligor.

11. Neither BAC nor any BAC Affiliates control or will control (within the meaning of section 2(a)(9) of the Act), directly or indirectly, Ameriprise or the Advisers or any other non-Fund entity under the control of Ameriprise (together, the ''Ameriprise Affiliates''). Applicants state that only the fiduciary account investments in the Owned Funds raise the affiliation issues addressed by the requested relief. Additionally, Ameriprise has no beneficial interest in, and will not control (within the meaning of section 2(a)(9) of the Act) directly or indirectly, BAC, the BAC Trading Entities or any other BAC Affiliate.

12. The BAC Affiliates and the Ameriprise Affiliates are structured as separate, independent businesses. Applicants state that the BAC Affiliates will not have any involvement in the Advisers' investment decisions or decisions to engage in Transactions pursuant to the Order, and will not attempt to influence or control in any way the placing by the Advisers of orders, other than in the normal course of sales activities of the same nature that are being carried out during the same time period with respect to unaffiliated institutional clients of the BAC Trading Entity.

13. Applicants state that each Fund has adopted confidentiality policies designed to limit the unnecessary flow of information about Fund holdings and transactions. Applicants note there are effective, existing separation and information barriers between the Advisers and the Funds on the one hand

[4] Applicants are not seeking relief from the provisions of sections 10(f), 17(e) or 17(d) of the Act or rule 17d–1 thereunder.

and the BAC Trading Entities on the other. Applicants assert that there is substantial internal separation and independent operation of the BAC Trading Entities from the other BAC Affiliates and of BANA (US Trust) from BANA (Dealer Unit). BANA (US Trust) is subject to strict fiduciary laws and regulations that require BANA (US Trust) to act solely in the interests of the principals or beneficiaries of the accounts. Applicants represent that there is not, and will not be, any express or implied understanding between a BAC Trading Entity and Ameriprise or any Adviser that an Adviser will cause a Fund to enter into Transactions or give preference to the BAC Trading Entity in effecting such Transactions between the Fund and the BAC Trading Entity.

14. Ameriprise and the Ameriprise Affiliates, including the Advisers, will not adopt any compensation scheme any component of which is based on the amount of business done by the Funds with a BAC Trading Entity except to the extent such business might affect indirectly the profits or losses of the Advisers. BAC and the BAC Affiliates, including BANA (US Trust), will not adopt any compensation scheme any component of which is based on a factor that compensates employees for Transactions with the Funds differently than Transactions with unaffiliated counterparties.

15. BANA (US Trust) undertakes to not to exercise any voting authority with respect to shares that constitute five percent or more of a Fund's total outstanding voting securities, including in connection with the election of directors/trustees (the ''Non-Voting Undertaking'').

Applicants' Legal Analysis

1. Section 17(a) of the Act, among other things, prohibits an affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal, from selling to or purchasing from such registered company any security or other property and from borrowing money or other property from such investment company. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

2. Section 6(c) of the Act, in relevant part, authorizes the Commission to exempt any person or transaction, or any class or classes of persons or transactions, from any provision or provisions of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Section 2(a)(3) of the Act defines ''affiliated person'' of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote, 5% or more of the outstanding voting securities of such other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned by, controlled, or held with power to vote, by such person; and (c) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

4. Section 2(a)(9) of the Act, in relevant part, defines ''control'' as ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company.'' Section 2(a)(9) also provides that any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the voting securities of a company shall be presumed to control such company. Any person who does not so own more than 25% of the voting securities of any company shall be presumed not to control such company.

5. Applicants state that a BAC Trading Entity could be deemed to be a first-tier affiliate or a second-tier affiliate of a 5% Fund insofar as fiduciary account investments of five percent or more of an Owned Fund's outstanding voting securities could cause BANA (US Trust) to be viewed as owning, controlling or holding with power to vote ''voting securities.'' Were BANA (US Trust) to be deemed a first-tier affiliate of a 5% Fund, the BAC Trading Entities (except for BANA (Dealer Unit)) would then be deemed to be second-tier affiliates of the 5% Fund. BANA (Dealer Unit), on the other hand, could be deemed to be a first-tier affiliate of the 5% Fund. Additionally, a BAC Trading Entity could be deemed a first-tier affiliate of a 25% Fund and a second-tier affiliate of the Other Funds.[5] Applicants submit that, due to the fiduciary account investments, any Transaction involving a Fund and a BAC Trading Entity that is a first-tier affiliate or a second-tier affiliate thereof, would be subject to the prohibition of section 17(a) of the Act.

6. Applicants submit that the primary purpose of section 17(a) is to prevent a person with the power to control an investment company from essentially engaging in self-dealing, to the detriment of the investment company's shareholders. Applicants submit that the policies which section 17(a) were meant to further are not implicated here because BAC and BAC Trading Entities are not able to cause a Fund to enter into a Transaction or otherwise influence portfolio decisions by the Advisers on behalf of the Funds. Applicants state that, as a result, no BAC Trading Entity is in a position to engage in self-dealing or otherwise cause any of the relevant Funds to enter into Transactions that are not in the best interests of its shareholders.

7. Applicants submit that the carefully circumscribed circumstances under which the Transactions would be conducted, including in particular the proposed conditions for the Order (set out below), amply satisfy the statutory standards for relief. Applicants state that compliance with the ''Structural Conditions'' set forth below is intended to assure that the Advisers and the Funds continue to operate independently of, and free of any undue influence by, BAC and the BAC Trading Entities, which applicants assert is further buttressed by the Non-Voting Undertaking. Moreover, neither BAC, nor any BAC Affiliate will exercise, or attempt to exercise, control over any Fund.

8. Applicants state that compliance with the ''Transactional Conditions'' set forth below is designed to assure that the terms of the individual transactions are fair from the perspective of the Funds. Applicants note that, at the outset, the conditions require each

[5] As discussed in the application, this conclusion could be reached if, on account of the fiduciary account investments, BANA (US Trust) ''beneficially owned'' greater than twenty-five percent of the 25% Fund's total outstanding voting securities. The Owned Fund could then be presumed to be under the control of BANA (US Trust), and thus of BAC. As wholly owned subsidiaries of BAC, the BAC Trading Entities may also be presumed to be under the control of BAC. Accordingly, the 25% Fund and the BAC Trading Entities could be presumed to be under the common control of BAC and thus first-tier affiliates of each other. If the 25% Fund and the Other Funds are deemed to be under the control of their respective Adviser(s), then the 25% Fund and the Other Funds could be deemed to be first-tier affiliates of each other by virtue of being under common control. Therefore, if the BAC Trading Entities are deemed to be first-tier affiliates of the 25% Fund, they could be deemed to be second-tier affiliates of the Other Funds.

Fund's Board of Directors, Board of Trustees or other governing body of such Fund, as applicable (each, a ''Board''), including a majority of its disinterested directors or trustees, as applicable (''Necessary Majority''), to approve, and the Fund to implement, procedures governing all Transactions pursuant to the Order. Applicants submit that, pursuant to such procedures, the Transactions will be subject to ongoing review by each Fund's chief compliance officer, and will be reviewed by its Board, including a Necessary Majority, on a quarterly basis. In addition, the Board must annually consider the level of Transactions with BAC Trading Entities and whether continued reliance on the Order is appropriate in light of the need of the Funds to have the BAC Trading Entities available as trading counterparties. The conditions also generally require price quotations from unaffiliated dealers that are in a position to quote competitive prices to ensure that the terms of the particular Transactions are fair and reasonable and do not involve overreaching. For primary market Transactions, the conditions generally require that the Funds purchase instruments at a price that is not more than the price paid by each other purchaser, and on the same terms as other purchasers, in that offering or in any concurrent offering.

9. Applicants state that the Transactions described in the Application satisfy the standards of sections 6(c) and 17(b). Applicants submit that there is no danger of overreaching or self-dealing by a BAC Trading Entity in connection with a Transaction, and there will be no conflict of interest associated with an Adviser's or Sub-Adviser's decision to engage in a Transaction with a BAC Trading Entity on behalf of a Fund. Moreover, applicants state that the Order is consistent with the policies of the Funds and the protection of investors, as the Advisers and Sub-Advisers will manage the Funds in accordance with the policies and investment objectives of the Funds and without any influence by the BAC Trading Entities. Finally, applicants state that permitting the Transactions will be appropriate in the public interest and consistent with general purposes of the Act because the ability to engage in Transactions increases the likelihood of a Fund achieving the best pricing, terms and quality of service otherwise available in the market in such transactions and results in none of the abuses that the Act was designed to prevent.

Applicants' Conditions

Applicants agree that the Order granting the requested relief will be subject to the following conditions:

A. Structural

(1) Neither BAC nor any BAC Affiliates will control any of the Advisers or principal underwriters or promoters for the Funds, directly or indirectly, within the meaning of section 2(a)(9) of the Act, and neither BAC nor any BAC Affiliates will exercise, or attempt to exercise, control over any Fund. The Order will remain in effect only so long as Ameriprise, or another entity not controlling, controlled by or under common control with BAC, primarily controls the Advisers. In this regard, pursuant to the Non-Voting Undertaking, BANA (US Trust) will not exercise any voting authority that it possesses with respect to shares that constitute five percent or more of any Fund's total outstanding voting securities. Instead, it will delegate to an independent third party that is not affiliated with either BAC or any BAC Affiliate the voting of such shares.

(2) Neither BAC nor any BAC Affiliates will directly or indirectly consult with Ameriprise or any Ameriprise Affiliate, including the Advisers, or any portfolio manager of the Advisers concerning purchase or sale Transactions, or the selection of a broker or dealer for any Transactions placed or to be placed on behalf of a Fund, or otherwise seek to influence the choice of broker or dealer for any Transaction by a Fund, other than in the normal course of sales activities of the same nature that are being carried out during the same time period with respect to unaffiliated institutional clients of the BAC Trading Entity, or that existed between the BAC Trading Entity and the Advisers, if any, prior to consummation of the Columbia Sale.

(3) No officer, director or employee of an Owned Fund will directly or indirectly seek to influence in any way the terms of any Transaction covered by the Order, other than in the normal course of investment activities of the same nature that are being carried out during the same time period with respect to unaffiliated broker-dealers, or that existed between the BAC Trading Entity and the Advisers, if any, prior to consummation of the Columbia Sale.

(4) The Advisers and each BAC Trading Entity are structured as separate organizations, with separate capitalization, separate books and records, and separate officers and employees, and are physically separated. Each BAC Trading Entity will adopt and implement policies that prohibit the BAC Trading Entity from (a) linking any approval or action relating to an Owned Fund to any action by any Fund or by an Adviser relating to any Fund, or (b) using the fiduciary account investments in an Owned Fund as a basis for seeking to persuade any Fund or the Advisers to engage in business with the BAC Trading Entity. The Funds have adopted policies designed to keep information about their holdings and transactions on a confidential basis, prior to any public disclosure, except in connection with the ordinary course of business as permitted by the portfolio holdings disclosure policies approved by the Funds' directors/trustees and involving communications of the same nature as are being made during the same period to unaffiliated trading partners of the Funds. Pursuant to these policies, the Advisers will designate information regarding investment advisory and portfolio execution matters relating to the Funds as information that may not be communicated between the Owned Fund, on the one hand, and the BAC Trading Entity, on the other hand, prior to any public disclosure.

(5) Ameriprise and the Ameriprise Affiliates will not adopt any compensation scheme any component of which is based on the amount of business done by the Funds with a BAC Trading Entity except to the extent such business might affect indirectly the profits or losses of the Advisers. BAC and the BAC Affiliates will not adopt any compensation scheme any component of which is based on a factor that compensates employees for Transactions with the Funds differently than Transactions with unaffiliated counterparties.

(6) The Advisers and the BAC Trading Entities, with the assistance of their respective legal/compliance departments, will prepare guidelines for their respective personnel to make certain that Transactions effected pursuant to the Order comply with its conditions, and that the Advisers and the BAC Trading Entities maintain an arms-length relationship. The respective legal/compliance departments of the Advisers and the BAC Trading Entities will monitor periodically the activities of the Advisers and the BAC Trading Entities, respectively, to make certain that the conditions of the Order are met.

B. Transactional

With respect to each Transaction entered into or effected pursuant to the Order on behalf of a Fund:

(1) Each Fund's Board, including the Necessary Majority, shall approve, and

the Fund shall implement, procedures governing all Transactions pursuant to the Order and the Fund's Board shall no less frequently than quarterly review all Transactions conducted pursuant to the Order and receive and review a report of those Transactions. Such report, which will be prepared by the Advisers and reviewed and approved by the Fund's Chief Compliance Officer, will indicate for each Transaction that the conditions of the Order have been satisfied, and will include a discussion of any significant changes in the volume, type or terms of Transactions between the relevant Funds and the BAC Trading Entity, the reasons for these changes, and a determination that such changes are appropriate. In addition, the Board will annually consider (i) whether the level of Transactions with BAC Trading Entities is appropriate and (ii) whether continued reliance on the Order in any applicable category of fixed-income instruments is appropriate in light of the need of the Funds to have the BAC Trading Entities available as trading counterparties, as evidenced by, among other things, the aggregate market share of the BAC Trading Entities in each such category.

(2) For each Transaction, the Adviser or Sub-Adviser will adhere to a ''best execution'' standard and will consider only the interests of the Funds and will not take into account the impact of a Fund's investment decision on the BAC Trading Entity. Before entering into any such Transaction, the Adviser or Sub-Adviser will determine that the Transaction is consistent with the investment objective(s) and policies of the Fund and is in the best interests of the Fund and its shareholders.

(3) Each Fund will (a) for so long as the Order is relied upon, maintain and preserve in an easily accessible place a written copy of the procedures and conditions (and any modifications thereto) that are described herein, and (b) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any Transaction in which the Adviser or Sub-Adviser knows that both a BAC Trading Entity and a Fund directly or indirectly have an interest occurs, the first two years in an easily accessible place, a written record of each such Transaction setting forth a description of the security purchased or sold by the Fund, a description of the BAC Trading Entity's interest or role in the Transaction, the terms of the Transaction, and the information or materials upon which the determination was made that each such Transaction was made in accordance with the procedures and conditions set forth herein.

(4) Except for Transactions involving repurchase agreements and variable rate demand notes, before any secondary market principal Transaction in fixed-income instruments is entered into between a Fund and a BAC Trading Entity, the Adviser or Sub-Adviser must obtain a competitive quotation for the same instruments (or in the case of instruments for which quotations for the same instruments are not available, a competitive quotation for Comparable Instruments) from at least two unaffiliated dealers that are in a position to quote favorable market prices, except that if, after reasonable efforts by the Adviser or Sub-Adviser, quotations are unavailable from two such dealers, only one other competitive quotation is required. For each such Transaction, the Adviser or Sub-Adviser will determine, based upon the quotations and such other relevant information reasonably available to the Adviser or Sub-Adviser, as applicable (such as available transaction prices and any other information regarding the value of the instruments), that the price available from the BAC Trading Entity is at least as favorable as that available from other sources.

(a) *Repurchase Agreements.* With respect to Transactions involving repurchase agreements, a Fund will enter into such agreements only where the Adviser or Sub-Adviser has determined, based upon information reasonably available to the Adviser or Sub-Adviser, as applicable, that the income to be earned from the repurchase agreement is at least equal to that available from other sources. Before any repurchase agreements are entered into pursuant to the Order, the Fund or the Adviser or Sub-Adviser, as applicable, must obtain competitive quotations from at least two unaffiliated dealers with respect to repurchase agreements comparable to the type of repurchase agreement involved, except that if, after reasonable efforts by the Adviser or Sub-Adviser, quotations are unavailable from two such dealers, only one other competitive quotation is required.

