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WHEN: Tuesday, December 11, 2012
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WHERE: Office of the Federal Register
Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Federal Register

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0520; Directorate Identifier 2002–NE–43–AD; Amendment 39–17273; AD 2012–24–03]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Turbomeca S.A. Arriel 1A, 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E, 1E2, 1K, 1K1, 1S, and 1S1 turboshaft engines. That AD currently requires initial and repetitive visual inspections for erosion caused by dust ingestion and, if necessary, cleaning of the gas generator (module M03). This new AD requires determining the engine history; performing a one-time visual inspection of the axial compressor for erosion; performing initial and repetitive cleaning of the gas generator hollow shaft; and replacing the rear bearing if the amount of dust collected during cleaning exceeds 8 grams. This AD also includes an optional terminating action. This AD was prompted by in-service experience which has shown that dust inside the gas generator hollow shaft may be found when the axial compressor wheel has less erosion than initially assessed. We are issuing this AD to prevent an unbalance of the gas generator rotating assembly, which may lead to gas generator rear bearing failure, and uncommanded engine shutdown.

DATES: This AD is effective January 7, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 7, 2013.

ADDRESSES: For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 05 59 74 40 00; telex: 570 042; fax: 33 05 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003). That AD applies to the specified products. The NPRM published in the **Federal Register** on July 25, 2012 (77 FR 43550). That NPRM proposed to require determining the engine history; performing a one-time visual inspection of the axial compressor for erosion; performing initial and repetitive cleaning of the gas generator hollow shaft; and replacing the rear bearing if the amount of dust collected during cleaning exceeds 8 grams. That NPRM also included an optional terminating action. That NPRM also removed Turbomeca S.A. Arriel 1E and 1K turboshaft engines from the applicability section of the AD. The 1E engine is no longer in service. The 1K engine is not an FAA validated engine.

Comments

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

Request To Ease Requirements When Barrier Filters Used Continuously

Charles E. Greenberg requested that the FAA consider modifying the AD to accommodate operators of helicopters with barrier filter installations for the engine intakes. If operator records can show that specific serial number engines have always operated with filtered air, the requirement for cleaning the gas generator hollow shaft should be superseded by a requirement to maintain records of operation with barrier filter protection. The commenter stated that no dirt can be ingested by an engine downstream of the filter, as long as the barrier filter has never gone into bypass mode.

We disagree. The FAA cannot anticipate all of the available barrier filter designs installed on helicopter models. Each barrier filter design and helicopter combination would require its own assessment of the filter's use and effectiveness. We did not change the AD.

However, the substantiated continuous use of a barrier filter may be proposed as an alternative method of compliance (AMOC) to this AD, using the standard AMOC request procedure.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect about 1,421 engines installed on helicopters of U.S. registry. We also estimate that it will take about 24 work-hours per engine to inspect and clean the gas generator module. The average labor rate is $85 per work-hour. A replacement gas generator rear bearing would cost about $4,128 per engine and take about 8 work-hours to replace. Based on these figures, we estimate the cost of the AD on U.S. operators to be $2,898,840.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003), and adding the following new AD:

2012–24–03 Turbomeca S.A.: Amendment 39–17273; Docket No. FAA–2012–0520; Directorate Identifier 2002–NE–43–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 7, 2013.

(b) Affected ADs

This AD supersedes AD 2003–12–14, Amendment 39–13199 (68 FR 36900, June 20, 2003).

(c) Applicability

This AD applies to all Turbomeca S.A. Arriel 1A, 1A1, 1A2, 1B, 1C, 1C1, 1C2, 1D, 1D1, 1E2, 1K1, 1S, and 1S1 turboshaft engines that have not incorporated Turbomeca S.A. Modification TU360.

(d) Unsafe Condition

This AD was prompted by in-service experience showing that dust inside the gas generator hollow shaft may be found when the axial compressor wheel has less erosion than initially assessed. We are issuing this AD to prevent an unbalance of the gas generator rotating assembly, which may lead to deterioration of the gas generator rear bearing and uncommanded engine shutdown.

(e) Compliance

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

(1) Within 50 engine hours after the effective date of this AD, determine the engine history and perform the maintenance actions at the specified schedules. Use paragraphs 1.A. and 2.A. through 2.C. of Turbomeca S.A. Alert Mandatory Service Bulletin (MSB) No. A292 72 0230, Version C, dated February 29, 2012 to perform the maintenance actions and to establish the cleaning schedule.

(2) If during any of the cleanings, the dust weight collected inside the gas generator hollow shaft is more than 8 grams, replace the gas generator rear bearing before further flight.

(3) After the effective date of this AD, if there are any changes in accordance with paragraph 1.A.(1)(a)1.3 of Turbomeca S.A. Alert MSB No. A292 72 0230, Version C, dated February 29, 2012, within 50 engine hours time-in-service after such a change, accomplish the actions as specified in paragraphs (e)(1) and (e)(2) of this AD.

(4) After the effective date of this AD, do not install any gas generator (module M03) on an engine unless it is in compliance with this AD.

(5) After the effective date of this AD, do not install any gas generator rear bearing that has operated on an engine with a hollow shaft that has been found to have a dust weight more than 8 grams.

(f) Optional Terminating Action

As optional terminating action to the repetitive actions in this AD, modify the engine by incorporating Turbomeca S.A. Modification TU360.

(g) Alternative Methods of Compliance (AMOCs)

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

(h) Related Information

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

(2) Refer to European Aviation Safety Agency AD 2012–0071, dated April 26, 2012, and Turbomeca S.A. Alert MSB No. A292 72 0230, Version C, dated February 29, 2012, for related information.

(i) Material Incorporated by Reference

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

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

(i) Turbomeca S.A. Alert Mandatory Service Bulletin No. A292 72 0230, Version C, dated February 29, 2012.

(ii) Reserved.

(3) For Turbomeca S.A. service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 05 59 74 40 00; telex: 570 042; fax: 33 05 59 74 45 15.

(4) You may view this service information at FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on November 20, 2012.

Robert J. Ganley,

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

[FR Doc. 2012–28839 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0857; Directorate Identifier 2011–NM–244–AD; Amendment 39–17270; AD 2012–23–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This AD was prompted by a report of a crack found in the fuselage skin under the aft drain mast. This AD requires a detailed inspection for cracking and corrosion of the channel and fillers adjacent to the drain mast bolts, an inspection to determine the location of the bonding strap, a measurement of the washers under the drain mast bolts, and related investigative actions and repair if necessary. We are issuing this AD to detect and correct cracking in the fuselage skin and internal support structure, which could result in uncontrolled decompression of the airplane.

DATES: This AD is effective January 7, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 7, 2013.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* 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 Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM published in the **Federal Register** on August 21, 2012 (77 FR 50414). That NPRM proposed to require a detailed inspection for cracking and corrosion of the channel and fillers adjacent to the drain mast bolts, an inspection to determine the location of the bonding strap, a measurement of the washers under the drain mast bolts, and related investigative actions and repair if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comment received on the proposal (77 FR 50414, August 21, 2012) and the FAA's response to the comment.

Statement Regarding Installation of Winglets

Aviation Partners Boeing (APB) stated that the installation of winglets per Supplemental Type Certificate (STC) ST01219SE does not affect them.

We have added paragraph (c)(2) to this AD to state that installation of STC ST01219SE (*http://rgl.faa.gov/regulatory_and_guidance_library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (i) of this AD.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 50414, August 21, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 50414, August 21, 2012).

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

Costs of Compliance

We estimate that this AD affects 612 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Detailed inspection, bonding strap inspection, washer measurement.	4 work-hours × $85 per hour = $340.	$0	$340	$208,080

We estimate the following costs to do certain necessary conditional actions that would be required based on the results of the inspection. We have no way of determining the number of aircraft that might need these actions:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Drain mast removal, high frequency eddy current and detailed inspections, and drain mast installation.	5 work-hours × $85 per hour = $425.	$0	$425

We have received no definitive data that would enable us to provide a cost estimate for the repair specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–23–14 The Boeing Company: Amendment 39–17270; Docket No. FAA–2012–0857; Directorate Identifier 2011–NM–244–AD.

(a) Effective Date

This AD is effective January 7, 2013.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011.

(2) Installation of Supplemental Type Certificate (STC) ST01219SE (*http://rgl.faa.gov/regulatory_and_guidance_library/rgstc.nsf/0/2C6E3DBDDD36F91C862576A4005D64E2?OpenDocument&Highlight=st01219se*) does not affect the ability to accomplish the actions required by this AD. Therefore, for airplanes on which STC ST01219SE is installed, a ''change in product'' alternative method of compliance (AMOC) approval request is not necessary to comply with the requirements of 14 CFR 39.17. For all other AMOC requests, the operator must request approval for an AMOC in accordance with the procedures specified in paragraph (i) of this AD.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by a report of a crack found in the fuselage skin under the aft drain mast. We are issuing this AD to detect and correct cracking in the fuselage skin and internal support structure, which could result in uncontrolled decompression of the airplane.

(f) Compliance

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

(g) Inspection and Repair

(1) For airplanes identified as Group 1 airplanes as specified in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011: At the times specified in paragraph 1.E. ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, do the actions specified in paragraphs (g)(1)(i), (g)(1)(ii), and (g)(1)(iii) of this AD, and do all related investigative actions and repair, as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, except as required by paragraph (h) of this AD. Related investigative actions and repairs must be done before further flight. If the drain mast is found to be installed correctly, no further action is required by this paragraph.

(i) Do a detailed inspection for cracking and signs of corrosion of the channel and the fillers adjacent to the drain mast bolts.

(ii) Inspect the bonding strap for the correct location.

(iii) Measure the diameter and thickness of the washers under the drain mast bolts.

(2) For airplanes identified as Group 2 airplanes as specified in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011: Within 120 days after the effective date of this AD, inspect and repair, as required, using a method approved in accordance with the procedures specified in paragraph (i) of this AD. Repairs must be done before further flight.

(h) Exception

(1) Where Paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, specifies a compliance time after the original issue date of Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) For airplanes identified as Group 1 airplanes as specified in Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011: If any cracking or sign of corrosion is found during any inspection required by this AD, and Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011, specifies to contact Boeing for appropriate action, before further flight, repair the crack or sign of corrosion using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6447; fax: 425–917–6590; email: *wayne.lockett@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Service Bulletin 737–53A1318, dated October 31, 2011.

(ii) Reserved.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on November 13, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28504 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0982; Directorate Identifier 2012–CE–035–AD; Amendment 39–17272; AD 2012–24–02]

RIN 2120–AA64

Airworthiness Directives; Stemme GmbH & Co. KG Powered Sailplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Stemme GmbH & Co. KG Models S10, S10–V, and S10–VT powered sailplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as unapproved rubber hoses installed in the engine fuel, oil, and cooling systems, which could lead to a system leak and result in an engine fire. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 7, 2013.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 7, 2013.