(b) *Variable Rate Demand Notes.* With respect to each Transaction involving variable rate demand notes for which dealer quotes are not ordinarily available, a Fund will only undertake purchases and sales where the Adviser or Sub-Adviser has determined, based on relevant information reasonably available to the Adviser or Sub-Adviser, as applicable, that the income earned from the variable rate demand note is at least equal to that of variable rate demand notes of comparable quality that are available from other sources.

(5) With respect to instruments offered in a primary market underwritten, or other primary market, Transaction, the Fund will undertake such purchase from a BAC Trading Entity only where the Adviser or Sub-Adviser has determined, based upon relevant information reasonably available to the Adviser or Sub-Adviser, as applicable, that the instruments will be purchased at a price that is not more than the price paid by each other purchaser of the instruments from, as relevant, the BAC Trading Entity or other members of an underwriting syndicate in that offering or in any concurrent offering of instruments, and on the same terms as such other purchasers (except in the case of an offering conducted under the laws of a country other than the United States, for any rights to purchase that are required by law to be granted to existing holders of the issuer). If no information regarding concurrent purchasers of the instruments is reasonably available to the Adviser or Sub-Adviser, the Fund may undertake such purchase from a BAC Trading Entity when the Adviser or Sub-Adviser has determined, based upon information reasonably available to the Adviser or Sub-Adviser, as applicable, that the yield on the instruments to be purchased is at least equal to that available on Comparable Instruments from other sources at that time.

(6) The commission, fee, spread, or other remuneration to be received by the BAC Trading Entities must be reasonable and fair compared to the commission, fee, spread, or other remuneration received by others in connection with comparable transactions involving similar instruments being purchased or sold during a comparable period of time.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28006 Filed 11–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934; Release No. 68224/November 14, 2012: Investment Company Act of 1940; Release No. 30261/ November 14, 2012]

Order Granting Exemptions From Specified Provisions of the Securities Exchange Act and the Investment Company Act and Certain Rules Thereunder; Order Under Section 17a and Section 36 of the Securities Exchange Act of 1934 Granting Exemptions From Specified Provisions of the Exchange Act and Certain Rules Thereunder; Order Under Section 6(C) and Section 38(A) of the Investment Company Act of 1940 Granting Exemptions From Specified Provisions of the Investment Company Act and Certain Rules Thereunder

Section 36 of the Securities Exchange Act of 1934 (the ''Exchange Act'') authorizes the Securities and Exchange Commission (the ''Commission''), by rule, regulation or order, to exempt, either conditionally or unconditionally, any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

Section 17A(c)(1) of the Exchange Act provides that the appropriate regulatory agency, by rule or by order, upon its own motion or upon application, may conditionally or unconditionally exempt any person or security or class of persons or securities from any provision of that section or any rule or regulation prescribed under Section 17A, if the appropriate regulatory agency finds that such exemption is in the public interest and consistent with the protection of investors and the purposes of this section, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.[1]

Section 6(c) of the Investment Company Act of 1940 (the ''Company Act'') provides that the Commission may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Company Act, or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Company Act. Section 38(a) of the Company Act provides that the Commission may make, issue, amend and rescind such rules and regulations and such orders as are necessary or appropriate to the exercise of the powers conferred upon the Commission under the Company Act. The necessity for prompt action of the Commission does not permit prior notice of the Commission's action.

Hurricane Sandy made landfall along the mid-Atlantic Coast on October 29, 2012. The storm and subsequent flooding have displaced individuals and businesses and disrupted communications and transportation across the mid-Atlantic region. We are issuing this Order to address the needs of companies and individuals directly or indirectly affected by Hurricane Sandy that must comply with the requirements of the federal securities laws.

I. Filing Requirements for Registrants and Other Persons

The lack of communications, transportation, electricity, facilities and available staff and professional advisors as a result of Hurricane Sandy could hamper the efforts of public companies and other persons with filing obligations to meet their filing deadlines. At the same time, investors have an interest in the timely availability of required information about these companies and the activities of persons required to file schedules and reports with respect to these companies. While the Commission believes that the relief from filing requirements provided by this Order is both necessary in the public interest and consistent with the protection of investors, we remind public companies and other persons who are the subjects of this Order to continue to evaluate their obligations to make materially accurate and complete disclosures in accordance with the anti-fraud provisions of the federal securities laws.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act, that a registrant (as defined in Exchange Act Rule 12b–2) subject to the reporting requirements of Exchange Act Section 13(a) or 15(d), and any person required to make any filings with respect to such a registrant, is exempt from any requirement to file or furnish materials with the Commission under Exchange Act Sections 13(a), 13(d), 13(f), 13(g), 14(a), 14(c), 15(d) and 16(a), Regulations 13A, 13D, 13G, 14A, 14C and 15D, and Exchange Act Rules 13f–1 and 16a–3, as applicable, for the period from and including October 29, 2012 to November 20, 2012, where the conditions below are satisfied.

Conditions

(a) The registrant or person other than a registrant is not able to meet a filing deadline due to Hurricane Sandy and its aftermath;

(b) The registrant or person other than a registrant files with the Commission any report, schedule or form required to be filed during the period from and including October 29, 2012 to November 20, 2012, on or before November 21, 2012; and (c) In any such report, schedule or form filed pursuant to this Order, the registrant or person other than a registrant must disclose that it is relying on this Order and state the reasons why, in good faith, it could not file such report, schedule or form on a timely basis.

II. Furnishing of Proxy and Information Statements

The conditions in the areas affected by Hurricane Sandy, including displacement of thousands of individuals and the destruction of property, have prevented and will continue to prevent the delivery of mail to the affected areas. In light of these conditions, we believe that relief is warranted for those seeking to comply with our rules imposing requirements to furnish materials to security holders when mail delivery is not possible.

Accordingly, *it is ordered,* pursuant to Section 36 of the Exchange Act, that a registrant or any other person is exempt from the requirements to furnish proxy statements, annual reports and other soliciting materials, as applicable (the ''Soliciting Materials''), under Exchange Act Rules 14a–3 and 14a–12, and the requirements to furnish information statements and annual reports, as applicable (the ''Information Materials''), under Exchange Act Rules 14c–2 and 14c–3, where the conditions below are satisfied.

[1] Section 3(a)(34)(B) of the Exchange Act defines ''appropriate regulatory authority'' when used in the context of transfer agents as generally: (1) The Comptroller of the Currency, in the case of a national bank or a subsidiary of such bank; (2) the Board of Governors of the Federal Reserve System, in the case of a state member bank of the Federal Reserve System, a subsidiary thereof, a bank holding company or a subsidiary of a bank holding company; (3) the Federal Deposit Insurance Corporation, in the case of a bank insured by the Federal Deposit Insurance Corporation; and (4) the Commission, in the case of all other transfer agents. Section 17A(c)(1) also requires that the Commission not object to the use of exemptive authority in instances where an appropriate regulatory authority other than the Commission is providing exemptive relief.

Conditions

(a) The registrant's security holder has a mailing address located within a zip code where, as a result of Hurricane Sandy, the United States Postal Service has suspended mail service of the type or class customarily used by the registrant;

(b) The registrant or other person making a solicitation has followed normal procedure when furnishing the Soliciting Materials to the security holder in order to ensure that the Soliciting Materials preceded or accompanied the proxy, as required by the rules applicable to the particular form of Soliciting Materials, or, in the case of Information Materials, the registrant has followed normal procedure when furnishing the Information Materials to the security holder in accordance with the rules applicable to Information Materials; and

(c) If requested by the security holder, the registrant or other person provides the Soliciting Materials or Information Materials by a means reasonably designed to furnish the Soliciting Materials or Information Materials to the security holder.

Any registrant or other person unable to meet a deadline (including any shareholder who is unable to meet a deadline applicable to a shareholder proposal) or a delivery obligation as a result of Hurricane Sandy, or in need of other assistance related to their public filings, should contact the Division of Corporation Finance at (202) 551–3500 or at *https://tts.sec.gov/cgi-bin/corp_fin_interpretive.* The Division will consider any requests on a case-by-case basis.

III. Relief Relating Specifically to Registered Investment Companies Regarding Transmittal of Annual and Semi-Annual Reports to Investors Required by the Company Act and the Rules Thereunder

For reasons similar to those cited in Section II, we believe that relief is warranted for the transmittal by registered management investment companies and registered unit investment trusts (collectively, ''registered investment companies'') of annual and semi-annual reports to investors.

Accordingly, *it is ordered,* pursuant to Sections 6(c) and 38(a) of the Company Act that, for the period from and including October 29, 2012 to November 20, 2012, a registered investment company is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e–1 thereunder to transmit annual and semi-annual reports to investors affected by Hurricane Sandy; and

For the period from and including October 29, 2012 to November 20, 2012, a registered unit investment trust is exempt from the requirements of Section 30(e) of the Company Act and Rule 30e–2 thereunder to transmit annual and semi-annual reports to unitholders affected by Hurricane Sandy,

Provided That

(a) The affected investor's mailing address for transmittal as listed in the records of the registered investment company has a zip code for which the United States Postal Service has suspended mail service, as a result of Hurricane Sandy, of the type or class customarily used by the registered investment company for transmittal of reports; and

(b) The registered investment company or other person promptly transmits the reports to affected investors: (i) If requested by the investor; or (ii) at the earlier of November 21, 2012 or the resumption of the applicable mail service.

Registered investment companies experiencing difficulties in complying with their obligations after November 20, 2012, with the filing of Forms N–SAR or N–MFP, or in need of additional information or assistance regarding issues arising under the Company Act, should contact the Division of Investment Management, Office of Chief Counsel, at (202) 551–6865 or *IMOCC@sec.gov.* Registered investment advisers experiencing difficulties arising from Hurricane Sandy in complying with their obligations such as the filing of Form PF, or in need of additional information or assistance regarding issues arising under the Investment Advisers Act of 1940, should contact the Division of Investment Management, Office of Investment Adviser Regulation, at (202) 551–6999 or *IARDLive@sec.gov.*

IV. Transfer Agent Compliance With Sections 17a and 17(F) of the Exchange Act

Exchange Act Section 17A and Section 17(f), as well as the rules promulgated under Sections 17A and 17(f), contain requirements for registered transfer agents relating to, among other things, processing securities transfers, safekeeping of investor and issuer funds and securities, and maintaining records of investor ownership. Following the events of Hurricane Sandy, registered transfer agents located in the affected region may have difficulty complying with some or all of their obligations as registered transfer agents. In addition, registered transfer agents located outside the affected region in many cases may be unable to conduct business with entities or securityholders inside the region, thereby making it difficult to process securities transactions and corporate actions in conformance with Section 17A, Section 17(f) and the rules thereunder.

While the national clearance and settlement system continues to operate well in light of this emergency, the Commission recognizes that securities transfers and payments to and from securityholders in the affected region may present compliance issues for many transfer agents. Therefore, the Commission is using its authority under Section 17A and Section 36 of the Exchange Act to relax temporarily certain regulatory provisions in order to provide transfer agents with flexibility in coping with the situation.[2] The Commission finds the following exemption to be in the public interest and consistent with the protection of investors and the purpose of Section 17A of the Exchange Act, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds.

Accordingly, *it is ordered,* pursuant to Sections 17A and 36 of the Exchange Act, that any registered transfer agent that is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable, due to Hurricane Sandy and its aftermath is hereby temporarily exempted from complying with such provisions for the period from and including October 29, 2012 to December 1, 2012, where the conditions below are satisfied.

Conditions

(a) A registered transfer agent relying on this Order must notify the Commission in writing by November 19, 2012 of the following:

(1) The transfer agent is relying on this Order;

(2) A statement of the reasons why, in good faith, the transfer agent is unable to comply with Section 17A and Section 17(f) of the Exchange Act and the rules promulgated thereunder, as applicable;

(3) If the transfer agent knows or believes that the books and records it is required to maintain pursuant to Section 17A and the rules thereunder were lost, destroyed or materially

[2] This order temporarily exempts transfer agents from the requirements of (1) Section 17A of the Exchange Act and Rules 17Ad–1 through 17Ad–20 thereunder and (2) Section 17(f) of the Exchange Act and Rules 17f–1 and 17f–2 thereunder.

damaged, information, to the extent reasonably available, as to the type of books and records that were maintained, the names of the issuers for whom such books and records were maintained, the extent of the loss of, or damage to, such books and records, and the steps taken to ameliorate any such loss or damage; and

(4) If the transfer agent knows or believes that funds or securities belonging to either issuers or securityholders and within its possession were, for any reason, lost, destroyed, stolen or unaccounted for, information, to the extent reasonably available, regarding the dollar amount of any such funds and the number of such securities and the steps taken to ameliorate any such loss; and

(b) Transfer agents that have custody or possession of any securityholder or issuer funds or securities shall use all reasonable means available to ensure that all such securities are held in safekeeping and are handled, in light of all facts and circumstances, in a manner reasonably free from risk of theft, loss, or destruction and that all funds are protected against misuse. To the extent possible, all securityholder or issuer funds that remain in the custody of the transfer agent shall be maintained in a separate bank account held for the exclusive benefit of securityholders until such funds are properly remitted.

The notification required under (a) above shall be sent to: U.S. Securities and Exchange Commission, Division of Trading and Markets, 100 F Street NE., Washington, DC 20549–7010.

The Commission encourages registered transfer agents and the issuers for whom they act to inform affected securityholders whom they should contact concerning their accounts, their access to funds or securities, and other shareholder concerns. If feasible, issuers and their transfer agents should consider placing a notice on their Web sites or providing toll free numbers to respond to inquiries.

Transfer agents experiencing difficulties in complying with obligations after December 1, 2012, or in need of additional information, should contact the Division of Trading and Markets at (202) 551–5777 or at *tradingandmarkets@sec.gov.*

V. Independence—Bookkeeping or Other Services Related to the Accounting Records or Financial Statements of the Audit Client

The conditions in the areas affected by Hurricane Sandy, including displacement of individuals, the destruction of property and loss or destruction of corporate records, may require extraordinary efforts to reconstruct lost or destroyed accounting records. The Commission understands that in this unique situation an audit client may look to its auditor for assistance in reconstruction of its accounting records because of the auditor's knowledge of the client's financial systems and records. Under Section 10A(g)(1) of the Exchange Act and Rule 2–01(c)(4)(i) of Regulation S–X, auditors are prohibited from providing bookkeeping or other services relating to the accounting records of the audit client, and in Rule 2–01(c)(4)(i) of Regulation S–X, these prohibited services are described as including ''maintaining or preparing the audit client's accounting records'' or ''preparing or originating source data underlying the audit client's financial statements.'' In light of the conditions in areas affected by Hurricane Sandy, however, we believe that limited relief from these prohibitions is warranted for those registrants and other persons that are required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder and that are affected by those conditions. Accordingly, *It Is Ordered,* pursuant to Section 36 of the Exchange Act, that independent certified public accountants engaged to provide audit services to registrants and other persons required to comply with the independence requirements of the federal securities laws and the Commission's rules and regulations thereunder are exempt from the requirements of Section 10A(g)(1) of the Exchange Act and Rule 2–01(c)(4)(i) of Regulation S–X, where the conditions below are satisfied.

Conditions

(a) Services provided by the auditor are limited to reconstruction of previously existing accounting records that were lost or destroyed as a result of Hurricane Sandy and such services cease as soon as the audit client's lost or destroyed records are reconstructed, its financial systems are fully operational and the client can effect an orderly and efficient transition to management or other service provider; and

(b) Services provided by the auditor to its audit client pursuant to this Order are subject to pre-approval by the audit client's audit committee as required by Rule 2–01(c)(7) of Regulation S–X.