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

For service information identified in this AD, contact STEMME AG, Flugplatzstrasse F2, Nr. 7 15344 Strausberg, Germany; telephone: +49 (0) 3341 3612–0, fax: +49 (0) 3341 3612–30; Internet: *http://www.stemme.de/daten/e/index.html.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Jim Rutherford, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4165; fax: (816) 329–4090; email: *jim.rutherford@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 18, 2012 (77 FR 57531). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> An occurrence has been reported of an engine fire during ground run of a S10–VT powered sailplane. The investigation results indicated that an unapproved fuel hose was installed in the engine fuel system of that aeroplane. Subsequent survey of some N-registered S 10 aeroplanes revealed more cases of installation of unapproved fuel, oil and cooling hoses on sailplanes engine systems.
>
> This condition, if not detected and corrected, could lead to a system leak with subsequent engine fire, possibly resulting in damage to the sailplane and/or injury of occupants.
>
> Prompted by these findings, Stemme GmbH developed a procedure for identification of these hoses, to have them removed from service.
>
> For the reasons described above, this AD requires a one-time review of the sailplane's maintenance records to determine whether a serviceable engine hose kit for fuel, oil and cooling systems has been installed and, depending on findings, replacement of the affected hoses with serviceable parts.

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

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (77 FR 57531, September 18, 2012) or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 57531, September 18, 2012) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (77 FR 57531, September 18, 2012).

Costs of Compliance

We estimate that this AD will affect 63 products of U.S. registry. We also estimate that it will take about .5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $2,677.50, or $42.50 per product.

In addition, we estimate that any necessary follow-on actions will take about 8 work-hours and require parts costing $1,957, for a cost of $2,637 per product for Models S10 and S10–V. We also estimate that any necessary follow-on actions will take about 16 work-hours and require parts costing $1,311, for a cost of $2,671 per product for Model S10–VT. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–24–02 Stemme GmbH & Co. KG: Amendment 39–17272; Docket No. FAA–2012–0982; Directorate Identifier 2012–CE–035–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 7, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Stemme GmbH & Co. KG Models S10, S10–V, and S10–VT powered sailplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 71: Powerplant.

(e) Reason

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as unapproved rubber hoses installed in the engine fuel, oil, and cooling systems. We are issuing this AD to prevent a system leak, which could lead to an engine fire.

(f) Actions and Compliance

Unless already done, do the following actions:

(1) If, on January 7, 2013 (the effective date of this AD), the date of manufacture of the sailplane is less than five years old, before further flight after January 7, 2013 (the effective date of this AD), review the sailplane's maintenance records/logbook for evidence as to whether the engine fuel, oil, and cooling systems rubber hoses have been replaced since new. Based on this review, if:

(i) There is no maintenance records/logbook evidence, i.e. logbook entry, that the engine fuel, oil, and cooling systems rubber hoses have been replaced since new, before further flight, make a logbook entry showing compliance with this AD.

(ii) There is maintenance records/logbook evidence, i.e. logbook entry, that the engine fuel, oil, and/or cooling systems rubber hoses have been replaced since new, before further flight, review the sailplane's maintenance records/logbook for current documentation of hose conformity through a Declaration of Conformity (DoC) or a European Aviation Safety Agency (EASA) Form 1.

(A) If you can find current documentation of a DoC or an EASA Form 1, before further flight, make a logbook entry showing compliance with this AD.

(B) If you cannot find current documentation of a DoC or an EASA Form 1, before further flight, replace the affected hose(s) with FAA-approved serviceable hoses following Stemme F & D Installation Instruction A34–10–093–01, dated August 13, 2012; or Stemme F & D Installation Instruction A34–10–093–02, dated August 13, 2012, as applicable.

(2) If, on January 7, 2013 (the effective date of this AD), the date of manufacture of the sailplane is five years old or older, before further flight after January 7, 2013 (the effective date of this AD), review the sailplane's maintenance records/logbook for evidence of the date the engine fuel, oil, and cooling systems rubber hoses were last replaced and for documentation of hose conformity through a DoC or a EASA Form 1. Based on this review, if:

(i) There is maintenance records/logbook evidence, i.e. logbook entry, that the installed engine fuel, oil, and cooling systems rubber hoses are less than five years old and there is current documentation of hose conformity with a DoC or an EASA Form 1, before further flight, make a logbook entry showing compliance with this AD.

(ii) There is maintenance records/logbook evidence, i.e. logbook entry, that the installed engine fuel, oil, and cooling systems rubber hoses are less than five years old, but there is no current documentation of hose conformity with a DoC or an EASA Form 1, before further flight, replace the affected hoses with FAA-approved serviceable hoses

following Stemme F & D Installation Instruction A34–10–093–01, dated August 13, 2012; or Stemme F & D Installation Instruction A34–10–093–02, dated August 13, 2012, as applicable.

(iii) There is maintenance records/logbook evidence, i.e. logbook entry, that the installed engine fuel, oil, and cooling systems rubber hoses are five years old or more than five years old, before further flight, replace the hoses with FAA-approved serviceable hoses following Stemme F & D Installation Instruction A34–10–093–01, dated August 13, 2012; or Stemme F & D Installation Instruction A34–10–093–02, dated August 13, 2012, as applicable.

(3) As of January 7, 2013 (the effective date of this AD), only install FAA-approved serviceable engine fuel, oil, and cooling systems rubber hoses following Stemme F & D Installation Instruction A34–10–093–01, dated August 13, 2012; or Stemme F & D Installation Instruction A34–10–093–02, dated August 13, 2012, as applicable, and that have a current documentation of hose conformity, i.e., DoC or EASA Form 1.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

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

(h) Related Information

Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2012–0154, dated August 17, 2012; Stemme F & D Installation Instruction A34–10–093–01, dated August 13, 2012; and Stemme F & D Installation Instruction A34–10–093–02, dated August 13, 2012, for related information.

(i) Material Incorporated by Reference

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

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

(i) Stemme F & D Installation Instruction A34–10–093–01, dated August 13, 2012.

(ii) Stemme F & D Installation Instruction A34–10–093–02, dated August 13, 2012.

(3) For Stemme GmbH & Co. KG service information identified in this AD, contact STEMME AG, Flugplatzstrasse F2, Nr. 7 15344 Strausberg, Germany; telephone: +49 (0) 3341 3612–0, fax: +49 (0) 3341 3612–30; Internet: *http://www.stemme.de/daten/e/index.html.*

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

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

Issued in Kansas City, Missouri, on November 20, 2012.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28819 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–1007; Directorate Identifier 2012–CE–031–AD; Amendment 39–17274; AD 2012–24–04]

RIN 2120–AA64

Airworthiness Directives; GA 8 Airvan (Pty) Ltd Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for GA 8 Airvan (Pty) Ltd Models GA8 and GA8–TC320 Airplanes. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as burnt electrical connectors leading to the left-hand wingtip pitot heater, which may result in loss of airspeed indication. We are issuing this AD to require actions to address the unsafe condition on these products.

DATES: This AD is effective January 7, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 7, 2013.

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

For service information identified in this AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: + 61 03 5172 1200; fax: + 61 03 5172 1201; Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 19, 2012 (77 FR 58052). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

CASA has received a number of Service Difficulty Reports regarding the pitot probe heater connector. The loss of pitot heat in Instrument Meteorological Condition (IMC) may lead to the loss of airspeed indication. This may lead to the loss of control of the

aeroplane. Remedial action is to replace the connector with a terminal block.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

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

- Are consistent with the intent that was proposed in the NPRM (77 FR 58052, September 19, 2012) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD will affect 29 products of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts would cost about $100 per product.

Based on these figures, we estimate the cost of the AD on U.S. operators to be $12,760, or $440 per product.

According to the manufacturer, all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2012–24–04 GA 8 Airvan (Pty) Ltd: Amendment 39–17274; Docket No. FAA–2012–1007; Directorate Identifier 2012–CE–031–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective January 7, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to GA 8 Airvan (Pty) Ltd Models GA8 and GA8–TC320 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 30, Ice and Rain Protection.

(e) Reason

This AD was prompted by burnt electrical connectors leading to the left-hand wingtip pitot heater, which may result in loss of airspeed indication. We are issuing this AD to modify the pitot heat wiring on the left-hand wingtip with a terminal block to prevent loss of heating to the pitot system, which could result in loss of airspeed indication.

(f) Actions and Compliance

Unless already done, within the next 100 hours time-in-service after January 7, 2013 (the effective date of this AD) or at the next annual inspection after January 7, 2013 (the effective date of this AD), whichever occurs later, modify the pitot heat wiring connector at the left wingtip, following GippsAero Mandatory Service Bulletin SB–GA8–2012–77, Issue 3, dated March 23, 2012.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; fax: (816) 329–4090; email: *doug.rudolph@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for

this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

Refer to MCAI Civil Aviation Safety Authority AD/GA8/6, dated August 6, 2012; and GippsAero Mandatory Service Bulletin SB–GA8–2012–77, Issue 3, dated March 23, 2012, for related information. For service information related to this AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: +61 03 5172 1200; fax: +61 03 5172 1201; Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

(i) Material Incorporated by Reference

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

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

(i) GippsAero Mandatory Service Bulletin SB–GA8–2012–77, Issue 3, dated March 23, 2012;

(ii) Reserved.

(3) For GippsAero service information identified in this AD, contact Gippsland Aeronautics, Attn: Technical Services, P.O. Box 881, Morwell Victoria 3840, Australia; telephone: +61 03 5172 1200; fax: +61 03 5172 1201; Internet: *http://www.gippsaero.com/customer-support/technical-publications.aspx.*

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

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

Issued in Kansas City, Missouri, on November 21, 2012.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–28821 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0681; Directorate Identifier 2008–NE–13–AD; Amendment 39–17268; AD 2012–23–12]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Turbomeca S.A. Arriel 1E2, 1S, and 1S1 turboshaft engines. That AD currently requires a one-time inspection and torque check of the 3-way union plug installed on all fuel control units (FCUs). This new AD requires the same actions. This AD also requires reduction of the applicability to certain FCUs and references an updated service bulletin containing additional detailed information to identify the non-compliant ''red disk.'' This AD also requires replacement of the plug before further flight if it is found to be non-compliant, and prohibits installation of FCUs that have not passed the 3-way union plug inspection and torque check. This AD was prompted by Turbomeca S.A. informing us that FCUs manufactured, repaired, or overhauled after March 31, 2008, do not require inspection. We are issuing this AD to prevent fuel leaks, which could result in a fire and damage to the helicopter.

DATES: This AD is effective January 7, 2013.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 7, 2013.

ADDRESSES: For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Rose Len, Aerospace Engineer, Engine & Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2009–03–04, Amendment 39–15805 (74 FR 7796, February 20, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on July 25, 2012 (77 FR 43552). That NPRM proposed to require a one-time inspection and torque check of the 3-way union plug, replacement of the plug before further flight if it is found to be non-compliant, and would prohibit installation of FCUs that have not passed the 3-way union plug inspection and torque check.

Comments

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

Conclusion

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

Costs of Compliance

Based on the updated service information, we estimate that this AD will affect about 179 engines installed on helicopters of U.S. registry. We also estimate that it will take about 0.5 hour per product to comply with this AD. The average labor rate is $85 per hour. Required parts will cost about $14 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $10,114. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

detail the scope of the Agency's authority.