Auditors or audit clients with questions about this section of the Order or with other questions relating to auditor independence are encouraged to call the Office of the Chief Accountant directly at (202) 551–5300.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–28049 Filed 11–16–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68209; File No. SR–NASDAQ–2012–126]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify NASDAQ's Rebates for Order Execution and Its Fees for Order Entry Ports Through the Introduction of New Market Quality Incentive Programs on a Pilot Basis

November 9, 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 1, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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

NASDAQ is proposing a change to modify rebates for order execution and its fees for order entry ports through the introduction of new market quality incentive programs on a pilot basis. NASDAQ will implement the proposed change on November 1, 2012. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is introducing two new pricing programs designed to create incentives for members to improve market quality. The programs will be in effect on a pilot basis from November 1, 2012 until April 30, 2013, subject to being modified, terminated, extended, or made permanent through a subsequent proposed rule change. The pilot nature of the proposals will allow NASDAQ to assess and report to the Commission on the effects of the programs on bid-ask spreads, depth of liquidity at the inside, and such other factors as may be deemed relevant.

First, under the NBBO Setter Incentive program, NASDAQ will provide an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the national best bid or best offer (''NBBO'') or join another trading center with a protected quotation at the NBBO. The NBBO Setter Incentive credit will be paid on a monthly basis, and the amount will be determined by multiplying $0.0005 or $0.0002 by the number of shares of displayed liquidity provided to which a particular rate applies. A member will receive an NBBO Setter Incentive credit at the $0.0002 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the Nasdaq Market Center during a given month if posted through an order that:

- Displayed a quantity of at least one round lot at the time of execution; and
- Either established the NBBO or was the first order posted on NASDAQ that had the same price as an order posted at another trading center with a protected quotation that established the NBBO. Thus, the credit will be paid for orders that incur risk by setting the inside market or allowing NASDAQ to join another trading center that has already set the inside market, thereby aiding price discovery and NASDAQ's market quality. The credit will not be paid with respect to orders that join another order on NASDAQ that has already established or joined the NBBO.

A member will receive an NBBO Setter Incentive credit at the $0.0005 rate with respect to all shares of displayed liquidity that are executed at a price of $1 or more in the NASDAQ Market Center during a given month if posted through an order that:

- Displayed a quantity of at least one round lot at the time of execution;
- Either established the NBBO or was the first order posted on Nasdaq that had the same price as an order posted at another trading center with a protected quotation that established the NBBO; and
- Was entered through a market participant identifier (''MPID'') that qualified for the Qualified Market Maker (''QMM'') program during the month.

The QMM program is the other market quality incentive being introduced by NASDAQ in this proposed rule change, and is discussed below.

Similar to other market quality incentive programs already in place at NASDAQ, such as the Investor Support Program, an NBBO Setter Incentive credit will be in addition to (and will not replace) any other credit or rebate for which a member may qualify. The program is similar to a provision of the fee schedule of the BATS Exchange, Inc. (''BATS''), under which BATS pays its members an additional rebate of $0.0002 per share executed for displayed liquidity that sets the NBBO (provided the member has an average daily volume equal to or greater than 0.5% of the total consolidated volume during the month).[3]

Qualified Market Maker Program

NASDAQ is proposing a market quality incentive program under which a member may be designated as a QMM with respect to one or more of its MPIDs if:

- The member is not assessed any ''Excess Order Fee'' under Rule 7018 during the month;[4] and
- Through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours[5] in an average of at least 1,000 securities during the month.[6]

Thus, to be a QMM, a member must make a significant contribution to market quality by providing liquidity at the NBBO in a large number of stocks for a significant portion of the day. In addition, the member must avoid imposing the burdens on NASDAQ and its market participants that may be associated with excessive rates of entry of orders away from the inside and/or order cancellation. A QMM may be, but is not required to be, a registered market maker in any security; thus, the QMM designation does not by itself impose a two-sided quotation obligation or convey any of the benefits associated with being a registered market maker. The designation will, however, reflect the QMM's commitment to provide meaningful and consistent support to market quality and price discovery by extensive quoting at the NBBO in a large number of securities. Thus, the program is designed to attract liquidity both from traditional market makers and from other firms that are willing to commit capital to support liquidity at the NBBO. Through these incentives, NASDAQ hopes to provide improved trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market. In addition, the program reflects an effort to use financial incentives to encourage a wider variety of members, including members that may be characterized as high-frequency trading firms, to make positive commitments to promote market quality.

A member that is a QMM with respect to a particular MPID will receive:

- An NBBO Setter Incentive credit of $0.0005 with respect to orders that qualify for the NBBO Setter Incentive program (*i.e.,* displayed orders with a size of at least one round lot that set the NBBO or join another trading center at the NBBO) and that are entered through that MPID; and
- A 25% discount on fees for ports used for entering orders for that MPID,

[3] *See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_ Schedule.pdf* (''$0.0002 additional rebate per share for adding displayed liquidity to the BZX Exchange order book on an order that sets the NBBO for Members who have an ADV equal to or greater than 0.5% of TCV'').

[4] Rule 7018(m). NASDAQ recently introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

[5] Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

[6] A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

up to a total discount of $10,000 per MPID per month.[7] As provided in amendments to Rule 7015, the specific fees subject to this discount are: (i) All ports using the NASDAQ Information Exchange (''QIX'') protocol,[8] (ii) Financial Information Exchange (''FIX'') trading ports,[9] and (iii) ports using other trading telecommunications protocols.[10]

NASDAQ is proposing these discounts as a means of recognizing the value of market participants that consistently quote at the NBBO in a large number of securities. Even when such market participants are not formally registered as market makers, they risk capital by offering immediately executable liquidity at the price most favorable to market participants on the opposite side of the market. Such activity promotes price discovery and dampens volatility and enhances the attractiveness of NASDAQ as a trading venue. A discount on order entry port fees is an appropriate incentive to encourage broad-based liquidity provision because active management of quotes across over 1,000 securities may require a member to employ numerous order entry ports. NASDAQ further notes that the proposed discount on port fees is similar in structure and purpose to a provision of the fee schedule for BATS's options market under which the $1,000 per month fee for a port with bulk-quoting capabilities is waived if a member achieves certain market quality standards with respect to options on more than 25 underlying securities.[11]

In addition to the foregoing changes, NASDAQ is also modifying the name of Rule 7014 to reflect the fact that it includes a range of market quality incentive programs, adding definitions of ''NBBO'', ''trading center'', and ''protected quotation'', and ''regular market hours'' to the rule, and making conforming changes to the letter designations of paragraphs within the rule.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed NBBO Setter Incentive program is intended to encourage members to add liquidity at prices that benefit all NASDAQ market participants and the NASDAQ market itself, and enhance price discovery, by establishing a new NBBO or allowing NASDAQ to join the NBBO established by another trading center. NASDAQ believes that the level of the credits available through the program—$0.0002 or $0.0005 per share executed—is reasonable, in that it does not reflect a disproportionate increase above the rebates provided to all members with respect to the provision of displayed liquidity under Rule 7018, which range from $0.0020 to $0.00295 per share executed. NASDAQ further notes that by introducing the program, NASDAQ is reducing fees for members that set the NBBO or join another market at the NBBO. The program is consistent with the Act's requirement for an equitable allocation of fees because members that establish the NBBO or cause NASDAQ to join another market at the NBBO benefit all investors by promoting price discovery and increasing the depth of liquidity available at the inside market. Such members also benefit NASDAQ itself by enhancing its competitiveness as a market that attracts actionable orders. Accordingly, NASDAQ believes that it is consistent with an equitable allocation of fees to pay an enhanced rebate in recognition of these benefits to NASDAQ and its market participants. NASDAQ further notes that the program is consistent with an equitable allocation of fees because it is immediately available to all market participants that allow NASDAQ to set or join the NBBO, regardless of the size of the firm or its trading volumes. Finally, NASDAQ believes that the program and the payment of a higher rebate with respect to qualifying orders is not unfairly discriminatory because it is intended to promote the benefits described above, and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

Similarly, the proposed QMM program is intended to encourage members to promote price discovery and market quality by quoting at the NBBO for a significant portion of each day in a large number of securities, thereby benefitting NASDAQ and other investors by committing capital to support the execution of orders. With respect to the enhanced NBBO Setter Incentive rebate provided to QMMs, NASDAQ believes that the rebate itself is reasonable, equitable, and not unfairly discriminatory for the reasons discussed above with regard to the NBBO Setter Incentive program. In addition, NASDAQ believes that it is reasonable to pay a higher rebate under that program to QMMs because of the additional commitment to market quality reflected in the quoting requirements associated with being a QMM. Similarly, NASDAQ believes that the higher rebate is consistent with an equitable allocation of fees because a QMM that sets the NBBO is demonstrating both a specific commitment to the market through the NBBO-setting order and a broad commitment through its quoting activity throughout the month. Accordingly, NASDAQ believes that it is consistent with an equitable allocation to pay a higher rebate in comparison with the rebate for other NBBO-setting orders. Finally, NASDAQ believes that this higher rebate is not unfairly discriminatory because it is consistent with the market quality and competitiveness benefits associated with the program and because the magnitude of the additional rebate is not unreasonably high in comparison to the rebate paid with respect to other displayed liquidity-providing orders.

NASDAQ believes that the proposed port fee discount for QMMs is consistent with an equitable allocation of fees because the fees for connectivity, such as the ports used for order entry, are a significant component of the overall cost of trading on NASDAQ and other trading venues. Accordingly, to the extent that a member maintains a significant presence in the NASDAQ market through the extent of its quoting at the NBBO, NASDAQ believes that it is equitable to provide the member a discount on this component of its trading costs. NASDAQ further believes that the discount is not unfairly discriminatory, because it is subject to a monthly cap, such that the disparity between the monthly costs of a QMM and another market participant with a similar configuration of order entry ports may not exceed $10,000. Finally, NASDAQ believes that the discount is

[7] The ports subject to the discount are not used for receipt of market data.

[8] The applicable undiscounted fees are $1,200 per month for a port pair or ECN direct connection port pair, and $1,000 per month for an unsolicited message port. *See* Rule 7015(a).

[9] The applicable undiscounted fee is $500 per port per month. *See* Rule 7015(b).

[10] The applicable undiscounted fee is $500 per port pair per month. *See* Rule 7015(g).

[11] *See http://cdn.batstrading.com/resources/regulation/rule_book/BZX_Fee_ Schedule.pdf* (''fees for logical ports with bulk-quoting capabilities will be waived for Members achieving QIP [Quoting Incentive Program] thresholds in more than 25 underlying securities'').

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4) and (5).

reasonable because it will result in a fee reduction for members that provide the market quality benefits associated with QMM status.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it is designed to reduce fees for members that enhance the quality of NASDAQ's market.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Because the market for order execution is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. By reducing fees for order execution and order entry ports, the proposal is a manifestation of the continued intense level of competition in the market for order execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–126. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–126 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28000 Filed 11–16–12; 8:45 am]

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68215; File No. SR–NSX–2012–20]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee and Rebate Schedule

November 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 2, 2012 National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Fee and Rebate Schedule (the ''Fee Schedule'') issued pursuant to Exchange Rule 16.1(a) to adopt separate regulatory fees for Order Delivery participants to: (1) Charge a flat fee per quotation update; (2) charge a separate flat fee per quotation update during a new Order Delivery participant's first three (3) months of participation; and (3) implement an Onboarding Fee for new Order Delivery participants. The text of the proposed rule change is available on the Exchange's Web site at *www.nsx.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Section IV of its Fee Schedule to adopt a separate Regulatory Fee for Order Delivery participants to: (1) Charge a flat fee per quotation update; (2) charge a separate flat fee per quotation update during a new Order Delivery participant's first three (3) months of participation; and (3) implement an Onboarding Fee for new Order Delivery participants. Proceeds from the new regulatory fees will be used to fund the NSX's regulatory oversight of Order Delivery participants.

Quotation Update Fee for Existing Order Delivery Participants

The Exchange proposed to charge a flat fee of $0.000444 per each Order Delivery participant's quotation update.[3] The Exchange will earmark and use all regulatory fees raised through the quotation update fee to support the regulatory oversight of the Order Delivery function.

The quotation update fee rate is reasonable since it is designed to correlate with the total regulatory costs associated with overseeing the Order Delivery trading program based on current Order Delivery participants' historic quotation activities. The Exchange will calculate, on a quarterly basis, the percentage of the Exchange's quotation activity that is accounted for by Order Delivery participants. The Exchange will consider any changes in the level of Order Delivery activity as well as any changes in the market, surveillance and system requirements required to effectively perform the surveillance function in determining whether to adjust the quotation update fee.

The Order Delivery functionality allows electronic communication networks (''ECNs'') to make quotations available through the consolidated quotation feed without the risk of double execution. The Exchange is the only market center to provide this service. This market structure has a higher cost structure than automated matching engines due to its increased operational, technology and regulatory demands. The Exchange currently does not charge execution fees for orders executed using the Order Delivery Mode.

The Exchange also notes that this proposed fee is similar to a quotation update fee imposed by FINRA on ADF Participants.[4] The Exchange's Order Delivery program is similar to the ADF offering. Therefore, the Exchange believes that a separate regulatory fee based on quotation updates is a reasonable manner in which to fund its regulatory program.

Fees for New Order Delivery Participants

The Exchange also proposed to adopt the following separate fees for new Order Delivery Participants: (1) A higher flat fee per quotation update during a new Order Delivery participant's first three (3) months of participation; and (2) a one-time Onboarding Fee of $5,000.00.

The Exchange proposes a separate flat fee per quotation update of $0.006667 during a new Order Delivery participant's first three (3) months of participation. This quotation update fee would be in lieu of the proposed standard quotation update fee of $0.000444 for existing Order Delivery participants. This is because the Exchange expends an increased regulatory focus over a new Order Delivery participant's activities to ensure compliance with Exchange Rule 11.13 and to gain familiarity with their quoting activities. The Exchange will earmark and use all regulatory fees raised through the quotation update fee to support the regulatory oversight of the Order Delivery function. The Exchange believes that charging a higher quotation update fee for new Order Delivery participants during their first three months of operation is reasonable, and is an equitable means to cover the increase regulatory oversight costs of their activities without being unfairly discriminatory among the ETP Holders.

The Exchange proposes a one-time Onboarding Fee of $5,000.00. The Exchange incurs increased costs when onboarding a new Order Delivery participant. These costs include establishing connectivity and administering the application process. The Exchange also conducts enhanced due diligence of the Order Delivery participant's systems to ensure its ability to comply with Exchange Rule 11.13, including the Order Delivery applicant's ability to comply with the Exchange's eligibility requirements. The Onboarding Fees will also be used by the Exchange to support the regulatory oversight of the Order Delivery function. The Exchange believes that adopting a one-time fee is reasonable for new Order Delivery participants, and an equitable distribution of regulatory costs that does not unfairly discriminate against the Order Delivery applicant or existing ETP Holders.

Operative Date and Notice

The Exchange currently intends to make the proposed modifications, which are effective on filing of this proposed rule, operative as of commencement of trading on November 2, 2012.[5] Pursuant to Exchange Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange'' through the issuance of a Regulatory Circular of the changes to the Fee Schedule and will post a copy of the rule filing on the Exchange's Web site (*www.nsx.com*).