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–03–04, Amendment 39–15805 (74 FR 7796, February 20, 2009), and adding the following new AD:

2012–23–12 Turbomeca S.A.: Amendment 39–17268; Docket No. FAA–2008–0681; Directorate Identifier 2008–NE–13–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 7, 2013.

(b) Affected ADs

This AD supersedes AD 2009–03–04, Amendment 39–15805 (74 FR 7796, February 20, 2009.

(c) Applicability

This AD applies to Turbomeca S.A. models Arriel 1E2, 1S, and 1S1 turboshaft engines with FCUs manufactured, repaired, or overhauled on or before March 31, 2008.

(d) Unsafe Condition

Turbomeca S.A. informed the European Aviation Safety Agency of a case of a ''red disk'' plug, adapted for bench testing, which was installed on the FCU on an engine and released for service operation. An engine experienced an in-service high pressure leak event (at the fuel pump outlet) due to cracking of this ''red disk'' plug. This leak could lead to in-flight flame-out and/or possibly a fire. This AD was prompted by Turbomeca S.A. informing us that FCUs manufactured, repaired, or overhauled after March 31, 2008, do not require inspection. We are issuing this AD to prevent fuel leaks, which could result in a fire and damage to the helicopter.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done. Within 100 operating hours from the effective date of this AD, perform a one-time inspection of the plug installed in the FCU 3-way union, part number 9 932 30 706 0.

(1) If the FCU 3-way union plug is unpainted, verify the plug is torqued to between 1.3 and 1.5 daN.m, in accordance with Turbomeca S.A. Mandatory Service Bulletin (MSB) No. 292 73 0817, Version D, dated February 29, 2012, before further flight.

(2) If the FCU 3-way union plug has any red paint on it, replace it with a serviceable plug and torque the plug to between 1.3 and 1.5 daN.m, in accordance with Turbomeca S.A. MSB No. 292 73 0817, Version D, dated February 29, 2012, before further flight.

(f) Installation Prohibition

After the effective date of this AD, do not install any FCU manufactured, repaired, or overhauled on or before March 31, 2008, onto any Turbomeca S.A. model Arriel 1E2, 1S, and 1S1 turboshaft engine, unless the FCU 3-way union plug has passed the one-time inspection and torque check required by this AD.

(g) Credit for Previous Actions

If you performed the inspections and corrective actions required by this AD using the original issue or any version up to and including Version D of Turbomeca S.A. MSB No. 292 73 0817 before the effective date of this AD, you have met the requirements of this AD.

(h) Alternative Methods of Compliance (AMOCs)

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

(i) Related Information

(1) For more information about this AD, contact Rose Len, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7772; fax: 781–238–7199; email: *rose.len@faa.gov*.

(2) Refer to European Aviation Safety Agency Airworthiness Directive 2012–0063, dated April 17, 2012, for related information.

(j) Material Incorporated by Reference

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

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

(i) Turbomeca S.A. Mandatory Service Bulletin No. 292 73 0817, Version D, dated February 29, 2012.

(ii) Reserved.

(3) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; telex: 570 042; fax: 33 (0)5 59 74 45 15.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

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

Issued in Burlington, Massachusetts, on November 14, 2012.

Colleen M. D'Alessandro,

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

[FR Doc. 2012–28637 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1049; Airspace Docket No. 12–ANM–12]

RIN 2120–AA66

Amendment of Area Navigation Route Q–1; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment; correction.

SUMMARY: This action corrects a final rule; technical amendment, published by the FAA in the **Federal Register** on October 29, 2012, that adds two waypoints to the description of area navigation (RNAV) route Q–1. This action corrects the spelling of the TOCOS waypoint.

DATES: Effective date 0901 UTC, January 10, 2013. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace Policy and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On October 29, 2012, the FAA published a final rule, technical amendment in the **Federal Register** amending the description of RNAV route Q–1 by adding two new waypoints to the route (77 FR 65461). Subsequent to publication, an error was discovered in the spelling of the TOCOS waypoint.

Area Navigation Routes are published in paragraph 6011 of FAA Order 7400.9W, dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The RNAV route listed in this document will be published subsequently in the Order.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the TACOS, CA, waypoint published in the **Federal Register** on October 29, 2012 (77 FR 65461) for RNAV route Q–1 is corrected as follows:

Paragraph 6011 United States Area Navigation Routes

* * * * *

Q–1 [Corrected]

On page 65461, second column, line 15, remove ''TACOS'' and insert ''TOCOS.''

On page 65462, line 7, remove ''TACOS'' and insert ''TOCOS.''

Issued in Washington, DC, on November 15, 2012.

Colby Abbott,

Acting Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2012–28999 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2012–1193; Airspace Docket No. 12–ANM–26]

RIN 2120–AA66

Amendment of VOR Federal Airway V–8 in the Vicinity of Rifle, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: This action amends VHF Omnidirectional Range (VOR) Federal Airway V–8 in the vicinity of Rifle, CO, to correct the description contained in part 71 to ensure it matches the information contained in the FAA's aeronautical database, matches the depiction on the associated charts, and to ensure the safety and efficiency of the National Airspace System (NAS).

DATES: Effective date 0901 UTC December 3, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace Regulations and ATC Procedures Group, Office of Mission Support Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

After a recent review of aeronautical data, the Aeronautical Navigation Products Group identified the current VOR Federal airway V–8 description published in FAA Order 7400.9, Airspace Designations and Reporting Points, did not match the airway information contained in the FAA's aeronautical database or the charted depiction of the airway. When V–8 was amended in the **Federal Register** of September 30, 1993 (58 FR 51010), the airway was realigned over the Rifle, CO, VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) navigation aid between Grand Junction, CO, and Kremmling, CO. In the **Federal Register** of August 9, 2010 (75 FR 47709), V–8 was renamed from the Findlay, OH, VORTAC to the Flag City, OH, VORTAC. The Rifle, CO, VOR/DME was inadvertently deleted from the airway description. The FAA aeronautical database retained the Rifle, CO, VOR/DME in the airway description correctly and the associated aeronautical charts remain published accordingly. To overcome any confusion or flight safety issues associated with conflicting airway description information being published, the FAA is amending the V–8 legal description to reflect the airway aligned over the Rifle, CO, VOR/DME. Accordingly, since this is an administrative correction to update the V–8 description to be in concert with the FAA's aeronautical database and charting, notice and public procedures under Title 5 U.S.C. 553(b) are unnecessary.

The Rule

The FAA amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the legal description of VOR Federal airway V–8 in the vicinity of Rifle, CO. Specifically, the FAA amends V–8 to reflect the airway aligned over the Rifle, CO, VOR/DME; thus, matching the information currently contained in the FAA's aeronautical database and the charted depiction of the airway.

VOR Federal airways are listed in paragraph 6010 of FAA Order 7400.9W dated August 8, 2012, and effective September 15, 2012, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document will be revised subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends an existing VOR Federal airway within the NAS.

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010 VOR Federal Airways.

(a) Domestic VOR Federal airways.

* * * * *

V–8

From INT Seal Beach, CA, 266° and Ventura, CA, 144° radials; Seal Beach; Paradise, CA; 35 miles, 7 miles wide (3 miles SE and 4 miles NW of centerline) Hector, CA; Goffs, CA; INT Goffs 033° and Morman Mesa, NV, 196° radials; Morman Mesa; Bryce Canyon, UT; Hanksville, UT; Grand Junction, CO; Rifle, CO; Kremmling, CO; Mile High, CO; Akron, CO; Hayes Center, NE; Grand Island, NE; Omaha, NE; Des Moines, IA; Iowa City, IA; Moline, IL; Joliet, IL; Chicago Heights, IL; Goshen, IN; Flag City, OH; Mansfield, OH; Briggs, OH; Bellaire, OH; INT Bellaire 107° and Grantsville, MD, 285° radials; Grantsville; Martinsburg, WV; to Washington, DC. The portion outside the United States has no upper limit.

* * * * *

Issued in Washington, DC, November 15, 2012.

Paul Gallant,

Acting Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2012–29001 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30870; Amdt. No. 3505]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 3, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 26, 2012.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
13–Dec–12	CA	Salinas	Salinas Muni	2/5358	10/24/12	VOR RWY 13, Amdt 11C.
13–Dec–12	CA	Monterey	Monterey Peninsula	2/5359	10/24/12	LOC/DME RWY 28L, Amdt 3E.
13–Dec–12	CA	Salinas	Salinas Muni	2/5360	10/24/12	LOC/DME RWY 31, Amdt 4C.
13–Dec–12	TX	Rocksprings	Edwards County	2/7908	10/24/12	RNAV (GPS) RWY 14, Orig.
13–Dec–12	CA	Modesto	Modesto City-Co-Harry Sham Fld.	2/8989	10/24/12	TAKEOFF MINIMUMS AND (OBSTACLE) DP, Amdt 5.
13–Dec–12	FL	West Palm Beach	Palm Beach Intl	2/9275	10/24/12	ILS OR LOC RWY 10L, Amdt 26.
13–Dec–12	OK	Oklahoma City	Clarence E Page Muni	2/9805	10/24/12	RNAV (GPS) RWY 17R, Amdt 2.
13–Dec–12	MO	Kansas City	Charles B. Wheeler Downtown	2/9823	10/24/12	VOR RWY 21, Amdt 14.
13–Dec–12	MO	Kansas City	Charles B. Wheeler Downtown	2/9824	10/24/12	RNAV (GPS) RWY 21, Amdt 1A.

[FR Doc. 2012–29018 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30869 ; Amdt. No. 3504]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 3, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on October 26, 2012.

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 13 December 2012*

Fayetteville, AR, Drake Field, LDA/DME RWY 34, Amdt 4

Hutchinson, KS, Hutchinson Muni, ILS OR LOC RWY 13, Amdt 16C

** * * Effective 10 January 2013*

Gustavus, AK, Gustavus, RNAV (GPS) Y RWY 29, Amdt 1

Middleton Island, AK, Middleton Island, Takeoff Minimums and Obstacle DP, Orig-A

Middleton Island, AK, Middleton Island, VOR RWY 2, Amdt 3A

Middleton Island, AK, Middleton Island, VOR/DME RWY 20, Amdt 6A

Tatitlek, AK, Tatitlek, Takeoff Minimums and Obstacle DP, Orig-A

Birmingham, AL, Birmingham-Shuttlesworth Intl, Takeoff Minimums and Obstacle DP, Amdt 7

Bentonville, AR, Bentonville Muni/Louise M Thaden Field, RNAV (GPS) RWY 18, Amdt 1

Bentonville, AR, Bentonville Muni/Louise M Thaden Field, RNAV (GPS) RWY 36, Amdt 1

Bentonville, AR, Bentonville Muni/Louise M Thaden Field, VOR–A, Amdt 13

Bentonville, AR, Bentonville Muni/Louise M Thaden Field, VOR/DME–B, Amdt 6

Meriden, CT, Meriden Markham Muni, GPS RWY 36, Orig-A, CANCELED

Meriden, CT, Meriden Markham Muni, RNAV (GPS) RWY 36, Orig

St Marys, GA, St Marys, Takeoff Minimums and Obstacle DP, Amdt 4
Tifton, GA, Henry Tift Myers, NDB RWY 33, Amdt 1A
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 28, Orig-A
Tifton, GA, Henry Tift Myers, RNAV (GPS) RWY 33, Orig-B
Tifton, GA, Henry Tift Myers, VOR RWY 28, Amdt 10A
Tifton, GA, Henry Tift Myers, VOR RWY 33, Amdt 11C
Lewiston, ID, Lewiston-Nez Perce County, ILS RWY 26, Amdt 13
Salem, IL, Salem-Leckrone, Takeoff Minimums and Obstacle DP, Amdt 7
Alexandria, LA, Esler Rgnl, ILS OR LOC/DME RWY 27, Amdt 16
Alexandria, LA, Esler Rgnl, NDB RWY 27, Amdt 1, CANCELED
Alexandria, LA, Esler Rgnl, RNAV (GPS) RWY 9, Amdt 2
Alexandria, LA, Esler Rgnl, RNAV (GPS) RWY 27, Amdt 2
Millinocket, ME, Millinocket Muni, NDB RWY 29, Amdt 4, CANCELED
Butler, MO, Butler Memorial, GPS RWY 18, Orig-B, CANCELED
Butler, MO, Butler Memorial, RNAV (GPS) RWY 18, Orig
Butler, MO, Butler Memorial, RNAV (GPS) RWY 36, Orig
Butler, MO, Butler Memorial, VOR–A, Amdt 5
Deer Lodge, MT, Deer Lodge-City-County, RNAV (GPS)–A, Orig
Deer Lodge, MT, Deer Lodge-City-County, Takeoff Minimums and Obstacle DP, Orig
Mount Olive, NC, Mount Olive Muni, VOR–A, Amdt 2
Tioga, ND, Tioga Muni, RNAV (GPS) RWY 30, Amdt 1
Albuquerque, NM, Albuquerque Intl Sunport, RNAV (RNP) Y RWY 26, Orig
Taos, NM, Taos Rgnl, Takeoff Minimums and Obstacle DP, Amdt 1
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 13, Amdt 3
Mount Pocono, PA, Pocono Mountains Muni, RNAV (GPS) RWY 31, Amdt 2
Florence, SC, Florence Rgnl, RADAR–1, Amdt 1, CANCELED
Marlin, TX, Marlin, Takeoff Minimums and Obstacle DP, Orig
Olney, TX, Olney Muni, GPS RWY 17, Orig, CANCELED
Olney, TX, Olney Muni, RNAV (GPS) RWY 17, Orig
Olney, TX, Olney Muni, RNAV (GPS) RWY 35, Orig
Olney, TX, Olney Muni, Takeoff Minimums and Obstacle DP, Orig
Spokane, WA, Spokane Intl, ILS OR LOC RWY 3, ILS RWY 3 (SA CAT I), ILS RWY 3 (CAT II), ILS RWY 3 (CAT III), Amdt 6A
Mosinee, WI, Central Wisconsin, Takeoff Minimums and Obstacle DP, Amdt 1

RESCINDED: On October 15, 2012 (77 FR 62429), the FAA published an Amendment in Docket No. 30864, Amdt No. 3499 to Part 97 of the Federal Aviation Regulations under section 97.33. The following entry for Mount Olive, NC, effective 15 November, 2012, is hereby rescinded in its entirety:

Mount Olive, NC, Mount Olive Muni, VOR–A, Amdt 2

[FR Doc. 2012–28988 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30871; Amdt. No. 3506]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokesStandard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 3, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2012.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the, associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866;(2) is not a ''significant rule '' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979); and (3)does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, and Navigation (Air).

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

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 13 December 2012*

Pocahontas, AR, Pocahontas Muni, Takeoff Minimums and Obstacle DP, Orig
Omaha, NE., Eppley Airfield, RNAV (GPS) Y RWY 36, Amdt 1A
Chamberlain, SD, Chamberlain Muni, Takeoff Minimums and Obstacle DP, Amdt 1
Nashville, TN, Nashville Intl, RNAV (RNP) Z RWY 2L, Amdt 1
Nashville, TN, Nashville Intl, RNAV (RNP) Z RWY 2R, Amdt 1
Nashville, TN, Nashville Intl, RNAV (RNP) Z RWY 31, Amdt 1

** * * Effective 10 January 2013*

Cordova, AK, Merle K (Mudhole) Smith, DF–A, LOW ALTITUDE (MAX 150KTS), Amdt 3, CANCELED
Cordova, AK, Merle K (Mudhole) Smith, ILS OR LOC/DME RWY 27, Amdt 11
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) Z RWY 8, Amdt 2
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) Z RWY 14, Amdt 2
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) Z RWY 26, Amdt 2
Jacksonville, FL, Jacksonville Intl, RNAV (GPS) Z RWY 32, Amdt 2B
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 8, Orig
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 14, Orig
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 26, Orig
Jacksonville, FL, Jacksonville Intl, RNAV (RNP) Y RWY 32, Orig
La Belle, FL, La Belle Muni, RNAV (GPS) RWY 14, Orig-A
Orlando, FL, Executive, ILS OR LOC RWY 25, Orig
Orlando, FL, Executive, LOC RWY 25, Amdt 1, CANCELED
Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 17L, Orig-A
Louisville, KY, Louisville Intl-Standiford Field, RNAV (RNP) Z RWY 17R, Orig-A
Westfield/Springfield, MA, Barnes Muni, ILS OR LOC RWY 20, Amdt 7
Westfield/Springfield, MA, Barnes Muni, RNAV (GPS) RWY 20, Amdt 1
Moose Lake, MN, Moose Lake Carlton County, GPS RWY 4, Orig, CANCELED
Moose Lake, MN, Moose Lake Carlton County, RNAV (GPS) RWY 4, Orig
Indianola, MS, Indianola Muni, RNAV (GPS) RWY 18, Amdt 2
Indianola, MS, Indianola Muni, RNAV (GPS) RWY 36, Amdt 2
Laurel, MS, Hesler-Noble Field, NDB RWY 13, Amdt 8
Laurel, MS, Hesler-Noble Field, RNAV (GPS) RWY 13, Amdt 1
Laurel, MS, Hesler-Noble Field, RNAV (GPS) RWY 31, Amdt 1
Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 17, Amdt 1
Madison, MS, Bruce Campbell Field, RNAV (GPS) RWY 35, Orig
Vicksburg, MS, Vicksburg Muni, RNAV (GPS) RWY 1, Amdt 1
Vicksburg, MS, Vicksburg Muni, RNAV (GPS) RWY 19, Orig
Yazoo City, MS, Yazoo County, GPS RWY 17, Orig, CANCELED
Yazoo City, MS, Yazoo County, GPS RWY 35, Orig, CANCELED
Yazoo City, MS, Yazoo County, RNAV (GPS) RWY 17, Orig
Yazoo City, MS, Yazoo County, RNAV (GPS) RWY 35, Orig
Yazoo City, MS, Yazoo County, VOR/DME RWY 17, Orig, CANCELED
Yazoo City, MS, Yazoo County, VOR/DME RWY 35, Orig-A, CANCELED
Yazoo City, MS, Yazoo County, VOR/DME–B, Orig, CANCELED
Sidney, MT, Sidney-Richland Muni, Takeoff Minimums and Obstacle DP, Amdt 5
Wahpeton, ND, Harry Stern, RNAV (GPS) RWY 33, Amdt 1
Albion, NE., Albion Muni, NDB RWY 33, Amdt 2, CANCELED
Holdrege, NE., Brewster Field, NDB RWY 18, Amdt 7A, CANCELED
Mount Holly, NJ, South Jersey Rgnl, RNAV (GPS) RWY 26, Amdt 1
Kingston, NY, Kingston-Ulster, RNAV (GPS) RWY 15, Orig
Kingston, NY, Kingston-Ulster, RNAV (GPS) RWY 33, Orig
Kingston, NY, Kingston-Ulster, VOR OR GPS–A, Amdt 1A, CANCELED
Rome, NY, Griffiss Intl, ILS OR LOC RWY 33, Amdt 2
Rome, NY, Griffiss Intl, RNAV (GPS) RWY 33, Amdt 2
Corpus Christi, TX, Corpus Christi Intl, LOC RWY 31, Amdt 8
Palacios, TX, Palacios Muni, GPS RWY 13, Orig-A, CANCELED
Palacios, TX, Palacios Muni, RNAV (GPS) RWY 13, Orig
Chase City, VA, Chase City Muni, RNAV (GPS) RWY 18, Amdt 1A
Portage, WI, Portage Muni, RNAV (GPS)-A, Orig
Portage, WI, Portage Muni, VOR/DME OR GPS–A, Amdt 6, CANCELED
Sheboygan, WI, Sheboygan County Memorial, ILS OR LOC/DME RWY 22, Amdt 5
Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 4, Amdt 3

Sheboygan, WI, Sheboygan County Memorial, RNAV (GPS) RWY 22, Amdt 3
Sheboygan, WI, Sheboygan County Memorial, Takeoff Minimums and Obstacle DP, Amdt 2
Sheboygan, WI, Sheboygan County Memorial, VOR RWY 22, Amdt 9

[FR Doc. 2012–28990 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30872; Amdt. No. 3507]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective December 3, 2012. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 2012.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Richard A. Dunham III, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

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

John M. Allen,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97, 14 CFR part 97, is amended by amending

Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC date	Subject
13–Dec–12	IA	Davenport	Davenport Muni	2/1130	10/30/12	RNAV (GPS) RWY 21, Amdt 1A.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1222	10/30/12	ILS OR LOC/DME RWY 26, Orig-B.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1224	10/30/12	RNAV (GPS) RWY 14, Orig-A.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1241	10/30/12	RNAV (GPS) RWY 32, Orig-A.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1242	10/30/12	NDB RWY 26, Amdt 1.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1244	10/30/12	NDB RWY 14, Amdt 12.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1245	10/30/12	RNAV (GPS) RWY 26, Orig-A.
13–Dec–12	IA	Keokuk	Keokuk Muni	2/1246	10/30/12	RNAV (GPS) RWY 8, Orig-A.
13–Dec–12	ID	Coeur D'Alene	Coeur D'Alene—Pappy Boyington Field.	2/1607	10/30/12	NDB RWY 5, Amdt 2B.
13–Dec–12	ID	Coeur D'Alene	Coeur D'Alene—Pappy Boyington Field.	2/1608	10/30/12	ILS OR LOC/DME RWY 5, Amdt 5B.
13–Dec–12	ID	Coeur D'Alene	Coeur D'Alene—Pappy Boyington Field.	2/1609	10/30/12	VOR RWY 5, Orig-A.
13–Dec–12	ID	Coeur D'Alene	Coeur D'Alene—Pappy Boyington Field.	2/1610	10/30/12	VOR/DME RWY 1, Amdt 2.
13–Dec–12	NY	New York	John F Kennedy Intl	2/4677	11/02/12	ILS RWY 4R, ILS RWY 4R (CAT II), ILS RWY 4R (CAT III), Amdt 29B.
13–Dec–12	NY	New York	John F Kennedy Intl	2/4678	11/05/12	RNAV (GPS) Y RWY 4R, Amdt 1C.
13–Dec–12	NY	New York	John F Kennedy Intl	2/4679	11/02/12	ILS RWY 4L, Amdt 10A.
13–Dec–12	NY	New York	John F Kennedy Intl	2/4680	11/02/12	RNAV (GPS) Y RWY 4L, Amdt 1B.
13–Dec–12	NY	New York	John F Kennedy Intl	2/4681	11/02/12	RNAV (RNP) Z RWY 4R, Orig-A.
13–Dec–12	NY	New York	John F Kennedy Intl	2/4682	11/02/12	RNAV (RNP) Z RWY 4L, Orig-A.
13–Dec–12	MS	Jackson	Jackson-Evers Intl	2/4886	11/05/12	RNAV (GPS) RWY 16L, Amdt 1.
13–Dec–12	ME	Portland	Portland Intl Jetport	2/4887	11/02/12	ILS OR LOC RWY 29, ILS RWY 29 (SA CAT I), ILS RWY 29 (SA CAT II), Amdt 3.
13–Dec–12	MS	Jackson	Jackson-Evers Intl	2/4888	11/02/12	ILS RWY 16L, ILS RWY 16L (CAT II), ILS RWY 16L (CAT III), Amdt 7D.
13–Dec–12	ME	Portland	Portland Intl Jetport	2/4892	11/02/12	RNAV (GPS) RWY 29, Amdt 2.
13–Dec–12	IL	Morris	Morris Muni—James R. Washburn Field.	2/6285	10/30/12	RNAV (GPS) RWY 18, Orig-A.
13–Dec–12	OR	North Bend	Southwest Oregon Rgnl	2/6880	10/30/12	ILS OR LOC RWY 4, Amdt 7A.

[FR Doc. 2012–28980 Filed 11–30–12; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 300

[Docket No. 110209128–2641–02]

RIN 0648–BA85

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Transshipping, Bunkering, Reporting, and Purse Seine Discard Requirements

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act) to implement requirements for U.S. fishing vessels used for commercial fishing that offload or receive transshipments of highly migratory species (HMS), U.S. fishing vessels used for commercial fishing that provide bunkering or other support services to fishing vessels, and U.S. fishing vessels used for commercial fishing that receive bunkering or engage in other support services, in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). Some of the requirements also apply to transshipments of fish caught in the area of application of the Convention (Convention Area) and transshipped elsewhere. NMFS also issues requirements regarding notification of entry into and exit from the ''Eastern High Seas Special Management Area'' (Eastern SMA) and requirements relating to discards from purse seine fishing vessels. This action is necessary for the United States to implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC) and to satisfy its obligations under the Convention, to which it is a Contracting Party.

DATES: This rule is effective January 2, 2013.

ADDRESSES: Copies of supporting documents that were prepared for this final rule, including the regulatory impact review (RIR) and the Environmental Assessment (EA), as well as the proposed rule, are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov.* Those documents, and the small entity compliance guide(s) prepared for this final rule, are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700. The initial regulatory flexibility analysis (IRFA) and final regulatory flexibility analysis (FRFA) prepared under the authority of the Regulatory Flexibility Act (RFA) are included in the proposed rule and this final rule, respectively.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above) and by email to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS PIRO, 808–944–2273.

SUPPLEMENTARY INFORMATION:

Background

On February 15, 2012, NMFS published a proposed rule in the **Federal Register** (77 FR 8759) to revise regulations at 50 CFR part 300, subpart O, in order to implement certain decisions of the WCPFC. The proposed rule was open to public comment through April 16, 2012.

This final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the WCPFC. The authority to promulgate regulations has been delegated to NMFS.

This final rule implements provisions in Conservation and Management Measures (CMMs) adopted by the WCFPC, particularly CMMs 2009–06, 2009–01, 2010–02, and 2009–02. The preamble to the proposed rule includes further background information, including information on the Convention and the WCPFC, as well as detailed information about each of the CMMs being implemented in this rule, and the basis for the proposed regulations.

New Requirements

This final rule establishes the following requirements:

1. Transshipment Reporting Requirements

The owner and operator (operator means, with respect to any vessel, the master or other individual aboard and in charge of that vessel) of any U.S. fishing vessel used for commercial fishing that transships HMS in the Convention Area, whether from an offloading vessel or to a receiving vessel, or that transships HMS caught in the Convention Area, whether from an offloading vessel or to a receiving vessel, is required to ensure the completion of and submission to NMFS of a transshipment report for each transshipment. The form required to be used for these reports is available from the NMFS Pacific Islands Regional Administrator. A separate report is required for each transshipment.

The information specified on the report form must be recorded on the form within 24 hours of completion of the transshipment. The requirements for transshipments on the high seas and for emergency transshipments (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage) that would otherwise be prohibited are slightly different than the requirements for all other transshipments. For transshipment on the high seas and for emergency transshipments that would otherwise be prohibited, the report must be submitted by email or fax to the address specified by the NMFS Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report can be submitted without signatures to accommodate vessels that remain at sea for more than 10 days after completion of the transshipment and that do not have fax or email capabilities. In such circumstances, for example, the information required on the form could be communicated via radio to a shore agent, and the shore agent could email or fax the form to NMFS within the 10-day deadline, which would enable NMFS to submit the report to the Commission within the 15-day due date under CMM 2009–06.

The original, signed copy of the report for high seas or emergency

transshipments must be submitted to the address specified on the form no later than 15 calendar days after the vessel first enters into port, or 15 calendar days after the transshipment for emergency transshipments in port.

For all other transshipments (i.e., transshipments that do not take place on the high seas and that are not emergency transshipments), if the transshipment is subject to transshipment reporting requirements in 50 CFR part 300 subpart D, 50 CFR part 660, or 50 CFR part 665, the original transshipment report must be submitted by the due date for submitting the transshipment reports specified in those regulations. If the vessel owner and operator are not subject to any of the above-referenced transshipment reporting requirements, for transshipments at sea the report must be submitted no later than 72 hours after the vessel first enters into port; for transshipments in port, the report must be submitted no later than 72 hours after completion of the transshipment. These reporting requirements do not apply to transshipments that take place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only include fish caught within such waters.

As noted in the preamble to the proposed rule, NMFS has developed a specific form, the Pacific Transshipment Declaration Form, to be used for the transshipment reporting requirements.

2. Prior Notice for High Seas Transshipments and Notice of Emergency Transshipments

For any transshipment of HMS on the high seas in the Convention Area or on the high seas anywhere of HMS that were caught in the Convention Area that is not prohibited (e.g., high seas transshipments by vessels other than purse seine vessels), vessel owners and operators must ensure the submission to the Commission of notice of the transshipment at least 36 hours prior to the transshipment. The notice must be provided by fax or email in the format specified by the NMFS Pacific Islands Regional Administrator as specified in this rule. The notice must include the following information: (1) The name of the offloading vessel; (2) the vessel identification markings located on the hull or superstructure of the offloading vessel; (3) the name of the receiving vessel; (4) the vessel identification markings located on the hull or superstructure of the receiving vessel; (5) the expected amount, in metric tons, of the fish product being transshipped, broken down by species and processed state; (6) the expected date or dates of the transshipment; (7) the expected location of transshipment, including latitude and longitude to the nearest tenth of a degree; (8) an indication of which one of the following areas the expected transshipment location is situated: High seas inside the Convention Area, high seas outside the Convention Area, or an area under the jurisdiction of a particular nation—in which case the nation must be specified; and (9) the geographic location of the catch to be transshipped, as described by: The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area on the high seas, outside the Convention Area on the high seas, and within areas under the jurisdiction of a particular nation, with each such nation and the associated amount specified. Information regarding the geographic location of the catch is not required, however, if the reporting vessel is the receiving vessel. The transshipment must take place within 24 nautical miles of the expected location provided in the notice.

Notice is also required for emergency transshipments that would otherwise be prohibited. For each transshipment that qualifies as an emergency transshipment, the owner or operator of the offloading and receiving vessels must ensure delivery of the notice directly to the Commission by fax or email within 12 hours of completion of the transshipment, and must ensure the notice includes the same information described above for the notice for high seas transshipments, as well as a description of the reasons for the emergency transshipment, in the format specified by the NMFS Pacific Islands Regional Administrator. The transshipment must take place within 24 nautical miles of the location provided in the notice.

This final rule allows emergency transshipments involving purse seine vessels to take place at sea in the Convention Area. Such transshipments were prohibited prior to the effective date of this final rule (see 50 CFR 300.216).

A copy of each notice must be submitted to NMFS by the same due dates specified for submission to the Commission: That is, at least 36 hours prior to the start of such transshipment on the high seas or within 12 hours after completion of an emergency transshipment.

3. Observer Coverage for Transshipments at Sea

Transshipments at sea in the Convention Area require observer coverage for vessels, with the specific requirements dependent upon the type of vessel and the type of fish to be transshipped. Observer coverage is not required for emergency transshipments at sea or for transshipments that take place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters. The observers are required to be WCPFC Observers. Observers deployed by NMFS are currently considered WCPFC Observers, as the program has completed the required authorization process to become part of the WCPFC Regional Observer Programme (ROP). For most transshipments, an observer is required on board the receiving vessel. However, for transshipments to a receiving vessel less than or equal to 33 meters in registered length, and not involving purse seine-caught fish or frozen longline-caught fish, the observer may be deployed on either the offloading vessel or receiving vessel. All involved vessel owners and operators are required to ensure that a WCPFC Observer is on board one of the two vessels to monitor the transshipment for the duration of the transshipment, even when the requirement to carry an observer falls on the other vessel involved in the transshipment (e.g., in those cases when the observer requirement applies only to the receiving vessel). The owner or operator of a vessel requiring an observer for transshipments at sea must ensure that notice is provided to the NMFS Pacific Islands Regional Administrator at least 72 hours (excluding weekends and Federal holidays) before the vessel leaves port on the fishing trip indicating the need for an observer. The notice will need to include the official number of the vessel, the name of the vessel, the intended date, time and location of departure, the name of the vessel operator, and a telephone number at which the vessel owner, vessel operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). The notice must be provided to the office or telephone number designated by the NMFS Pacific Islands Regional Administrator. If applicable, notice may be provided in conjunction with the notice required under 50 CFR 665.803(a), which requires the permit holder, or designated agent, for any

vessel registered for use under a Hawaii longline limited access permit, or for any vessel greater than 40 feet length overall that is registered for use under an American Samoa longline limited access permit, to notify NMFS at least 72 hours (excluding weekends and Federal holidays) before the vessel leaves port on a fishing trip, any part of which occurs in the U.S. EEZ around the Hawaiian Archipelago or American Samoa.

In addition, a receiving vessel must receive product from only one offloading vessel at a time for each observer that is available to monitor the transshipment; the observer may be on the offloading or receiving vessel. Accordingly, if only one WCPFC Observer is available, the receiving vessel must receive HMS from only one offloading vessel at a time.