2. Statutory Basis

The Exchange believes that the proposed fixed quotation update fee for existing Order Delivery participants is consistent with the provisions of Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Order Delivery Mode imposes on the Exchange greater regulatory and operational costs than Auto-Ex Mode, because Order Delivery is a model that requires increased regulatory procedures to ensure effective oversight of compliance with applicable SEC and SRO rules. By imposing a quotation update fee based on each Order Delivery participant's quotation activity, this fee equitably

[3] A ''quotation update'' includes any change to the price, size or side of a quotation or submission of an updated quote with the same price, size or side. A quotation update does not include posting of a new quote to replace a quote that was fully executed.

[4] *See* Securities Exchange Act Release No. 47331 (February 10, 2003), 68 FR 7635 (February 14, 2003) (SR–NASD–2003–09), *see also,* Securities Exchange Act Release No. 55379 (March 1, 2007), 72 FR 10283 (March 7, 2007) (SR–NASD–2007–017). While the Exchange proposes a fixed quotation update fee for existing Order Delivery participants and a separate quotation update fee for a new applicant, FINRA's quotation update fee is tiered based on the ADF Participant's trading volumes.

[5] Because the proposed changes are effective November 2, 2012, trading activity occurring on November 1, 2012 will be excluded from the proposed fees.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

allocates costs based on their overall quotation activity. The Exchange is the only market center to offer Order Delivery to market participants, which allows ECNs to make quotations available through the consolidated quotation feed without the risk of double execution. This market structure has a higher cost structure than automated matching engines due to its increased operational, technology and regulatory demands. The Exchange currently does not charge execution fees for orders executed using the Order Delivery Mode. Therefore, the Exchange believes this fee structure is a reasonable means for the NSX to recover the regulatory costs of Order Delivery. Moreover, the Exchange believes that the proposed fixed quotation update fee for existing Order Delivery participants is consistent with the provisions of Section 6(b)(5) of the Act,[8] in that the proposed regulatory fee is not unfairly discriminatory because it is based on an ETP Holder's quotation activity in Order Delivery. Order Delivery participants are eligible to submit (or not submit) liquidity adding and quotes, and may do so at their discretion in the daily volumes they choose during any given trading day.

Furthermore, the Exchange also believes that the proposed fixed quotation update fee for new Order Delivery participants during their first three (3) months of operation is consistent with the provisions of Section 6(b) of the Act,[9] in general, and Section 6(b)(4) of the Act,[10] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Oversight of a new Order Delivery participant's activities imposes on the Exchange greater regulatory and operational costs than it does for existing Order Delivery participants, because the Exchange expends an increased regulatory focus over a new Order Delivery participant's activities to ensure compliance with Exchange Rule 11.13 and to gain familiarity with their quoting activities. The Exchange believes that charging a higher quotation update fee for new Order Delivery participants during their first three (3) months of operation is a reasonable means to cover the increase regulatory oversight costs of their activities require. By imposing a quotation update fee based on each Order Delivery participant's quotation activity, this fee equitably allocates costs based on their overall quotation activity. Again, the Exchange is the only market center to offer Order Delivery to market participants which allows ECNs to make quotations available through the consolidated quotation feed without the risk of double execution. This market structure has a higher cost structure than automated matching engines due to its increased operational, technology and regulatory demands. The Exchange currently does not charge execution fees for orders executed using the Order Delivery Mode. Therefore, the Exchange believes this fee structure is a reasonable means for the NSX to recover the regulatory costs of Order Delivery. Moreover, the Exchange believes that the proposed fixed quotation update fee for new Order Delivery participants during their first three (3) months of operation is consistent with the provisions of Section 6(b)(5) of the Act,[11] in that the proposed regulatory fee is not unfairly discriminatory because it is based on an ETP Holder's quotation activity in Order Delivery. New Order Delivery participants require increased regulatory oversight relative to existing participants due to the Exchange's focus on their trading activity, ensuring compliance with SEC and SRO rules as well as Exchange staff developing familiarity with the new participant's trading behavior. Also, Order Delivery participants are eligible to submit (or not submit) liquidity adding and quotes, and may do so at their discretion in the daily volumes they choose during any given trading day.

Lastly, the Exchange believes that the proposed one-time Onboarding Fee for new Order Delivery participants is also consistent with the provisions of Section 6(b) of the Act,[12] in general, and Section 6(b)(4) of the Act,[13] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using the facilities of the Exchange. Onboarding a new Order Delivery participant imposes on the Exchange increased regulatory and operational costs. These costs include establishing connectivity and administering the application process. The Exchange also conducts extensive due diligence and increased regulatory procedures to ensure effective oversight of compliance with applicable SEC and SRO rules, including review of an Order Delivery participant's systems to ensure their ability to comply with Exchange Rule 11.13's automated response time requirements. By imposing a one-time Onboarding Fee for new Order Delivery participants, this fee equitably allocates costs based on the increased regulatory review of the new participant's ability to comply with SEC and SRO rules relating to Order Delivery. The Exchange currently does not charge execution fees for orders executed using the Order Delivery Mode. Therefore, the Exchange believes this one-time Onboarding Fee is a reasonable means for the NSX to recover the regulatory costs associated with onboarding new Order Delivery participants. Moreover, the Exchange believes that the proposed one-time Onboarding Fee for new Order Delivery participants is consistent with the provisions of Section 6(b)(5) of the Act,[14] in that the proposed regulatory fee is not unfairly discriminatory because it applies to all new Order Delivery participant's equally and all ETP Holders who meet the criteria of Exchange Rule 11.13 are eligible to become Order Delivery 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 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 neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has taken effect upon filing pursuant to Section 19(b)(3)(A)(ii) of the Exchange Act [15] and subparagraph (f)(2) of Rule 19b–4 [16] thereunder, because, as provided in (f)(2), it changes ''a due, fee or other charge applicable only to a member'' (known on the Exchange as an ETP Holder). 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.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4.

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–NSX–2012–20 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–NSX–2012–20. 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–NSX–2012–20 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28004 Filed 11–16–12; 8:45 am]

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[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68217; File No. SR-Phlx–2012–130]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change Relating to SQT and RSQT Evaluations

November 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on October 31, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 510 titled ''SQT and RSQT Performance Evaluation'' to provide a different method for reviewing quote submissions in evaluating member organizations to determine whether they have fulfilled performance standards relating to the quality of markets.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend a standard by which Streaming Quote Traders [3] and Remote Streaming Quote Traders [4] are evaluated to determine whether they have fulfilled performance standards relating to, among other things, quality of markets, efficient quote submission to the Exchange (including quotes submitted through a third party vendor), competition, observance of ethical standards, and administrative factors. Specifically, with respect to quote submission, the Exchange is proposing to amend its methodology for evaluating a factor of the Performance Evaluation with quote submissions.

By way of background, Rule 510 establishes specific criteria for each option assigned to an SQT or RSQT that would be regularly evaluated by the Exchange. The Exchange periodically conducts an evaluation of member organizations that have SQTs and RSQTs, as defined in Exchange Rule 1014,[5] to determine whether they have fulfilled performance standards relating to, among other things, efficient quote submission to the Exchange.[6] The Exchange may review the Performance Evaluations and consider other relevant information including, but not limited to, trading data, regulatory history and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Streaming Quote Trader (''SQT'') is defined in Exchange Rule 1014(b)(ii)(A) as an Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned.

[4] A Remote Streaming Quote Trader (''RSQT'') is defined Exchange Rule in 1014(b)(ii)(B) as a ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange.

[5] Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders'' provides that transactions of a Specialist and a ROT should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and those members should not enter into transactions or make bids or offers that are inconsistent with such a course of dealings. *See* Rule 1014.

[6] This would include quotes that are submitted through a third party vendor.

such other factors and data as may be pertinent in the circumstances.[7]

With respect to Performance Evaluations, Commentary .01 to Rule 510 specifies that the Exchange will evaluate Minimum Performance Standards on a monthly basis for each SQT and RSQT. Among other factors, the Exchange would review the percentage of total quotes that represent the PBBO, quoting requirements pursuant to Rule 1014, the number of requests for a quote spread parameter and efficient quote submission.

This proposal seeks to amend the method by which the Exchange reviews efficient quote submission. Today the Exchange considers how an SQT or RSQT optimizes the submission of quotes through the Specialized Quote Feed,[8] by evaluating the number of individual quotes per quote block[9] received by the Exchange. The Exchange believes that this measure of efficiency may be outdated because it focuses more on technological ''load balance'' that may be unrelated to actual number of quotes submitted. The Exchange proposes to replace this measure with quote-to-trade and quote-to-contracts traded ratios to evaluate how an SQT or RSQT optimizes the submission of quotes submitted to the Exchange pursuant to Rule 1014. The Exchange believes that this method would be more useful in that it would allow the Exchange to better evaluate the efficiency with which an SQT or RSQT submits quotes and the quality of those quotes. For example, the Exchange would capture the following data in a report for each SQT and RSQT: Executed contracts, trade count, total quotes, executed contract to quote ratio and trade count to quote ratio. The Exchange believes that this information would provide the Exchange with additional data that is not captured today. The number of contracts executed would be analyzed in addition to the number of quotes received by the Exchange. Today, only quotes are analyzed. The executed contract to quote ratio would provide the Exchange with efficiency information. For example, an SQT could be evaluated in comparison to other liquidity providers to determine how much of their quote usage is actually resulting in liquidity being accessed by participants in the marketplace. The trade count to quote ratio would provide an additional subset of information that would reflect participation at the NBBO. This information is relevant because smaller participants may execute lesser size, but may provide value due to their presence at the top of the market.

The Exchange believes that updating the methodology utilized to review quote submissions with different statistical information, specifically quote-to-trade and quote-to-contracts traded ratios, would allow the Exchange to obtain more precise information with which to evaluate SQTs and RSQTs and determine Performance Evaluations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would be beneficial because it would provide the Exchange with a better means to evaluate quote submissions in comparison to other liquidity providers to evaluate how much their quote usage is actually resulting in liquidity being accessed by participants in the marketplace. The trade count to quote ratio would provide an additional subset of information that would reflect participation at the NBBO. This information, which relates to efficiency, would allow the Exchange to obtain more precise information with which to evaluate the performance of SQTs and RSQTs, particularly market participants that execute at a lesser size. The information would allow the Exchange to evaluate the value provided to the marketplace. The Exchange believes that the quote-to-trade and quote-to-contract data would provide valuable information to utilize in evaluations as compared to the number of individual quotes per quote block because the Exchange believes the proposed information would provide better metrics overall.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) By order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–130 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–130. 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

[7] *See* Rule 510(b). If the Exchange finds any failure by the SQTs and RSQTs to meet Minimum Performance Standards, the Exchange may restrict assignments or suspend or terminate an assignment or registration, after written notice and after opportunity for an informal meeting.

[8] A Specialist, RSQT or SQT may establish an option pricing model via a specialized connection, which is known as a specialized quote feed (''SQF''). *See* Commentary .01 to Rule 1080.

[9] A block contains up to 200 quotes.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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–Phlx–2012–130 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28066 Filed 11–16–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68216; File No. SR–Phlx–2012–125]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to References in the Exchange's Pricing Schedule With Respect to Non-Electronic Transactions

November 13, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1], and Rule 19b–4[2] thereunder, notice is hereby given that on October 31, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Pricing Schedule to clarify certain references to the Exchange's trading floor.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend certain text within the Pricing Schedule which refers to the Exchange's trading floor. The Exchange makes reference in its Pricing Schedule to trades which are electronic, submitted into PHLX XL®,[3] the Exchange's fully automated options trading system, and trades which are non-electronic, submitted into the Options Floor Broker Management System[4] or executed in open outcry.

The Exchange is proposing to clarify its Pricing Schedule by referring to transactions that are non-electronic as transactions ''originating (originates or originated) on the Exchange floor'' or ''floor transactions'' to eliminate any confusion. The Exchange would eliminate the other various references to floor trading such as ''non-electronic,'' ''FBMS'' and ''open outcry.'' The Exchange believes the proposed language provides clarity to the Pricing Schedule by utilizing consistent terminology. The Exchange believes this is a non-substantive change.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that clarifying the current rule text in the Pricing Schedule by adopting consistent terms to refer to floor transactions would simplify the Pricing Schedule and conform the rule text as it relates to floor transactions. Each of the terms, ''non-electronic,'' ''FBMS'' and ''open outcry,'' refer to transaction originating on the Exchange's trading floor as compared to electronic transactions entered into PHLX XL. The Exchange believes that utilizing the terms ''originating (originates or originated) on the Exchange floor'' and ''floor transactions'' will eliminate any potential confusion. The proposed amendment is non-substantive.

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.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposal refers to ''PHLX XL'' as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

[4] The Options Floor Broker Management System (''FBMS'') is a component of the Exchange's system designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. FBMS also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trial provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. *See* Exchange Rule 1080, Commentary .06.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) [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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2012–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–125. 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–Phlx–2012–125 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28065 Filed 11–16–12; 8:45 am]

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[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68220; File No. SR–NYSE–2012–66]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Interim Rule Change Relating to Rule 440B(b)

November 13, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 13, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes an interim proposed rule change related to Rule 440B(b) to provide that on November 12, 2012, the closing price for 216 Exchange-listed securities that did not have a closing transaction on the Exchange was the consolidated last sale price available as of the end of regular trading hours on November 12, 2012, and that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered pursuant to Rule 440B(c) on November 13, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes an interim proposed rule change for Rule 440B(b) to provide that on November 12, 2012, the closing price for 216 Exchange-listed securities that did not have a closing transaction on the Exchange was the consolidated last sale price available as of the end of regular trading hours on November 12, 2012, and that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered pursuant to Rule 440B(c) on November 13, 2012. The Exchange proposes that this interim proposed rule change be in effect until the Exchange has an opportunity to amend its rules on a permanent basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Rule 440B sets forth how the Exchange implements the provisions of Rule 201 of Regulation SHO (''Rule 201'')[4] under the Securities Exchange Act of 1934 (the ''Act'') which, if triggered, imposes a restriction on the prices at which securities may be sold short (''Short Sale Price Test''). Among other things, Rule 201 requires trading centers to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of a covered security decreases by 10% or more from the covered security's closing price as determined by the listing market for the covered security as of the end of regular trading hours on the prior day. Accordingly, Rule 201(b)(1)(i) delegates to the listing market how to determine the closing price for a security.

Due to a systems issue at the Exchange on November 12, 2012, the Exchange was unexpectedly unable to close 216 Exchange-listed securities pursuant to the procedures set forth in Rule 123C. The Exchange notes that market participants rely on the Exchange's official closing price for purposes of calculating the value of mutual funds, exchange traded funds, and various indices, among other things. Accordingly, on November 12, 2012, the Exchange needed to designate an official closing price for the 216 affected symbols that did not have a closing transaction at the Exchange. Because those securities continued to trade on other markets, the Exchange determined that the appropriate official closing price for those securities should be the consolidated last sale price available as of the end of regular trading hours on November 12, 2012.[5] The Exchange believes that using the consolidated last sale price available as of the end of regular trading hours best approximated the market's determination of the appropriate price of such securities in the absence of a closing transaction on the listing market.

Rule 440B establishes procedures for the Exchange, as a listing market, to determine whether a Short Sale Price Test has been triggered for a covered security. Among other things, Rule 440B(b) defines the ''Trigger Price'' as the security's closing price on the listing market as of the end of regular trading hours on the prior day. Rule 440B(c)(2) provides that if a covered security did not trade on the Exchange on the prior trading day (due to a trading halt, trading suspension, or otherwise), the Exchange's determination of the Trigger Price shall be based on the last sale price on the Exchange for that security on the most recent day on which the security traded. The Exchange believes that Rule 440B(c)(2) does not contemplate how the Exchange should determine the closing price in the unique circumstances that occurred on November 12, 2012, namely, that due to a systems issue, the Exchange was unable to conduct a closing transaction in securities that otherwise were eligible to trade on other markets. In particular, the reason why the Exchange did not trade the 216 securities was not because of a trading halt or trading suspension, and the Exchange does not believe the ''or otherwise'' language in Rule 440B(c)(2) was designed to address the unanticipated scenario on November 12, 2012 when due to a systems issue, the Exchange was unable to hold a closing transaction in those securities.

Because the Exchange has determined that the official closing price of the 216 affected securities should be the consolidated last sale price available as of the end of regular trading hours, the Exchange similarly believes that such consolidated last sale prices should be the closing price for purposes of determining the Trigger Price pursuant to Rule 440B(b). Accordingly, the Exchange proposes this interim proposed rule change for Rule 440B(b) to provide that for circumstances when the Exchange does not have a closing transaction, but securities are otherwise eligible to trade on other markets, the Exchange shall use the consolidated last sale price available as of the end of regular trading hours as the closing price for purposes of Rule 440B. The Exchange further proposes that such closing price shall be the Trigger Price for purposes of determining whether a Short Sale Price Test has been triggered on the following day pursuant to Rule 440B(c). The Exchange notes that the proposed interim rule proposal is intended to be in place only until the Exchange has an opportunity to amend its rules on a permanent basis to address this gap in its rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to 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.

The Exchange believes that the proposed rule change will promote just and equitable principles of trade because it provides for an interim measure that provides clarity of how the Exchange, as a listing market, determined the Trigger Price for 216 securities that did not have a closing transaction at the Exchange on November 12, 2012. In particular, the Exchange believes that using the consolidated last sale price available as of the end of regular trading hours as the official closing price for the affected securities on November 12, 2012 promotes just and equitable principles of trade because the consolidated last sale price represents the market's determination of the appropriate price of the securities in the absence of a closing auction on the primary market. The Exchange further believes that using a Trigger Price based on the consolidated last sale price available as of the end of regular trading hours for purposes of determining whether a Short Sale Price Test has been triggered on November 13, 2012 promotes just and equitable principles of trade because it provides transparency of how the Exchange determined the closing price for purposes of triggering a Short Sale Price Test on November 13, 2012.

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.

[4] 17 CFR 242.201.

[5] *See http://markets.nyx.com/nyse/market-status/view/11558.* The Exchange notes that for the 216 affected securities, 212 securities had a consolidated last-sale eligible trade on November 12, 2012. For the four symbols that did not have a transaction on November 12, 2012, the Exchange used the last available consolidated last-sale eligible transaction that occurred during regular trading hours.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[10]

A proposed rule change filed under Rule 19b–4(f)(6) [11] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b4(f)(6)(iii),[12] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission hereby grants the request.[13] Waiving the 30-day operative delay will allow the Exchange to provide transparency for how the Exchange determined the closing price on November 12, 2012. The Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and, therefore, designates the proposal as operative upon filing.

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.shtm*l); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the 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. 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–NYSE–2012–66 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

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[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 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 Commission has determined to waive the five-day prefiling period in this case.

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68213; File No. SR–Phlx–2012–129]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Routing Fees

November 13, 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 31, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Routing Fees to adopt new fees which recoup costs incurred by the Exchange when routing to various away markets. The Exchange also proposes to amend Section VII, Section D to memorialize a fee currently assessed to members in its Pricing Schedule.

While changes to the Pricing Schedule pursuant to this proposal are effective upon filing, the Exchange has designated the proposed amendment to be operative on November 1, 2012.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to eliminate the current Routing Fees in Section V of the Pricing Schedule and adopt new Routing Fees which recoup costs that the Exchange incurs for routing and executing orders in equity options to various away markets.

The Exchange's Pricing Schedule at Section V currently includes the following Routing Fees for routing Customer, Professional,[3] Firm, Broker-Dealer, Market Maker[4] and Specialist[5] orders to away markets:

Exchange	Customer	Professional	Firm/broker-dealer/specialist/market maker
NYSE AMEX	$0.11	$0.31	$0.55
BATS Penny	0.55	0.55	0.55
BATS non-Penny	0.86	0.91	0.91
BOX	0.11	0.11	0.55
BX Options	0.11	0.54	0.54
CBOE	0.11	0.31	0.55
CBOE orders greater than 99 contracts in RUT, RMN, NDX, MNX, ETFs, ETNs and HOLDRs	0.29	0.31	0.55
C2	0.55	0.56	0.55
ISE	0.11	0.29	0.55
ISE Select Symbols[13]	0.31	0.39	0.55
NYSE ARCA (Penny Pilot)	0.55	0.55	0.55
NYSE ARCA (Standard)	0.11	0.11	0.55
NOM Penny Pilot Options	0.54	0.54	0.55
NOM Non-Penny Pilot Options	0.86	0.91	0.91

[13] These fees are applicable to orders routed to ISE that are subject to Rebates and Fees for Adding and Removing Liquidity in Select Symbols. See ISE's Schedule of Fees for the complete list of symbols that are subject to these fees.

The Exchange proposes to adopt new Routing Fees when routing and executing orders in equity options to BATS Exchange, Inc. (''BATS''), BOX Options Exchange LLC (''BOX''), NASDAQ OMX BX, Inc. (''BX Options''), C2 Options Exchange, Incorporated (''C2''), Chicago Board Options Exchange, Incorporated (''CBOE''), International Securities Exchange, LLC (''ISE''), NASDAQ Options Market (''NOM''), NYSE Amex LLC (''NYSE Amex'') and NYSE Arca, Inc. (''NYSE Arca'').

Today, the Exchange calculates Routing Fees by assessing certain Exchange costs related to routing orders to away markets plus the away market's transaction fee. The Exchange incurs a fee when it utilizes Nasdaq Options Services LLC (''NOS''), a member of the Exchange and the Exchange's exclusive order router.[6] NOS is utilized by the Exchange's fully automated options trading system, PHLX XL®,[7] to route orders in options listed and open for trading on the PHLX XL system to destination markets. Each time NOS routes to away markets NOS incurs approximately $0.06 per contract in clearing-related cost and, in the case of certain exchanges, a transaction fee is also charged in certain symbols, which fees are passed through to the Exchange. The Exchange currently recoups clearing and transaction charges incurred by the Exchange as well as certain other costs incurred by the Exchange when routing to away markets, such as administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing options. Today, the Exchange's Routing Fees include a $0.06 clearing-related cost and another $0.05 per contract fee associated with administrative and technical costs for operating NOS ($0.11 per contract in total) in addition to the away market's transaction fee. The Exchange does not assess actual transaction fees in all cases today, but rather has limited fees in certain circumstances. In those cases the Exchange does not recover all of its costs for routing to the away market. Each time an away market modifies its transaction fees the Exchange files a proposed rule change to amend its Routing Fees to reflect a Routing Fee which equates to the current away market's transaction fee plus an additional $0.11 per contract for costs incurred by the Exchange.[8]

The Exchange proposes to amend its Routing Fees to specify in its rule text that the Exchange will assess the transaction fee that is being assessed by the away market plus a specified fixed fee which represents a cost incurred by the Exchange for routing an order to a destination market. The transaction fee

[3] The term ''professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). *See* Rule 1000(b)(14).

[4] A ''Market Maker'' includes Registered Options Traders (''ROTs'') (Rule 1014(b)(i) and (ii), which include Streaming Quote Traders (''SQTs'') (*See* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (''RSQTs'') (*See* Rule 1014(b)(ii)(B)).

[5] A Specialist is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[6] In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router. *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[7] This proposal refers to ''PHLX XL'' as the Exchange's automated options trading system. In May 2009 the Exchange enhanced the system and adopted corresponding rules referring to the system as ''Phlx XL II.'' *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The Exchange intends to submit a separate technical proposed rule change that would change all references to the system from ''Phlx XL II'' to ''PHLX XL'' for branding purposes.

[8] In some cases the Exchange filed a rule change which noted that the Exchange would not assess the actual transaction charge, but a lower amount where the transaction fees at an away market were higher than other markets. All Routing Fees are available on the Exchange's Pricing Schedule at Section V.

would be the actual charge assessed by the away exchange at the time that the order was entered into the Exchange's trading system. This transaction fee would be calculated on an order-by-order basis since different away markets charge different amounts.[9] The Exchange would also assess a fixed fee that represents the cost to the Exchange for routing the order to the away market. In analyzing its costs, the Exchange took into account clearing costs,[10] administrative and technical costs associated with operating NOS, membership fees at away markets and regulatory costs. With respect to BATS, BOX, C2, CBOE, ISE, NYSE Amex and NYSE Arca the Exchange proposes to assess a $0.10 per contract fee in addition to the away market's transaction fee.[11] The Exchange currently assesses $0.11 per contract for costs incurred by the Exchange. This proposal would reduce those fixed costs to $0.10 per contract. While the clearing cost itself was lowered by OCC, the Exchange, in analyzing its actual costs, has determined to assess a $0.10 per contract fixed fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, which is in addition to the transaction fee assessed by the away market.[12]

The Exchange also analyzed costs related to routing to BX Options and NOM and determined the costs are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[13] Because Phlx, BX Options and NOM all utilize NOS, the cost to the Exchange is less as compared to routing to other away markets. In addition the fixed costs are reduced because NOS is owned and operated by NASDAQ OMX and the three exchanges and NOS share common technology and related operational functions. The Exchange proposes to assess a $0.04 per contract fixed fee in addition to the away market's transaction fee to route to BX Options and NOM. This proposal would reduce the fixed fees assessed today on average to route to BX Options and NOM from $0.11 to $0.04 per contract.

For all Routing Fees, the transaction fee is based on the away market's transaction fee or rebate for particular market participants and in the case that there is no transaction fee or rebate assessed by the away market, the only fee assessed would be the $0.04 or $0.10 per contract fixed fee assessed by the Exchange to recoup its costs. As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change.

Finally, the Exchange notes in the proposed rule text in the Pricing Schedule that the fee assessed for routing shall be the actual transaction fee assessed or rebate paid by the away market. The Exchange is proposing to pay a market participant a rebate offered by an away market where there is such a rebate. Any rebate available would be netted against a fee assessed by the Exchange. For example, if a Customer order is routed to BOX, and BOX offers a customer rebate of $0.20 per contract, the Exchange would assess a $0.10 per contract fixed fee which would net against the rebate ($0.20 per contract in this example). The market participant for whom the customer contract was routed would receive a $0.10 per contract rebate. Today the market participant does not receive a rebate and only pays the current $0.11 per contract Routing Fee.

The Exchange is also proposing to memorialize a fee that is currently assessed on members and included in Exchange Rule 1092 titled ''Obvious Error and Catastrophic Errors.'' Rule 1092(f)(ii) states that [a]n Options Exchange Official[14] will determine whether a transaction(s) qualifies as a Catastrophic Error. If it is determined that a Catastrophic Error has occurred, the Options Exchange Official will adjust the execution price(s) of the transaction(s) according to Rule 1092. If it is determined that a Catastrophic Error has not occurred, the member requesting the determination will be subject to a charge of $5,000. The Exchange has memorialized its fees within the Pricing Schedule in order that all fees are readily located in one document. The Exchange is proposing to memorialize the Catastrophic Fee pursuant to Rule 1092 in Chapter VII, Part D of the Pricing Schedule for ease of reference.

2. Statutory Basis

The Exchange believes that its proposal to amend its Pricing Schedule is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(4) of the Act[16] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that the proposed Routing Fees are reasonable because they seek to recoup costs that are incurred by the Exchange when routing Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders to away markets on behalf of members. Each destination market's transaction charge varies and there is a cost incurred by the Exchange when routing orders to away markets. The costs to the Exchange include clearing costs, administrative and technical costs associated with operating NOS, membership fees at away markets, and technical costs associated with routing options. The Exchange believes that the proposed Routing Fees would enable the Exchange to recover the costs it incurs to route orders to away markets in addition to transaction fees assessed to market participants for the execution of Customer, Professional, Firm, Broker-Dealer, Specialist and Market Maker orders by the away market.

In addition, the Exchange notes that while it currently assesses a fixed fee of $0.11 per contract for costs incurred by the Exchange, the proposal would reduce the fixed fee to $0.10 per contract for non-NASDAQ OMX exchanges. The Exchange believes that the proposed fee is reasonable because while the per contract clearing fee itself was lowered by OCC (from $0.03 to $0.01 per contract side), the Exchange, in analyzing its actual costs, has determined to assess a $0.10 per contract fee to represent the overall cost to the Exchange for technical, administrative, clearing, regulatory, compliance and other costs, in addition to the transaction fee assessed by the away market. The clearing cost was only one component of the $0.11 per contract fee and other costs, which comprise the proposed $0.10 per contract fee, are not recouped today. Also, the Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances. The Exchange

[9] This is similar to the methodology utilized by ISE in assessing Routing Fees. *See* ISE's Fee Schedule.

[10] The Options Clearing Corporation (''OCC'') recently amended its clearing fee from $0.03 per contract side to $0.01 per contract side. *See* Securities Exchange Act Release No. 68025 (October 10, 2012), 77 FR 63398 (October 16, 2012) (SR–OCC–2012–18).

[11] The $0.10 per contract fixed fee would apply to all options exchanges other than BX Options and NOM, which are discussed separately in this proposal. The Exchange anticipates that if other options exchanges are approved by the Commission after the filing of this proposal, those exchanges would be assessed the $0.10 per contract fee applicable to ''all other options exchanges.''

[12] The Exchange will assess the actual transaction fees that are in place at the various away markets and will no longer limit those transaction fees as it does today in certain circumstances.

[13] *See* Chapter VI, Section 11 of the BX Options and NOM Rules.

[14] An Option Exchange Official is an Exchange staff member or contract employee designated as such by the Chief Regulatory Officer.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(4).

believes that it is reasonable for it to recoup its actual costs associated with routing orders to away markets. Also, market participants whose orders routed to away markets would be entitled to receive rebates offered by away markets, which rebates would net against fees assessed by the Exchange for routing orders. The Exchange believes that the opportunity to collect a rebate, which is not the case today, will reduce Routing Fees.

In addition, the Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.10 per contract, which is mostly comprised of technology, infrastructure and away market non-transaction fee costs, to route orders to non-NASDAQ OMX away markets because the Exchange would be assessing an overall lower fixed fee. While today, the $0.11 per contract fee is mostly comprised of clearing costs, the proposed $0.10 per contract fixed fee is based on costs attributable to routing to non-NASDAQ OMX away markets, which costs are not assessed today. The proposed $0.10 per contract fixed fee would be assessed uniformly on all orders routed to non-NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market.

The Exchange believes that it is equitable and not unfairly discriminatory to assess a fixed cost of $0.04 per contract to route orders to NASDAQ OMX away markets (BX Options and NOM) because the cost, in terms of actual cash outlays, to the Exchange to route to those markets is lower. For example, costs related to routing to BX Options and NOM are lower as compared to other away markets because NOS is utilized by all three exchanges to route orders.[17] NOS and the three NASDAQ OMX options markets have a common data center and staff that are responsible for the day-to-day operations of NOS. Because the three exchanges are in a common data center, Routing Fees are reduced because costly expenses related to, for example, telecommunication lines to obtain connectivity are avoided when routing orders in this instance. The costs related to connectivity to route orders to other NASDAQ OMX exchanges are de minimis. When routing orders to non-NASDAQ OMX exchanges, the Exchange incurs costly connectivity charges related to telecommunication lines and other related costs when routing orders. The proposed fixed fee for routing orders to non-NASDAQ OMX exchanges is therefore increased as compared to the fees for routing orders to NASDAQ OMX exchanges (BX Options and NOM), $0.10 per contract versus $0.04 per contract, respectively. The proposed $0.04 per contract fixed fee would be assessed uniformly on all orders routed to NASDAQ OMX markets in addition to the actual away market transaction fee assessed by the destination market. The Exchange also believes that it is equitable and not unfairly discriminatory for market participants to receive rebates on orders routed to away markets that pay rebates. Today, the Exchange does not pay such rebates when routing orders. The Exchange would pay rebates offered by away markets uniformly to market participants when their orders are routed to a destination market that offers a rebate.