Operators and crew members of vessels carrying observers under these requirements are subject to general requirements regarding WCPFC Observers at 50 CFR 300.215, such as providing any WCPFC Observer on board the vessel with full access to the vessel, as well as access to information and data sources.

4. Categories of Vessels With Which Transshipping and Bunkering May Be Conducted

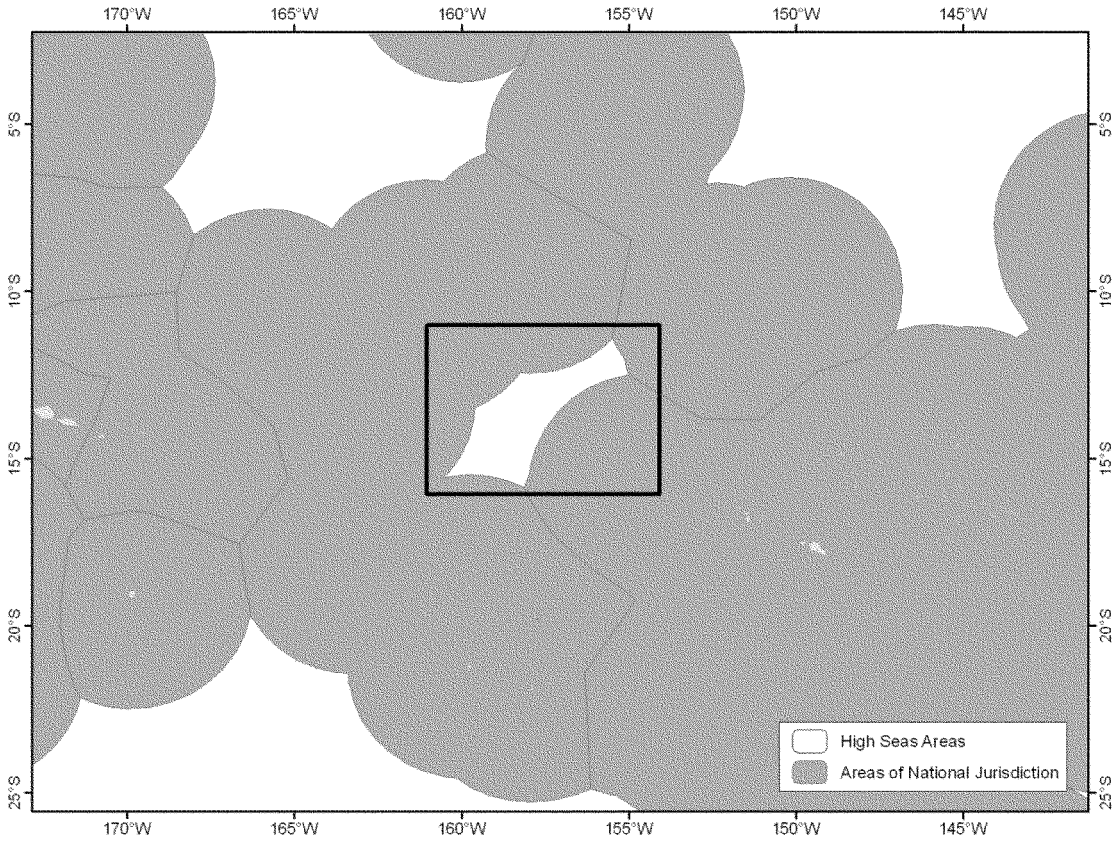
The owner and operator of any U.S. fishing vessel used for commercial fishing for HMS must ensure that any vessel with which they engage in transshipment (to or from) in the Convention Area, or engage in bunkering or other support activities (to or from) in the Convention Area, falls into one of the three following categories. The vessel must be: (1) Flagged by a WCPFC Member or Cooperating Non-Member; (2) on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels (Interim Register), which is available at *http://www.wcpfc.int/;* or (3) on the WCPFC Record of Fishing Vessels, which is available at *http://www.wcpfc.int/.* NMFS notes that the Interim Register is tentatively scheduled to expire in 2013, at which point no vessels would fall in this category. Only fishing vessels that are authorized to be used for fishing in the U.S. EEZ may transship and/or bunker in the U.S. EEZ. These requirements for transshipments do not apply to emergency transshipments or transshipments that take place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only include fish caught within such waters.

5. Requirements Regarding Notification of Entry Into and Exit From Eastern SMA

The owner or operator of any U.S. fishing vessel used for commercial fishing must ensure the submission of a notice to the Commission containing specific information at least six hours prior to entry and no later than six hours prior to exiting the Eastern SMA (see Figure 1, below). The notices must be submitted in the format specified by the NMFS Pacific Islands Regional Administrator. The notices must be submitted via fax or email and must include the following information: (1) The vessel identification markings located on the hull or superstructure of the vessel; (2) whether the notice is for entry or exit; (3) date and time of anticipated point of entry or exit; (4) latitude and longitude of anticipated point of entry or exit; (5) amount of fish product on board at the time of the report, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and (6) an indication of whether the vessel has engaged in or will engage in any transshipments while in the Eastern SMA. A copy of the notice must be provided to NMFS at least six hours prior to the entry and no later than six hours prior to the exit.

The map in Figure 1 shows the Eastern SMA as the high seas area within the rectangle bounded by the bold black lines.

Figure 1. Eastern SMA. Areas of high seas are indicated in white; areas of claimed national jurisdiction, including territorial seas, archipelagic waters, and EEZs, are indicated in dark shading. The Eastern SMA is the high seas area (in white) within the rectangle bounded by the bold black lines. This map displays indicative maritime boundaries only.



6. Requirements Regarding Discards From Purse Seine Fishing Vessels

The owner or operator of any U.S. purse seine fishing vessel must ensure the submission of a report containing specific information to the Commission and a copy of the report to NMFS no later than 48 hours after any discard at sea of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*). The reports must be submitted in the format specified by the NMFS Pacific Islands Regional Administrator via fax or email. A specific form, the U.S. Purse Seine Discard Form (OMB Control Number 0648–0649), has been developed for this requirement. A hard copy of the report must be submitted to the observer on board the vessel.

7. Other Requirements

This final rule prohibits the transfer of fish at sea from a purse seine net deployed by or under the control of a fishing vessel of the United States to any other fishing vessel in the Convention Area. However, the rule includes a narrow exception that allows U.S. purse seine vessels to transfer fish through net sharing (i.e., the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel) to other U.S. purse seine vessels on the final set of a trip when there is insufficient well space for the fish. The final rule also amends the regulatory definition of transshipment to exclude net sharing from the definition of transshipment as purse seine vessels are generally prohibited from engaging in transshipment of HMS at sea. Under the exception for net sharing, the purse seine vessel that transfers fish through net sharing is prohibited from making further purse seine sets during the remainder of its fishing trip.

Furthermore, in the U.S. EEZ, net sharing is allowed only between U.S. vessels that are authorized to be used for fishing in that area. In the event of a net share, the owner and operator of the vessel that caught the fish must record the catch, as required under 50 CFR 300.34(c)(1), on the Regional Purse Seine Logsheet (RPL), and must note that the net sharing has taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator, on the RPL. The owner and operator of the vessel that accepted the fish must note on the RPL for their vessel that the net sharing has taken place, in the manner specified by the NMFS Pacific Islands Regional Administrator.

In addition to the new requirements, the final rule amends the language that is in 50 CFR 300.223(d) to remove the termination date (December 31, 2012) applicable to the catch retention provision and includes some editorial changes to that language (i.e., from stating that ''a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna'' to stating that ''an owner or operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna''). The final rule also corrects 50 CFR 300.222(y), which was inconsistent with 50 CFR 300.223(d)(3). Section 300.223(d)(3) states that the catch retention requirements are applicable to the entire Convention Area. However, § 300.222(y), which is a prohibitions section, stated that the prohibition on discarding fish at sea in contravention of § 300.223(d) is limited to the high seas and areas within the jurisdiction of the United States, including the U.S. EEZ and territorial sea between 20° N. latitude and 20° S. latitude. This final rule amends § 300.222(y) to amend the description of the requirement to state that the catch retention requirements are applicable to the entire Convention Area.

The final rule also includes a minor change to the wording of the language at 50 CFR 300.216(b) so that the terminology referring to U.S. purse seine vessels is consistent throughout 50 CFR part 300 subpart O. Specifically, the phrase ''purse seine fishing vessel of the United States'' is replaced with ''fishing vessel of the United States equipped with purse seine gear.''

The final rule also modifies the prohibitions for at-sea transshipments for purse seine vessels. The final rule includes an additional prohibition for transshipments at sea involving purse seine vessels of fish caught in the Convention Area but transshipped outside of the Convention Area, and allows emergency transshipments involving purse seine vessels to take place at sea in the Convention Area.

Comments and Responses

NMFS received one comment letter on the proposed rule, with three distinct comments. Each comment is summarized below, followed by a response from NMFS.

Comment 1

The basis for the prohibitions on net sharing provided in the proposed rule—that it would be difficult to keep track of fish—seems insufficient. The purse seine vessel receiving the fish would likely report the fish, since it would have the best estimate of the amount in the net share. It is also unclear how commonly net sharing among purse seine vessels takes place. If this is a matter of serious concern, a better explanation of the need for the prohibitions should be given. It would be worthwhile to exempt the transfer of live fish from one fishing vessel to another from this prohibition. Although vessels fishing in the eastern Pacific Ocean (EPO) will not likely be subject to these prohibitions on a frequent basis, in the past, there has been some confusion, since corrected, as to whether the prohibition on transshipping in the area of application of the IATTC applies to the transfer of live bluefin tuna.

Response

As stated in the proposed rule, existing regulations at 50 CFR 300.223(d) require U.S. purse seine fishing vessels to retain all catch of bigeye tuna, yellowfin tuna, and skipjack tuna unless: (1) The fish are unfit for human consumption; (2) there is insufficient well space to accommodate all the fish captured in a given set, provided that no additional sets are made during the trip; or (3) serious malfunction of equipment occurs. Existing regulations at 50 CFR 300.216 prohibit purse seine vessels from conducting transshipments at sea in the Convention Area, consistent with Article 29 of the Convention. However, the existing catch retention provisions at 50 CFR 223(d) do not address whether net sharing falls within the definition of transshipment, which is prohibited at sea for purse seine vessels. As stated in Section 3.1.1.1 of the EA, NMFS estimates that approximately 10 percent of all U.S. purse seine trips in the WCPO include a net sharing event. This rule explicitly excludes net sharing activities from the definition of transshipment and implements a general prohibition on net sharing, as net sharing in most situations would not be consistent with the catch retention requirements.

However, the rule allows U.S. purse seine fishing vessels to conduct limited net sharing on the final set of a trip with other U.S. purse seine vessels, consistent with CMM 2008–01, which states that ''excess fish taken in the last set may be transferred to and retained on board another purse seine vessel provided this is not prohibited under applicable national law.'' As stated in the IRFA, NMFS considered the alternatives of allowing U.S. purse seine fishing vessels to conduct net sharing with foreign-flagged vessels, and allowing U.S. purse seine fishing vessels to conduct net sharing both to and from foreign-flagged vessels on the last set of the transferring vessel's trip. Alternatives to allow net sharing on other than the last set would be inconsistent with CMM 2008–01, so were not considered. However, allowing net sharing to foreign-flagged vessels would make it difficult to ensure consistent counting of catches—for example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign-flagged vessel with which the catch is shared, resulting in inaccurate reporting. Allowing net sharing to and from foreign-flagged vessels would have the same shortcomings and would also be very difficult to enforce, as the United States would have limited ability to determine whether a foreign-flagged vessel complied with the last-set condition.

Regarding the commenter's recommendation to generally exempt the transfer of live fish from one vessel to another, net sharing of live fish on the final set of trip between U.S. purse seine fishing vessels is not prohibited under the new rule.

Finally, the net sharing requirements in this rule are applicable in the Convention Area, and do not apply in the EPO.

Comment 2

Regarding the projected costs for observer coverage for transshipments at sea, a refrigerated carrier vessel that operates regularly in the Convention Area would likely have an observer on board, so the observer coverage requirements for troll vessels transshipping on the high seas would likely be covered. However, if a troll vessel wants to transship on the high seas to a carrier that is not already active in the Convention Area, the projected cost of the observer requirements does not include the following cost estimates: (1) Cost in time and money to see that such a refrigerated carrier is properly registered; and (2) the cost of travel to get an observer accepted by the ROP of the WCPFC to and from the transshipping point. Although this may be seen as a business cost for transshipping, it is still a substantial cost that may well fall on the troll or pole-and-line vessels, and should at least be factored into the cost estimates.

Response

Should a U.S. troll or pole-and-line vessel desire to transship to a foreign-flagged carrier vessel that is not already active in the Convention Area, and if the owner of the carrier vessel chooses to make the carrier vessel available for such transshipments by satisfying the various applicable WCPFC requirements, NMFS agrees that some of the costs of doing so could be passed on to fishing businesses that interact with the carrier vessel, such as the U.S. troll or pole-and-line fishing business. Such costs include the $2,500 annual fee for registering a vessel on the Interim Register, the costs associated with participating in the WCPFC vessel monitoring system, and the costs associated with carrying WCPFC ROP observers, possibly including travel costs for the observer. NMFS notes that the cost of transporting a WCPFC Observer would depend on the circumstances, and could be minimal if a WCPFC Observer is available at the carrier vessel's port of departure and does not need further transportation from the port of return. NMFS also notes that the Interim Register is tentatively scheduled to expire in 2013. If some or all these costs are passed on by the owner/operator of the carrier vessel to fishing businesses that make use of the carrier vessel, NMFS expects that carrier vessels would be likely to work with multiple offloading vessels and would distribute the costs accordingly. The costs borne by any single U.S. troll or

pole-and-line fishing business would be accordingly smaller than the total costs. NMFS has revised the RIR to acknowledge and reflect these possible costs incurred by U.S. fishing businesses. This comment is also relevant in the context of the FRFA, as discussed in the Classification section of this preamble.

Comment 3

Regarding the notification of entry and exit to and from the Eastern SMA, the system set up for this entry and exit notification scheme is fatally flawed under international law, because States bordering a high seas pocket have no more right to know what is going on there than other Commission members. If Kiribati, Cook Islands and French Polynesia are to receive special notifications, those notifications should be made to the Commission and be available to all Commission members.

While few, if any, U.S. albacore troll and pole-and-line vessels fish in the Eastern SMA, this area is close to various transit lines. That area is right along the track line going from Papeete, French Polynesia, to Majuro, Marshall Islands—both are important ports for the South Pacific albacore troll fishery. In the past, vessels in this fishery transshipped their fish in Papeete and then proceeded directly to Majuro for fueling before heading to fishing grounds in the North Pacific. Historically, as many as a dozen vessels made that circuit. The Eastern SMA is also very close to the track line going from Pago Pago, American Samoa, to Papeete. There is also a history of vessels proceeding from the South Pacific fishing grounds to Honolulu, and the Eastern SMA is near that track line. Thus, the proposed rule underestimates the frequency of U.S. troll and pole and line vessels transiting the Eastern SMA and associated costs.

Response

NMFS notes the commenter's view that the system set up by the Commission for the Eastern SMA is flawed. This comment appears to be a general comment on the Commission's decision to adopt CMM 2010–02, which is beyond the scope of this rulemaking. The Commission exercised its authority pursuant to the Convention to adopt conservation and management measures for the high seas, which are implemented by members, including, where appropriate, by flag State members, in accordance with their jurisdiction and control over vessels flying their flag on the high seas. To the extent the comment alleges that NMFS' implementation of the notification scheme provided for in this final rule is inconsistent with international law, NMFS disagrees. In order to meet the international obligations of the United States as a member of the Commission, and pursuant to the authority of the WCPFC Implementation Act, NMFS is implementing this provision of CMM 2010–02 via regulations. NMFS is unaware of any provisions of international law that this rulemaking would violate.

NMFS appreciates the additional information regarding the operational activity of the U.S. albacore troll and pole-and-line vessels near the Eastern SMA. However, the comment does not include any indication of the historical or current number of Eastern SMA entries and exits by such vessels on an annual basis. In the RIR issued with the proposed rule and in the IRFA, NMFS estimated that U.S. albacore troll vessels would enter the Eastern SMA between zero and two times per year and exit the same number of times. This estimate was based on readily available data regarding the fishing patterns of the fleet, indicating that the fishing grounds of this fleet are and have been in areas distant from the Eastern SMA. In order to take into consideration the commenter's information, NMFS has evaluated (unpublished) data from NMFS' vessel monitoring system (VMS) to determine the precise annual number of Eastern SMA entries and exits by vessels in this fleet. The VMS data indicate that U.S. albacore troll vessels entered the Eastern SMA zero times during 2011 and 2012 (2011 was the first full year in which U.S. albacore troll vessels fishing in the Convention Area were required to participate in the vessel monitoring system).

Given these recent data and the location of the traditional fishing grounds of the U.S. albacore troll fleet, NMFS believes that the estimate of zero to two entries per year (and zero to two exits per year) is reasonable and an appropriate basis on which to estimate the costs to the U.S. albacore troll fleet to satisfy the Eastern SMA entry and exit notification requirements. NMFS acknowledges that there has been limited activity by the albacore troll fleet in the Convention Area in recent years (see Table 10 in the EA indicating that the number of U.S. albacore troll vessels operating in the South Pacific each year has numbered no more than six since 2007). Should the activity of the U.S. albacore troll fleet in the Convention Area return to the greater levels experienced in the past and should that increased activity include use of the historic lines of transit mentioned in the comment, the number and associated costs of the entry and exit notifications may be higher, possibly affecting as many as a dozen vessels each year, as noted by the commenter, or more. Although such a future scenario is possible, it, like other possible future scenarios, is speculative and does not warrant changes to the estimates used by NMFS as a basis to estimate the costs to affected U.S. fishing fleets.

Changes From the Proposed Rule

NMFS made some minor technical and non-substantive changes to the proposed rule in this final rule to remove ambiguities. Also, given the effective date the final rule, the provision that the at-sea observer provisions do not apply to transshipments to receiving vessels greater than 33 meters in registered length and involving only fish caught by troll gear and/or pole-and-line gear prior to January 1, 2013, has been removed. Due to an editorial error, the proposed rule indicated that a new, separate definition would be provided for the term ''on board.'' However, the definition of ''on board'' was included in the revised definition of transshipment and in the definition of net sharing in the proposed rule, which remain the same in this final rule. Also, although the regulatory text in the proposed rule specified that the purse seine discard reports would be required for discards of bigeye tuna, yellowfin tuna, or skipjack tuna, the proposed rule's preamble incorrectly indicated that discards of fish, in general, would need to be reported. In addition, although the regulatory text in the proposed rule specified the editorial changes to the purse seine catch retention requirement, the proposed rule's preamble did not mention these editorial changes (i.e., from stating that ''a fishing vessel of the United States equipped with purse seine gear may not discard at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna'' to stating that ''an owner or operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna, yellowfin tuna, or skipjack tuna'').

In § 902.1(b) of title 15 of the *Code of Federal Regulations,* which includes a table listing control numbers issues by the Office of Management and Budget (OMB) for collections of information required under NOAA regulations, new entries have been added for the OMB control numbers approved for the information collections required under

§§ 300.215, 300.218, and 300.225 of title 50 of the *Code of Federal Regulations.*

Delegation of Authority

Under NOAA Administrative Order 205–11, dated December 17, 1990, the under Secretary of Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

Classification

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

Executive Order 12866

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

Regulatory Flexibility Act

A FRFA was prepared. The FRFA incorporates the IRFA prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety.

A description of the action, why it is being considered, and the legal basis for this action are contained in the preamble of the proposed rule and in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule, above. The analysis follows:

There would be no disproportionate economic impacts between small and large entities operating vessels as a result of this final rule. Furthermore, there would be no disproportionate economic impacts based on vessel size, gear, or homeport.

Significant Issues Raised by Public Comments in Response to IRFA

NMFS received two comments related to the IRFA (see Comments 2 and 3 on the proposed rule, above). Regarding Comment 2, NMFS agrees with the commenter that U.S. fishing businesses could bear costs associated with transshipping to foreign-flagged carrier vessels that are not already active in the Convention Area, and that this should be factored into the estimated compliance costs. See NMFS' Response to Comment 2 on the proposed rule, above, for a description of those possible costs. NMFS has also revised the RIR to reflect those possible costs. Regarding Comment 3, NMFS acknowledges the additional information about the historical activity of U.S. albacore troll and pole-and-line vessels near the Eastern SMA, as well as the possibility that the future rate of entries into and exits out of the Eastern SMA by U.S. albacore troll vessels, and the associated costs, could be greater than the estimates provided in the IRFA. However, NMFS believes that the estimate in the IRFA of zero to two entries per year (and zero to two exits per year) is reasonable, based on readily available information regarding the fishing patterns of the fleet and recent VMS data, and an appropriate basis for the cost estimates. See NMFS' Response to Comment 3 on the proposed rule, above, for further details. NMFS has not made any changes to the rule as a result of these two comments.

Description of Small Entities to Which the Rule Will Apply

The final rule will apply to owners and operators of U.S. HMS fishing vessels used to: (1) Transship HMS in the Convention Area or to transship outside the Convention Area HMS caught in the Convention Area; (2) enter or exit the Eastern SMA; or (3) purse seine for HMS in the Convention Area. The estimated number of affected entities is as follows, broken down by vessel type:

Based on the number of longline vessels permitted to fish under the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region or the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species as of January 2011, the estimated number of longline vessels to which the rule will apply is 170. Based on the number of purse seine vessels licensed under the South Pacific Tuna Treaty as of January 2011, the estimated number of purse seine vessels to which the rule will apply is 36. Based on the average annual number of albacore troll vessels that fished in the Convention Area during 2002–2009, the estimated number of troll vessels to which the rule will apply is 26. The total estimated number of vessels that would be subject to the rule is 232.