The Exchange believes it is reasonable, equitable and not unfairly discriminatory to pass along savings realized by leveraging NASDAQ OMX's infrastructure and scale to market participants when those orders are routed to BX Options and NOM.[18] It is important to note with respect to routing to an away market that orders are routed to away markets based on price first. PHLX XL will route orders to away markets where the Exchange's disseminated bid or offer is inferior to the national best bid (best offer) (''NBBO'') price.[19] Market participants may submit orders to the Exchange as ineligible for routing or ''DNR'' to avoid incurring the Routing Fees proposed herein.[20]

The Exchange also believes its proposal to add the Catastrophic Error Fee to the Pricing Schedule is reasonable, equitable and not unfairly discriminatory because the Exchange has listed all fees it assesses and rebates paid to its members and member organizations within the Pricing Schedule. The Exchange believes that memorializing all fees and rebates within the Pricing Schedule provides an easy reference for members and member organizations. The Exchange is not establishing a new fee, but rather simply codifying the Catastrophic Error Fee, which is noted in Rule 1092, within the Pricing Schedule.

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. To the contrary, Phlx Routing Fees seek to recoup costs for Routing Orders to other exchanges on behalf of its members. Options Participants may choose to mark the order as ineligible for routing to avoid incurring these fees.[21]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[22] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File

[17] *See* Chapter VI, Section 11 of the BX Options and NOM Rules.

[18] Today, the Exchange assesses a $0.11 per contract fixed fee for routing orders to BX Options and NOM. That fee is proposed to be reduced to a $0.04 per contract fixed fee, which would be in addition to the actual transaction fee assessed by the away market.

[19] *See* Rule 1080(m). The Phlx XL II system will contemporaneously route an order marked as an Intermarket Sweep Order (''ISO'') to each away market disseminating prices better than the Exchange's price, for the lesser of: (a) The disseminated size of such away markets, or (b) the order size and, if order size remains after such routing, trade at the Exchange's disseminated bid or offer up to its disseminated size. If contracts still remain unexecuted after routing, they are posted on the book. Once on the book, should the order subsequently be locked or crossed by another market center, the Phlx XL II system will not route the order to the locking or crossing market center, with some exceptions noted in Rule 1080(m).

[20] *See* Rule 1066(h) (Certain Types of Orders Defined) and 1080(b)(i)(A) (PHLX XL and PHLX XL II).

[21] *Id.*

[22] 15 U.S.C. 78s(b)(3)(A)(ii).

Number SR–Phlx–2012–129 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–129. 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–Phlx–2012–129 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28003 Filed 11–16–12; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68211; File No. SR–NYSE–2012–64]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20 and 36.21 That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor Following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, November 16, 2012

November 9, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 9, 2012, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored on Friday, November 16, 2012. The proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor [4] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[5] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36 requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20, 36.21, and 36.30 that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[6] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[7]

Since filing the extension, the Exchange has been advised by its third-party carrier that the damage to the telephone connections is more extensive

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[5] *See* Securities Exchange Act Release No. 68137 (Nov. 1, 2012) (SR–NYSE–2012–58).

[6] *See* Securities Exchange Act Release No. 68161 (Nov. 5, 2012) (SR–NYSE–2012–61).

[7] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

than previously anticipated. As a result, the telephone line connections for Floor brokers still are not fully operational. The Exchange notes, however, that the telephone lines available for DMMs are now operational, so that the DMMs no longer need relief.

Because of the ongoing intermittent 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 addition, the land lines for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone 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 or wired phone lines.

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20 and 36.21 that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, November 16, 2012. Because phone service to DMMs has been restored, the Exchange is not proposing to extend further the temporary suspension of Rule 36.30, which prohibits DMMs from using personal portable phones on the Trading Floor.[8] The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20 and 36.21 to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[9]

In particular, as set forth in the prior filing, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

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 of Rules 36.20 and 36.21 will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored until late in the week of November 12, 2012, and because of the extensive damage, may be later than that date. Accordingly, the Exchange proposes that the extension of the temporary suspensions of those aspects of Rule 36 that do not permit Floor brokers to use personal portable phones on the Trading Floor continue until the earlier of when phone service is fully restored or Friday, November 16, 2012.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36 that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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)

[8] Similarly, because the off-Floor locations for DMMs have been restored, the Exchange does not need to extend further the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. *See supra* notes 5 and 6 (notices describing the relief requested for DMMs).

[9] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[10] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to November 16, 2012, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36 that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [16] 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, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, until the earlier of when phone service for Floor brokers is fully restored or Friday, November 16, 2012. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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–2012–64 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–2012–64. 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–NYSE–2012–64 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28001 Filed 11–16–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68212; File No. SR–NYSEMKT–2012–66]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Temporary Suspension of Those Aspects of Rules 36.20—Equities and 36.21—Equities That Would Not Permit Floor Brokers To Use Personal Portable Phone Devices on the Trading Floor following the Aftermath of Hurricane Sandy Until the Earlier of When Phone Service Is Fully Restored or Friday, November 16, 2012

November 9, 2012.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on November 9, 2012, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, 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 extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor following the aftermath of Hurricane Sandy until the earlier of when phone service is fully restored or Friday, November 16, 2012. 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On Thursday, November 1, 2012, the Exchange filed a rule proposal to temporarily suspend those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and Designated Market Makers (''DMMs'') to use personal portable phone devices on the Trading Floor[4] following the aftermath of Hurricane Sandy and during the period that phone service was not fully functional.[5] Pursuant to that filing, all other aspects of those rules remained applicable and the temporary suspensions of Rule 36—Equities requirements were in effect beginning the first day trading resumed following Hurricane Sandy until Friday, November 2, 2012.

On November 5, 2012, although power had been restored to the downtown Manhattan vicinity, other services were not yet fully operational. Among other things, the telephone services provided by third-party carriers to the Exchange were still not fully operational on the Trading Floor, which continued to impact the ability of Floor members to communicate from the Trading Floor as permitted by Rule 36—Equities. Accordingly, the Exchange filed to extend the temporary suspension of those aspects of Rules 36.20—Equities, 36.21—Equities, and 36.30—Equities that would not permit Floor brokers and DMMs to use personal portable phone devices on the Trading Floor to the earlier of phone service being restored or November 9, 2012,[6] which was subject to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[7]

Since filing the extension, the Exchange has been advised by its third-party carrier that the damage to the telephone connections is more extensive than previously anticipated. As a result, the telephone line connections for Floor brokers still are not fully operational. The Exchange notes, however, that the telephone lines available for DMMs are now operational, so that the DMMs no longer need relief.

Because of the ongoing intermittent 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 addition, the land lines for Floor brokers continue to not be functional. In certain instances, however, the personal cell phones of Floor brokers are operational on the Trading Floor. The Exchange believes that because communications with customers is a vital part of a Floor broker's role as agent and therefore contributes to maintaining a fair and orderly market, during the period when phone 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 or wired phone lines.

Accordingly, the Exchange proposes to extend the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities that would not permit Floor brokers to use personal portable phone devices on the Trading Floor to the earlier of when phone service is fully restored or Friday, November 16, 2012. Because phone service to DMMs has been restored, the Exchange is not proposing to extend further the temporary suspension of Rule 36.30—Equities, which prohibits DMMs from using personal portable phones on the Trading Floor.[8] The Exchange proposes that the extension of the temporary suspension of those aspects of Rules 36.20—Equities and 36.21—Equities to permit use of the personal portable phones by Floor brokers on the Trading Floor be pursuant to the same terms and conditions of the temporary suspension filed for October 31, 2012 through November 2, 2012, including the record retention requirements related to any use of personal portable phones.[9]

In particular, as set forth in the prior filing, Floor brokers that use a portable personal phone must provide the Exchange with the names of all Floor-based personnel who used personal portable phones during this temporary suspension period, together with the phone number and applicable carrier for each number. Floor broker member organizations must maintain in their books and records all cell phone records that show both incoming and outgoing calls that were made during the period that a personal portable phone was used on the Trading Floor. To the extent the records are unavailable from the third-party carrier, the Floor broker member organizations must maintain contemporaneous records of all calls made or received on a personal portable phone while on the Trading Floor. As with all member organization records, such cell phone records must be provided to Exchange regulatory staff, including without limitation staff of the Financial Industry Regulatory Authority (''FINRA''), on request.

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 of Rules 36.20—Equities and 36.21—Equities will be required. However, based on current estimates, the Exchange understands that phone service may not be fully restored until late in the week of November 12, 2012, and because of the extensive damage, may be 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 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 16, 2012.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[11] in general, and furthers the objectives of Section 6(b)(5)

[4] Pursuant to Rule 6A, the Trading Floor is defined as the restricted-access physical areas designated by the Exchange for the trading of securities, but does not include the physical locations where NYSE Amex Options are traded.

[5] *See* Securities Exchange Act Release No. 68138 (Nov. 1, 2012) (SR–NYSEMKT–2012–59).

[6] *See* Securities Exchange Act Release No. 68162 (Nov. 5, 2012) (SR–NYSEMKT–2012–62).

[7] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[8] Similarly, because the off-Floor locations for DMMs have been restored, the Exchange does not need to extend further the temporary suspension for DMMs to be permitted to communicate with off-Floor personnel who may not be located at their regular physical location. *See supra* notes 5 and 6 (notices describing the relief requested for DMMs).

[9] *See supra* note 5 (notice that describes the terms and conditions of the temporary suspension).

[10] The Exchange will provide notice of this rule filing to Floor brokers, including the applicable recordkeeping and other requirements. If telephone service is fully restored prior to November 16, 2012, the Exchange will notify Floor brokers that the temporary suspension of those aspects of Rule 36—Equities that do not permit the use of personal portable phones on the Trading Floor has expired as of the time that phone service is fully restored.

[11] 15 U.S.C. 78f(b).

of the Act,[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

In particular, in the aftermath of Hurricane Sandy, while the Exchange was able to open for trading, many of the services that the Exchange depends on from third-party carriers, such as wired and wireless telephone connections, are not fully restored. The Exchange believes that the proposed extension of the temporary suspensions from those aspects of Rule 36—Equities that restrict Floor broker's use of personal portable phones on the Trading Floor removes impediments to and perfects the mechanism of a free and open market and national market system because the proposed relief will enable Floor brokers to conduct their regular business, notwithstanding the ongoing issues with telephone service. The Exchange further believes that without the requested relief, Floor brokers would be compromised in their ability to conduct their regular course of business on the Trading Floor, which could adversely impact the market generally and investor confidence during this time of unprecedented weather disruptions. In particular, for Floor brokers, because they operate as agents for customers, their inability to communicate with customers could compromise their ability to represent public orders on the Trading Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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 [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [15] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [16] 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, for Floor brokers, the emergency temporary relief necessitated by Hurricane Sandy's disruption of telephone service, as described herein and in the Exchange's prior filings seeking such relief, until the earlier of when phone service is fully restored for Floor brokers, or Friday, November 16, 2012. Therefore, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[17]

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–2012–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2012–66. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the 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–2012–66 and should be submitted on or before December 10, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28002 Filed 11–16–12; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 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.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6).

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; In The Matter of American Realty Funds Corporation

November 15, 2012.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of American Realty Funds Corporation (''American Realty'') because of questions concerning the accuracy of publicly disseminated information in the company's public filings and financial statements. American Realty is a Tennessee corporation based in Bay City, Michigan. Its stock is quoted on the OTCBB under the symbol ANFDE.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed company is suspended for the period from 9:30 a.m. EST, on November 15, 2012 through 11:59 p.m. EST, on November 29, 2012.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–28147 Filed 11–15–12; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8089]

30-Day Notice of Proposed Information Collection: Humphrey Evaluation Survey

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to December 19, 2012.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to Michelle Hale who may be reached on 202–632–6312 or at *halemj2@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Humphrey Evaluation Survey.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Policy and Evaluation, Evaluation Division (ECA/P/V).
- *Form Number:* SV2012–0003.
- *Respondents:* Foreign Humphrey participants between 1979 and 2009.
- *Estimated Number of Respondents:* 1,200.
- *Estimated Number of Responses:* 648.
- *Average Time per Response:* 30 minutes per response.
- *Total Estimated Burden Time:* 324 hours.
- *Frequency:* One time.
- *Obligation to Respond:* Voluntary.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection: This request for a new information collection will allow ECA/P/V to conduct a descriptive survey of the exchange participants in the Hubert H. Humphrey Fellowship Program between 1979 and 2009. This study is authorized by the Mutual Educational and Cultural Exchange Act of 1961, as amended (also known as the Fulbright-Hays Act) (22 U.S.C. 2451 *et seq.*). Collecting this data will help ECA/P/V examine what Fellows have been doing post-program, their roles in critical areas of change at work, and in their fields of study, and how the Program affected their work. Data collections efforts will be conducted via electronic survey.

Methodology: All data will be collected electronically via SurveyGizmo, an on-line surveying tool.

Dated: November 9, 2012.

Matt Lussenhop,

Director of the Office of Policy and Evaluation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2012–28059 Filed 11–16–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0151, Notice 1]

Notice of Receipt of Petition for Decision That Nonconforming 2007 Chevrolet Corvette Passenger Cars 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 2007 Chevrolet Corvette passenger cars 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 2007 Chevrolet Corvette passenger cars) and they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 19, 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 2007 Chevrolet Corvette passenger cars are eligible for importation into the United States. The vehicles which G&K believes are substantially similar are 2007 Chevrolet Corvette passenger cars 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 2007 Chevrolet Corvette passenger cars 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 2007 Chevrolet Corvette passenger cars, 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 2007 Chevrolet Corvette passenger cars 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,* 108 *Lamps, Reflective Devices and Associated Equipment,* 109 *New Pneumatic Tires,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 138 *Tire Pressure Monitoring 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.*

With regard to Standard No. 108 Lamps, Reflective Devices and Associated Equipment, the petition asserts: ''All lamps, reflective devices and associated equipment are identical to those found in the U.S. Companion Model and therefore comply with the requirements of FMVSS 108.'' Because the headlamp requirements in European and other foreign markets differ from those in the U.S., NHTSA is concerned that the headlamps on the vehicles that are the subject of the petition may not, in fact, have been originally manufactured to comply with all requirements of Standard No. 108. As a consequence, the agency is soliciting specific comments with respect to this issue.

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. 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:* Installation of a U.S.-model passenger side rearview mirror, or inscription of

the required warning statement on the face of the existing mirror.

Standard No. 208—*Occupant Crash Protection:* Petitioner claims that the passive restraint system hardware in the nonconforming 2007 Chevrolet Corvette is identical to that found on the U.S.-certified 2007 Chevrolet Corvette, 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 8, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–28069 Filed 11–16–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0167]

Technical Report Evaluating the Effectiveness of Tire Pressure Monitoring Systems (TPMS) in Proper Tire Pressure Maintenance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for comments on technical report.

SUMMARY: This notice announces NHTSA's publication of a Technical Report reviewing and evaluating its existing Safety Standard 138, *Tire Pressure Monitoring Systems.* The report's title is: *Evaluation of the Effectiveness of TPMS in Proper Tire Pressure Maintenance.*

DATES: Comments must be received no later than March 19, 2013.

ADDRESSES: *Report:* The technical report is available on the Internet for viewing in PDF format at *http://www-nrd.nhtsa.dot.gov/Pubs/811681.pdf.* You may obtain a copy of the report free of charge by sending a self-addressed mailing label to Charles J. Kahane (NVS–431), National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590.

Comments: You may submit comments [identified by Docket Number NHTSA–2012–0167] by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, M–30, U.S. Department of Transportation, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

You may call Docket Management at 202–366–9826.

Instructions: For detailed instructions on submitting comments, see the Procedural Matters section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Bob Sivinski, Mathematical Statistician, Mathematical Analysis Division, NVS–421, National Center for Statistics and Analysis, National Highway Traffic Safety Administration, Room W55–212, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2740. Email: robert.sivinski@dot.gov.

For information about NHTSA's evaluations of the effectiveness of existing regulations and programs: You may see a list of published evaluation reports at *http://www-nrd.nhtsa.dot.gov/cats/listpublications.aspx?Id=226&ShowBy=Category* and if you click on any report you will be able to view it in PDF format.

SUPPLEMENTARY INFORMATION: This report is an analysis of the data collected through the Tire Pressure Monitoring System-Special Study as it pertains to the effectiveness of TPMS in promoting proper tire inflation. The study was conducted in 2011, using a nationally representative sampling structure, based on the primary sampling units (PSUs) of the National Automotive Sampling System. NASS personnel collected 6,103 complete vehicle observations including tire pressure of all four tires. This survey found that 23.1 percent of the MY 2004–2007 vehicles without TPMS had at least one severely underinflated tire as defined by FMVSS No. 138 (25% or more below the vehicle manufacturer's recommended cold tire pressure), but only 11.8 percent of the MY 2004–2007 vehicles equipped with TPMS had a severely underinflated tire. Based on these results, the presence of TPMS on a vehicle of model years 2004 to 2007 is estimated to result in a 55.6-percent reduction in the likelihood that the vehicle will have one or more severely underinflated tires as defined by FMVSS No. 138. It is also estimated to result in a 30.7-percent reduction in the likelihood that the vehicle will have one or more tires that are overinflated by 25 percent or more above the manufacturer's recommended cold tire pressure. During the first eight years of operation TPMS is estimated to save a typical passenger car 9.32 gallons of fuel and a typical LTV 27.89 gallons of fuel. During 2011 TPMS is estimated to have saved $511 million across the vehicle fleet through reduced fuel consumption. NHTSA plans to conduct further research to determine the effect of TPMS on the incidence of tire-related crashes and injuries.

Procedural Matters

How can I influence NHTSA's thinking on this subject?

NHTSA welcomes public review of the technical report. NHTSA will submit to the Docket a response to the comments and, if appropriate, will supplement or revise the report.

How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2012–0167) in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

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) or you may visit *http://www.regulations.gov.*

Please send two paper copies of your comments to Docket Management, fax them, or use the Federal eRulemaking Portal. The mailing address is U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The fax number is 1–202–493–2251. To use the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

We also request, but do not require you to send a copy to Charles J. Kahane, Chief, Evaluation Division, NVS–431, National Highway Traffic Safety Administration, Room W53–312, 1200 New Jersey Avenue SE., Washington, DC 20590 (or email them to chuck.kahane@dot.gov). He can check if your comments have been received at the Docket and he can expedite their review by NHTSA.

How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to U.S. Department of Transportation, Docket Management Facility, M–30, West Building, Ground Floor, Rm. W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or submit them via the Federal eRulemaking Portal.

Will the agency consider late comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

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 check the Docket for new material.

How can I read the comments submitted by other people?

You may read the materials placed in the docket for this document (e.g., the comments submitted in response to this document by other interested persons) at any time by going to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. You may also read the materials at the Docket Management Facility by going to the street address given above under **ADDRESSES**. The Docket Management Facility is open between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Authority: 49 U.S.C. 30111, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

James F. Simons,

Director, Office of Regulatory Analysis and Evaluation.

[FR Doc. 2012–27994 Filed 11–16–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35664]

V and S Railway, LLC—Acquisition and Operation Exemption—Colorado Department of Transportation

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 and 49 CFR 1150.1 *et seq.,* for V and S Railway, LLC (V&S), a Class III rail carrier, to acquire approximately 121.9 miles of rail line between milepost 747.5, near Towner, and milepost 869.4, near NA Junction in Pueblo, Crowley, and Kiowa Counties, Colo. (the Towner Line). V&S filed its petition for exemption because, in an earlier Board proceeding, it received Board authority only to operate over the Towner Line by assignment of the lease of the previous operator.[1] However, V&S had actually purchased the Towner Line from the owner, the Colorado Department of Transportation (CDOT), which V&S has operated since December 29, 2005.

V&S also requests that the Board grant retroactive approval of its acquisition. V&S states that in the near future it expects to file a verified notice of exemption to abandon the western segment of the Towner Line, on which there has been no traffic for more than two years' time and asks that December 29, 2005, be the effective date of its acquisition. The Board denies the request of V&S for retroactive approval of its acquisition, but will allow V&S to file a notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon the western segment of the Towner Line by waiving the requirement that it have had ownership of that portion of the line for at least two years before making the certification required at 49 CFR 1152.50(b).

DATES: This exemption will be effective December 13, 2012. Petitions to stay must be filed by November 28, 2012. Petitions to reopen must be filed by December 10, 2012.

ADDRESSES: Send an original and 10 copies of all pleadings referring to Docket No. FD 35664, to: Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Fritz Kahn, Fritz Kahn, P.C., 1919 M Street NW., 7th Floor, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Jonathon Binet, (202) 245–0368. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in

[1] *V & S Ry.—Acquis. and Operation Exemption—Colo., Kan. & Pac. Ry.,* FD 34779 (STB served Dec. 30, 2005).

the Board's decision served November 13, 2012, which is available on our Web site at *www.stb.dot.gov.*

Decided: November 13, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Derrick A. Gardner,

Clearance Clerk.

[FR Doc. 2012–28047 Filed 11–16–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 13, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 19, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–1438.

Type of Review: Extension without change.

Title: CO–8–91 (Final) Distributions of Stock and Stock Rights.

Abstract: The requested information is required to notify the Service that a holder of preferred stock callable at a premium by the issuer has made a determination regarding the likelihood of exercise of the right to call that is different from the issuer's determination.

Affected Public: Private Sector: Businesses or other For-Profit Institutions.

Estimated Total Burden Hours: 333.

OMB Number: 1545–0217.

Type of Review: Extension without change of a currently approved collection.

Title: Form 5735, American Samoa Economic Development Credit.

Abstract: Form 5735 is used to figure the American Samoa economic development credit under section 30A. The credit is generally allowed against income tax imposed by Chapter 1.

A domestic corporation (other than an S corporation) that is an existing credit claimant with respect to American Samoa must complete Form 5735 for each year the American Samoa economic development credit election is in effect.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 127.

OMB Number: 1545–0495.

Type of Review: Extension without change of a currently approved collection.

Title: Request for Public Inspection or Copy of Exempt or Political Organization IRS Form.

Form: 4506–A.

Abstract: Internal Revenue Code section 6104 states that if an organization described in section 501(c) or (d) is exempt from taxation under section 50(a) for any taxable year, the application for exemption is open for public inspection. This includes all supporting documents, any letter or other documents issued by the IRS concerning the application, and certain annual returns of the organization. Form 4506–A is used to request public inspection or a copy of these documents.

Affected Public: Individuals or households.

Estimated Total Burden Hours: 19,400.

OMB Number: 1545–0887.

Type of Review: Extension without change of a currently approved collection.

Title: Information Return for Publicity Offered Original Issue Discount Instruments.

Form: 8121.

Abstract: Form 8281 is filed by the issuer of a publicly offered debt instrument having OID. The information is used to update Pub. 1212, List of Original Issue Discount Instruments.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 3,060.

OMB Number: 1545–1260.

Type of Review: Extension without change of a currently approved collection.

Title: CO–62–89 (Final) Final Regulations under Section 382 of the Internal Revenue Code of 1986; Limitations on Corporate Net Operating Loss Carryfowards.

Abstract: The reporting requirement concerns the election a taxpayer may make to treat as the change data the effective data of a plan of reorganization in a title II or similar case rather than the confirmation date of a plan.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 1.

OMB Number: 1545–1537.

Type of Review: Extension without change.

Title: REG–253578–96 Final Regulations for Health Coverage Portability for Group Health Plans and Group Health insurance Issuers under HIPPA Titles I & IV.

Abstract: The regulations provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 262,289.

OMB Number: 1545–1543.

Type of Review: Extension without change.

Title: Revenue Procedure 97–29 Model Amendments and Prototype Program for SIMPLE IRAs.

Abstract: The revenue procedure provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters and provides permissive amendments to sponsors of non-SIMPLE IRAs.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 25,870.

OMB Number: 1545–2110.

Type of Review: Extension without change.

Title: REG–127770–07 (Final), Modifications of Commercial Mortgage Loans Held by a Real Estate Mortgage Investment Conduit.

Abstract: This final regulation expands the list of permitted loan modifications to include certain modifications of commercial mortgages. The regulations are necessary to better accommodate evolving commercial mortgage industry packages.

Affected Public: Private Sector: Business or other for-profits.

Estimated Total Burden Hours: 3,000.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–27971 Filed 11–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 14, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 19, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request maybe found at *www.reginfo.gov*.

Internal Revenue Service (IRS)

OMB Number: 1545–1983.

Type of Review: Extension without change.

Title: Qualified Railroad Track Maintenance Credit.

Form: 8900.

Abstract: Form 8900, Qualified Railroad Track Maintenance Credit, was developed to carry out the provisions of new Code section 45G. This new section was added by section 245 of the American Jobs Creation Act of 2004 (Pub. L. 108–357). The new form provides a means for the eligible taxpayers to compute the amount of credit.

Affected Public: Private sector: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1,985.

OMB Number: 1545–1989.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2009–53—Credit for Nonbusiness Energy Property.

Abstract: This notice updates interim guidance, pending the issuance of regulations, relating to the credit for nonbusiness energy property under § 25C of the Internal Revenue Code. Specifically, this notice provides procedures that manufacturers may follow to certify property as either eligible building envelope components or qualified energy property, as well as guidance regarding the conditions under which taxpayers seeking to claim the § 25C credit may rely on a manufacturer's certification.

Affected Public: Individuals or households.

Estimated Total Burden Hours: 350.

OMB Number: 1545–1993.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2006–54, Alternative Fuel Motor Vehicle Credit.

Abstract: This notice sets forth a process that allows taxpayers who purchase alternative fuel motor vehicles to rely on the domestic manufacturer's (or, in the case of a foreign manufacturer, its domestic distributor's) certification that both a particular make, model, and year of vehicle qualifies as an alternative fuel motor vehicle under Sec. 30B(a)(4) and (e) of the Internal Revenue Code and the amount of the credit allowable with respect to the vehicle.

Affected Public: Individuals or households.

Estimated Total Burden Hours: 600.

OMB Number: 1545–2002.

Type of Review: Extension without change of a currently approved collection.

Title: Notice 2006–25, Qualifying Gasification Project Program.

Abstract: This notice establishes the qualifying gasification project under Section 48B of the Internal Revenue Code. This notice provides the time and manner for a taxpayer to apply for an allocation of qualifying gasification project credits.

Affected Public: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 1,700.

OMB Number: 1545–2005.

Type of Review: Extension without change of a currently approved collection.

Title: Restaurant Tips —Attributed Tip Income Program (ATIP).

Abstract: This revenue procedure sets forth the requirements for participating in the Attributed Tip Income Program (ATIP). ATIP provides benefits to employers and employees similar to those offered under previous tip reporting agreements without requiring one-on-one meetings with the Service to determine tip rates or eligibility.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 6,100.

OMB Number: 1545–2009.

Type of Review: Extension without change.

Title: Form 13285–A—Reducing Tax Burden on America's Taxpayers.

Form: 13285–A.

Abstract: Form 13285–A is used by taxpayers and external partners and stakeholders to identify meaningful taxpayer burden reduction opportunities. Employees will make the forms available at education and outreach events.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 62.

OMB Number: 1545–2142.

Type of Review: Revision of a currently approved collection.

Title: Form 8038–CP—Return for Credit Payments to Issuers of Qualified Bonds.

Form: 8038–CP.

Abstract: Form 8038–CP, Return for Credit Payments to Issuers of Qualified Bonds, will be used to make direct payments to State and local governments. The American Recovery and Reinvestment Act of 2009, Public Law 111–5, provides State and local governments with the option of issuing a tax credit bond instead of a tax-exempt governmental obligation bond. The bill gives State and local governments the option to receive a direct payment from the Federal government equal to a subsidy that would have been received through the Federal tax credit for bonds.

Affected Public: State, local, or tribal governments.

Estimated Total Burden Hours: 246,000.

OMB Number: 1545–2143.

Type of Review: Revision of a currently approved collection.

Title: Notice 2009–26, Build America Bonds and Direct Payment Subsidy Implementation.

Abstract: This Notice provides guidance on the new tax incentives for Build America Bonds under § 54AA of the Internal Revenue Code (''Code'') and the implementation plans for the refundable credit payment procedures for these bonds. This Notice includes guidance on the modified Build America Bond program for Recovery Zone Economic Development Bonds

under § 1400U–2 of the Code. This Notice provides guidance on the initial refundable credit payment procedures, required elections, and information reporting. This Notice solicits public comments on the refundable credit payment procedures for these bonds. This Notice is intended to facilitate prompt implementation of the Build America Bond program and to enable state and local governments to begin issuing these bonds for authorized purposes to promote economic recovery and job creation.

Affected Public: State, local, or tribal governments.

Estimated Total Burden Hours: 15,000.

OMB Number: 1545–2231.

Type of Review: Extension without change.

Title: Form 13768—Electronic Tax Administration Advisory Committee Membership Application.

Abstract: The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA 98) authorized the creation of the Electronic Tax Administration Advisory Committee (ETAAC). ETAAC has a primary duty of providing input to the Internal Revenue Service (IRS) on its strategic plan for electronic tax administration. Accordingly, ETAAC's responsibilities involve researching, analyzing and making recommendations on a wide range of electronic tax administration issues.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 500.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–28098 Filed 11–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 14, 2012.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 19, 2012 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov.*

Internal Revenue Service (IRS)

OMB Number: 1545–0046.

Type of Review: Extension without change.

Title: Form 982—Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

Form: 982.

Abstract: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Affected Public: Private sector: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 7,491.

OMB Number: 1545–0144.

Type of Review: Extension without change of a currently approved collection.

Title: Undistributed Capital Gains Tax Return.

Form: 2438.

Abstract: Form 2438 is used by regulated investment companies to figure capital gains tax on undistributed capital gains designated under IRC section 852(b)3(D). IRS uses this information to determine the correct tax.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 976.

OMB Number: 1545–0195.

Type of Review: Extension without change of a currently approved collection.

Title: Election to Postpone Determination as to whether the Presumption Applies that an activity is engaged in for profit.

Form: 5213.

Abstract: This form is used by individuals, partnerships, estates, trusts, and S corporations to make an election to postpone an IRS determination as to whether an activity is engaged in for profit for 5 years (7 years for breeding, training, showing, or racing horses). The data is used to verify eligibility to make the election.

Affected Public: Businesses or other for-profit institutions.

Estimated Total Burden Hours: 2,762.

OMB Number: 1545–0260.

Type of Review: Extension without change of a currently approved collection.

Title: Form 706–CE—Certificate of Payment of Foreign Death Tax.

Form: 706–CE.

Abstract: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit allowed by IRS section 2014. The information is used by IRS to verify that the proper tax credit has been claimed.

Affected Public: Individuals or households.

Estimated Total Burden Hours: 3,870.

OMB Number: 1545–1035.

Type of Review: Extension without change of a currently approved collection.

Title: Recapture of Low-Income Housing Credit.

Form: 8611.

Abstract: IRC section 42 permits owners of residential rental projects providing low-income housing to claim a credit against their income tax. If the property is disposed of or it falls to meet certain requirements over a 15-year compliance period and a bond is not posted, the owner must recapture on Form 8611 part of the credit(s) taken in prior years.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 7,842.

OMB Number: 1545–1522.

Type of Review: Extension without change.

Title: Revenue Procedure 2010—1(Letter rulings, information letters, and determination letters)—26 CFR 601–.201.

Abstract: This revenue procedure explains how the Service provides advice to taxpayers on issues under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions and Products), the Associate Chief Counsel (Income Tax and Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs and Special Industries), the Associate Chief Counsel (Procedure and Administration), and the Division

Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). It explains the forms of advice and the manner in which advice is requested by taxpayers and provided by the Service.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 305,540.

OMB Number: 1545–1539.

Type of Review: Extension without change.

Title: REG–208172–91 (TD 8787—final) Basis Reduction Due to Discharge of Indebtedness.

Abstract: The IRS will use the information provided by taxpayers owning interests in partnerships and owning section 1221(i) real property to verify compliance with sections 1017(b)(3)(C), 1017(b)(3)(E), 1017(b)(3)(F), and 1017(b)(4)(X).

Affected Public: Individuals or households.

Estimated Total Burden Hours: 10,000.

OMB Number: 1545–1673.

Type of Review: Revision of a currently approved collection.

Title: Rev Proc 2008–50—Employee Plans Compliance Resolution System (RP 2006–27); Form 8950—App For Voluntary Correction Program; Form 8951—Compliance Fee for Emp Plans Voluntary Correction Program.

Abstract: The information requested in Revenue Procedure 2008–50 is required to enable the Internal Revenue Service to make determinations on the issuance of various types of closing agreements and compliance statements. The issuance of the agreements and statements allow individual plans to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 99,170.

OMB Number: 1545–1683.

Type of Review: Extension without change.

Title: Notice Concerning Fiduciary Relationship-Illinois Type Land Trust.

Abstract: The data collected on the forms provides trustees of Illinois Land Trusts a convenient method of reporting information related to creating, changing, and closing such trusts.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 22,000.

OMB Number: 1545–1832.

Type of Review: Extension without change.

Title: Systemic Advocacy Issue Submission Form.

Form: 14411.

Abstract: Form 14411 is to be used by individuals, businesses, practitioners and other public groups to identify systemic problems that taxpayers are encountering with IRS. This form will be submitted electronically via the IRS.gov Web site. Mailed or faxed forms will be accepted and are necessary.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 336.

OMB Number: 1545–1971.

Type of Review: Revision of a currently approved collection.

Title: Household Employment Taxes.

Form: 1040 H.

Abstract: Schedule H (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 655,209.

OMB Number: 1545–1973.

Type of Review: Extension without change.

Title: Net Profit from Business.

Abstract: Schedule C–EZ (Form 1040) is used by individuals to report their employment taxes. The data is used to verify that the items reported on the form is correct and also for general statistical use.

Affected Public: Private sector: Business or other for-profits.

Estimated Total Burden Hours: 1,027,515.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. 2012–28021 Filed 11–16–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Renewal; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is extending, without revision, the ''Risk-Based Capital Standards: Advanced Capital Adequacy Framework'' information collection, pending OMB review and action on proposed changes to the collection arising from proposed rules published in the **Federal Register** on August 30, 2012, entitled ''Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action;'' ''Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements;'' and ''Regulatory Capital Rules: Advanced Approaches Risk-Based Capital Rule; Market Risk Capital Rule.''

DATES: Comments must be submitted on or before January 18, 2013.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mail Stop 2–3, Attention: 1557–0234, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, or Mary Gottlieb, OCC Clearance Officers, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to renew the following currently approved collection of information without change:

Title: Risk-Based Capital Standards; Advanced Capital Adequacy Framework.

OMB Control No.: 1557–0234.

Frequency of Response: On occasion.

Affected Public: Insured National banks and Federal branches and agencies of foreign banks, Federal savings associations.

Estimated Number of Respondents: 55.

Estimated Total Annual Burden: 821,640 hours.

General Description of Collection: On December 7, 2007, the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation (Agencies) issued the joint final rule entitled ''Risk-Based Capital Standards: Advanced Capital Adequacy Framework'' (final rule) implementing a new risk-based regulatory capital framework for institutions in the United States. The final rule requires certain large or internationally active banks and bank holding companies to (1) Adopt a written implementation plan, (2) update that plan for any mergers, (3) obtain prior written approvals for the use of certain approaches for determining risk-weighted assets, and (4) make certain public disclosures regarding their capital ratios, their components, and information on implicit support provided to a securitization.

The Agencies, on August 30, 2012, proposed three rules that would amend this collection: Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Minimum Regulatory Capital Ratios, Capital Adequacy, Transition Provisions, and Prompt Corrective Action (77 FR 52792); Regulatory Capital Rules: Standardized Approach for Risk-Weighted Assets; Market Discipline and Disclosure Requirements (77 FR 52888); and Regulatory Capital Rules: Advanced Approaches Risk-based Capital Rules; Market Risk Capital Rule (77 FR 52978). An information collection request to revise and rename the collection on the basis of the three rules has been submitted to OMB for review. However, the OCC is proceeding with the renewal process to ensure continuation of the collection in the event that OMB does not act on the OCC's request to revise the collection prior to its expiration date.

Comments submitted in response to this notice will be summarized, included in the request for OMB approval, and become a matter of public record. Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the OCC's functions, including whether the information has practical utility;

b. The accuracy of the OCC's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 14, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–28043 Filed 11–16–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of an Individual Pursuant to Executive Order 13413

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of one individual whose property and interests in property have been blocked pursuant to Executive Order 13413 of October 27, 2006, ''Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of Congo.''

DATES: The designation by the Director of OFAC of the one individual identified in this notice, pursuant to Executive Order 13413 of October 27, 2006, is effective on November 13, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director for 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

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) and via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 27, 2006, the President signed Executive Order 13413 (the ''Order'' or ''E.O. 13413'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA) and section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA). In the Order, the President found that the situation in or in relation to the Democratic Republic of the Congo constitutes an unusual and extraordinary threat to the foreign policy of the United States and imposed sanctions, and authorized additional sanctions, to address that threat.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in, or thereafter come within, the United States, or within the possession or control of United States persons, of the persons identified by the President in the Annex to the Order, as well as those persons determined by the Secretary of the Treasury, after consultation with the Secretary of State, to meet any of the criteria set forth in subparagraphs (a)(ii)(A)–(a)(ii)(G) of Section 1 of the Order.

On November 13, 2012, the Director of OFAC exercised the Secretary of the Treasury's authority to designate, pursuant to one or more of the criteria set forth in Section 1 of the Order, the one individual listed below, whose property and interests in property therefore are blocked pursuant to E.O. 13413.

The listing of the blocked individual appears as follows:

1. MAKENGA, Sultani (a.k.a. MAKENGA, Emmanuel Sultani); DOB 25 Dec 1973; POB Rutshuru, Democratic Republic of the Congo; Colonel (individual) [DRCONGO].

Dated: November 13, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–28037 Filed 11–16–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning Regulations governing U.S. Treasury Securities—State and Local Government Series.

DATES: Written comments should be received on or before January 18, 2013, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing United States Treasury Certificates Of Indebtedness—State and Local Government Series, Unites States Treasury Notes—State and Local Government Series, and United States Treasury Bonds—State and Local Government Series.

OMB Number: 1535–0091.

Abstract: The information is requested to establish consideration for a waiver of regulations.

Current Actions: None.

Type of Review: Extension.

Affected Public: State or local governments.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 13 minutes.

Estimated Total Annual Burden Hours: 434.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 13, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–27983 Filed 11–16–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills.

DATES: Written comments should be received on or before January 18, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills.

OMB Number: 1535–0068.

Abstract: The regulations govern book-entry Treasury bonds, notes, and bills.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households, businesses or other for-profit, and state and local governments.

Estimated Total Annual Burden Hours: 1.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: November 14, 2012.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2012–28046 Filed 11–16–12; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

United States Mint

Price for the 2012 Limited Edition Silver Proof Set™

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing a price of $149.95 for the 2012 Limited Edition Silver Proof Set™.

FOR FURTHER INFORMATION CONTACT: B.B. Craig, Associate Director for Sales and Marketing, United States Mint, 801 9th Street NW., Washington, DC 20220, or call 202–354–7500.

Authority: 31 U.S.C. 5111, 5112 & 9701.

Dated: November 9, 2012.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2012–28035 Filed 11–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0376]

Proposed Information Collection (Agent Orange Registry Code Sheet); Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) 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 the information needed to maintain an up-to-date Agent Orange Registry.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 18, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov.* Please refer to ''2900–0376'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Agent Orange Registry Code Sheet, VA Form 10–9009.

OMB Control Number: 2900–0376.

Type of Review: Extension of a currently approved collection.

Abstract: VA in an on-going effort to maintain an Agent Orange Registry (AOR) developed a reporting format to facilitate the collection of information obtained from veterans during the Agent Orange registry examination process. VA is required to organize and update the information contained in AOR to be able to notify Vietnam era veterans who served in the Republic of Vietnam of any increased health risks resulting from exposure to dioxin or other toxic agents. VA may also provide, upon request, a health examination, consultation, and counseling veterans who are eligible for listing or inclusion in any health-related registry administrated by VA that is similar to the Persian Gulf War Veterans Health Registry. Registry examination is provided to veterans who served in Korea in 1968 or 1969, and/or any U.S. veteran who may have been exposed to dioxin, or other toxic substance in a herbicide or defoliant, during the conduct of, or as a result of, the testing, transporting, or spraying of herbicides, and who requests an Agent Orange Registry examination. VA will enter the information obtained from the veteran during the interview on VA Form 10–9009, Agent Orange Registry Code Sheet. The registry will provide a mechanism that will catalogue prominent symptoms, reproductive health, and diagnoses and to communicate with Agent Orange veterans. VA will inform the veterans on research findings or new compensation policies through periodic newsletters. The registry is not designed or intended to be a research tool and therefore the results cannot be generalized to represent all Agent Orange veterans.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 6,667 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 20,000.

Dated: November 14, 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. 2012–28026 Filed 11–16–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0774]

Proposed Information Collection (Compensation and Pension Examination Program (CPEP) Veterans Satisfaction Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the Veteran experience in taking the Compensation and Pension examination at individual CPEP sites.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 18, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''2900–0774'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Compensation and Pension Examination Program (CPEP) Veterans Satisfaction Survey, VA Form 10–0480.

OMB Control Number: 2900–0774.

Type of Review: Extension of currently approved collection.

Abstract: The survey will be used to gather feedback from Veterans regarding their experience at individual CPEP examination sites. VA will use the data collected to determine where and to what extent services are satisfactory or where improvement is needed.

Affected Public: Individuals or households.

Estimated Annual Burden: 153.

Estimated Average Burden per Respondent: 5.7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,614.

Dated: November 14, 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. 2012–28027 Filed 11–16–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0775]

Proposed Information Collection (Patient Satisfaction Survey Michael E. DeBakey Home Care Program) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA), 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 patients' satisfaction with services provided by or through the Michael E. DeBakey Home Care Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 18, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''2900–0775'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or FAX (202) 273–9387.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from 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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Patient Satisfaction Survey Michael E. DeBakey Home Care Program, VA Form 10–0476.

OMB Control Number: 2900–0775.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0476 will be used to gather feedback from patients regarding their satisfaction with the quality of services/care provided by home care program staff.

Affected Public: Individuals and households.

Estimated Annual Burden: 17 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 100.

Dated: November 14, 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. 2012–28028 Filed 11–16–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0335]

Proposed Information Collection (Dental Record Authorization and Invoice for Outpatient Services) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) 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 the information needed to determine a veteran's dental treatment needs, and the fees associated for these services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 18, 2013.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (10P7BFP), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''2900–0335'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor (202) 461–5870 or Fax (202) 273–9387.

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, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA'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: Dental Record Authorization and Invoice for Outpatient Services, VA Form 10–2570d.

OMB Control Number: 2900–0335.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–2570d is essential to the proper administration of VA outpatient fee dental program. The associated instructions make it possible to communicate with clarity the required procedures, peculiarities, and precautions associated with VA authorizations for contracting with private dentists for the provision of dental treatment for eligible veteran beneficiaries. Since most of the veterans who are authorized fee dental care are geographically inaccessible to VA dental clinics, it is necessary to request information as to the veteran's oral condition, treatment needs and the usual customary fees for these services from the private fee dentist whom the veteran has selected. The form lists the dental treatment needs of the veteran patient, the cost to VA to provide such services, and serves as an invoice for payment. VA uses the data collected to verify the veteran's eligibility to receive dental benefits.

Affected Public: Business and other for profit.

Estimated Total Annual Burden: 3,666 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 11,000.

Dated: November 14, 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. 2012–28030 Filed 11–16–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the Advisory Committee on Women Veterans will meet on December 4–6, 2012, in room 230 at VA Central Office, 810 Vermont Avenue NW., Washington, DC, from 8:30 until 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women Veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee makes recommendations to the Secretary regarding such programs and activities.

The agenda will include overviews of the Veterans Health Administration, the Veterans Benefits Administration, and the National Cemetery Administration; and briefings on health care for women Veterans, mental health, women Veterans' legislative issues, military sexual trauma, the claims process, and homeless initiatives for women Veterans.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties should provide written comments for review by the Committee to Ms. Shannon L. Middleton, VA, Center for Women Veterans (00W), 810 Vermont Avenue NW., Washington, DC 20420, or email at *00W@mail.va.gov,* or fax to (202) 273–7092. Individuals who wish to attend the meeting or want additional information should contact Ms. Middleton at (202) 461–6193.

Dated: November 14, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–28102 Filed 11–16–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that a meeting of the Veterans' Advisory Committee on Rehabilitation will be held on December 12–13, 2012, in Room 501K at the Department of Veterans Affairs, 1800 G Street NW., Washington, DC. The meeting sessions will begin at 8 a.m. each day and adjourn at 5 p.m. on December 12 and at noon on December 13. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary on the rehabilitation needs of Veterans with disabilities and on the administration of VA's rehabilitation programs.

During the meeting, Committee members will be provided updated briefings on various VA programs designed to enhance the rehabilitative potential of recently-discharged Veterans. Members will also begin consideration of potential recommendations to be included in the Committee's next annual report.

No time will be allocated at this meeting for oral presentations from the public. Interested parties should provide written comments for review by the Committee to Teri Nguyen, Designated Federal Officer, VA, Veterans Benefits Administration (28), 810 Vermont Avenue NW., Washington, DC 20420, or via email at *Teri.Nguyen1@va.gov.* In the communication with the Committee, writers must identify themselves and state the organization, association or person(s) they represent. Individuals who wish to attend the meeting should contact Teri Nguyen at (202) 461–9634.

Dated: November 14, 2012.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2012–28052 Filed 11–16–12; 8:45 am]

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