Based on the best available financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in the longline and troll fleets are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than $4.0 million. In the purse seine fleet, most or all of the businesses that operate these vessels are large entities as defined by the RFA. However, it is possible that one or a few of these fish harvesting businesses meet the criteria for small entities, so the purse seine fleet is included in the remainder of this analysis.

Reporting, Recordkeeping, and Other Compliance Requirements

The reporting, recordkeeping, and other compliance requirements under this rule are described earlier in the preamble. The classes of small entities subject to the requirements and the types of professional skills necessary to fulfill each of the requirements are described in the IRFA.

Steps Taken To Minimize the Significant Economic Impact on Small Entities

NMFS has attempted to identify alternatives that would accomplish the objectives of the Act and minimize any significant economic impact of the final rule on small entities. The alternative of taking no action at all was rejected because it would fail to accomplish the objectives of the WCPFC Implementation Act. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. For some of the elements where the CMMs provide discretion in implementation, NMFS has identified specific alternatives, as described below. For the other elements, NMFS has not identified alternatives. However, for each of the elements where alternatives have not been identified, NMFS has developed the element to be the least burdensome on small entities, while still being in accordance with the relevant WCPFC decision, as explained below.

With respect to element (1) of the rule, transshipment reporting requirements, one alternative would be to impose a uniform timeframe for submission of the report; to satisfy all requirements and the provisions of CMM 2009–06, it would have to be submitted to NMFS within 10 calendar days after completion of the transshipment. This alternative would be more burdensome for certain types of fishing vessels than the alternative adopted in this final rule, and was rejected for that reason. Submission of transshipment reports, as well as specific timeframes for submission of the reports for high seas and emergency transshipments, are specified in CMM 2009–06. Thus, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act.

With respect to element (2), prior notice for high seas transshipments and emergency transshipments, one alternative would be to give affected entities the option of either providing the notice of high seas transshipment to

NMFS at least one business day plus 36 hours in advance of the transshipment (i.e., 60 hours before the transshipment), or, as under this final rule, providing the notice directly to the WCPFC at least 36 hours in advance of the transshipment, with a copy to NMFS. This flexibility could relieve the burden for some entities and/or situations; specifically, in cases where it is less burdensome to send the notification to NMFS than to the WCPFC. Under this alternative, if a vessel operator exercises the first option, NMFS would have to forward the notification to the WCPFC within one business day, so this alternative would bring some additional administrative costs to NMFS. This alternative would also have the disadvantage of being more complex and possibly more confusing to affected entities than the final rule (under which there would be a single timeframe and single recipient). For these reasons, and because NMFS believes that the benefits of the flexibility afforded to affected entities by this alternative would be minor, this alternative was rejected. CMM 2009–06 specifies submission of the notices, as well as specific timeframes for submission of the notices. Thus, the alternatives considered by NMFS were restricted by the parameters of the CMM.

With respect to element (3), observer coverage for transshipments at sea, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2009–06 specifies requirements for at-sea observer coverage. For most transshipments, the provisions of the CMM specify that the observer must be on board the receiving vessel. However, for transshipments to receiving vessels less than or equal to 33 meters in registered length and not involving purse seine caught fish or frozen longline caught fish, the observer may be on board the offloading or receiving vessel. The final rule allows maximum flexibility for at-sea observer coverage by allowing observers to be on board either the offloading or receiving vessel for transshipments to receiving vessels less than or equal to 33 meters in registered length and not involving purse seine caught fish or frozen longline caught fish. There are other conceivable alternatives, such as requiring that an observer be on board the receiving vessel or requiring that an observer be on board the offloading vessel. However, these two approaches would be more constraining, and thus, more burdensome on affected entities than the provisions in the final rule and would not provide any advantages with respect to the underlying purpose of the observer requirement. In developing this element to afford affected entities with the maximum flexibility, NMFS is ensuring that there is a greater chance of compliance, and thus, a greater chance that the objective of the CMM and the final rule will be satisfied.

With respect to element (4), restrictions on vessels with which transshipping and bunkering may be conducted, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2009–06 and CMM 2009–01 include specific provisions for vessels with which transshipping and bunkering may be conducted and the final rule implements those provisions; the CMMs leave no room for consideration of any alternatives. With respect to element (5), notice of entry or exit for Eastern SMA, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2010–02 includes specific requirements for notice of entry or exit for the Eastern SMA and the final rule implements those provisions; the CMM leaves no room for consideration of any alternatives that would reduce the cost of compliance.

With respect to element (6), the purse seine discard report, NMFS has not identified any alternatives that would be less burdensome than the alternative adopted in this final rule and would accomplish the objectives of the WCPFC Implementation Act. CMM 2009–02 includes specific requirements for the purse seine discard report, and the final rule implements those provisions; the CMM leaves no room for consideration of any alternatives that would reduce the cost of compliance.

With respect to element (7), net sharing restrictions and reporting, one alternative would be to allow U.S. vessels to net share to (but not from) foreign-flagged vessels, and a second would be to allow U.S. vessels to net share both to and from foreign vessels. Under both these alternatives, net sharing would be allowed only on the last set. Alternatives to allow net sharing on other than the last set would not be consistent with WCPFC decisions, so were not further considered. Both alternatives identified above would be less restrictive than the alternative adopted in this final rule and thus bring lower compliance costs. The first alternative would make it difficult to ensure consistent counting and reporting of catches—for example, the shared catch might be logged as catch by both the U.S. catcher vessel and the foreign vessel with which the catch is shared. Since the foreign vessel is not expected to report its catch and effort data to NMFS, this could result in inaccurate reporting of catch. The alternative was rejected for that reason. The second alternative would have the same shortcoming and would also be very difficult to enforce, as the United States would have limited ability to determine whether a foreign vessel complied with the last-set condition. The alternative was rejected for those reasons.

For each element, NMFS also considered the no-action alternative, or status quo situation. However, as stated above, the no-action alternative would not accomplish the objectives of the WCPFC Implementation Act and was rejected for that reason.

Small Entity Compliance Guides

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, one or more small entity compliance guides have been prepared. The guide(s) will be sent to permit and license holders in the affected fisheries. The guide(s) and this final rule will also be available at *http://www.fpir.noaa.gov/* and by request from NMFS PIRO (see **ADDRESSES**).

Paperwork Reduction Act

This final rule contains new collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0649. The public reporting burdens for each of the requirements are estimated as follows: transshipment reporting: 60 minutes per response, on average; prior notice for high seas transshipments and emergency transshipments: 15 minutes per response, on average; pre-trip notification for the purpose of deploying observers: 1 minute per response, on average; notice of entry or exit for

Eastern SMA: 15 minutes per response, on average; purse seine discard report: 30 minutes per response, on average. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments on these or any other aspects of the proposed collection of information to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**), and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

This final rule also contains a collection-of-information requirement subject to the PRA that was previously approved by OMB under control number 0648–0218, ''South Pacific Tuna Act'' (the net sharing reporting requirement). The public reporting burden for the Catch Report Form under that collection-of-information requirement is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. NMFS estimated that the net sharing reporting requirement would not increase the public reporting burden for the Catch Report Form. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to Michael D. Tosatto, Regional Administrator, NMFS PIRO (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Prior notice and opportunity for public comment are not required with respect to the revision to the table of OMB control numbers in 15 CFR 902.1(b), because this action is a rule of agency organization, procedure or practice under 5 U.S.C. 553(b)(A).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 300

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: November 27, 2012.

Alan D. Risenhoover,

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

For the reasons set out in the preamble, 15 CFR Chapter IX and 50 CFR Chapter III are amended as follows:

15 CFR CHAPTER IX—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

■ 1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

■ 2. In § 902.1, paragraph (b), the table is amended by adding in the left column under 50 CFR, in numerical order, entries for §§ 300.215, 300.218, and 300.225, and, in the right column, in corresponding positions, the control number ''–0649'' as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR Part or section where the information collection requirement is located	Current OMB control number (all numbers begin with 0648–)
* * * * *	
50 CFR.	
* * * * *	
300.215	–0649
300.218	–0649
* * * * *	
300.225	–0649
* * * * *	

50 CFR CHAPTER III—INTERNATIONAL FISHING AND RELATED ACTIVITIES

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

Authority: 16 U.S.C. 6901 *et seq.*

■ 2. In § 300.211, definitions of ''Cooperating Non-Member,'' ''Eastern High Seas Special Management Area,'' ''Net sharing,'' ''WCPFC Interim Register of non-Member Carrier and Bunker Vessels,'' and ''WCPFC Record of Fishing Vessels'' are added, in alphabetical order, and the definition of ''Transshipment'' is revised, to read as follows:

§ 300.211 Definitions.

* * * * *

Cooperating Non-Member means a non-Member of the Commission that has been accorded Cooperating Non-Member status by the Commission at the Commission's most recent annual meeting.

Eastern High Seas Special Management Area means the area of the high seas within the area bounded by the four lines connecting, in the most direct fashion, the coordinates specified as follows: 11° S. latitude and 161° W. longitude; 11° S. latitude and 154° W. longitude; 16° S. latitude and 154° W. longitude; and 16° S. latitude and 161° W. longitude.

* * * * *

Net sharing means the transfer of fish that have not yet been loaded on board any fishing vessel from the purse seine net of one vessel to another fishing vessel. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel.

* * * * *

Transshipment means the unloading of fish from on board one fishing vessel and its direct transfer to, and loading on board, another fishing vessel, either at sea or in port. Fish shall be considered to be on board a fishing vessel once they are on a deck or in a hold, or once they are first lifted out of the water by the vessel. Net sharing is not a transshipment.

* * * * *

WCPFC Interim Register of Non-Member Carrier and Bunker Vessels means, for the purposes of this subpart, the WCPFC Interim Register of non-Member Carrier and Bunker Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at *http://www.wcpfc.int/.*

* * * * *

WCPFC Record of Fishing Vessels means, for the purposes of this subpart, the WCPFC Record of Fishing Vessels as established in the decisions of the WCPFC and maintained on the WCPFC's Web site at *http://www.wcpfc.int/.*

* * * * *

■ 3. Section 300.215 is revised to read as follows:

§ 300.215 Observers.

(a) *Applicability.* This section applies to the following categories of fishing vessels:

(1) Any fishing vessel of the United States with a WCPFC Area Endorsement.

(2) Any fishing vessel of the United States for which a WCPFC Area Endorsement is required.

(3) Any fishing vessel of the United States used for commercial fishing that receives or offloads in the Convention Area a transshipment of HMS at sea.

(b) *Notifications.* The owner or operator of a vessel required to carry a WCPFC observer under paragraph (d) of this section during a given fishing trip must ensure the provision of notice to the Pacific Islands Regional Administrator at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip, indicating the need for an observer. The notice must be provided to the office or telephone number designated by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(c) *Accommodating observers.* (1) Fishing vessels specified in paragraphs (a)(1) and (a)(2) of this section must carry, when directed to do so by NMFS, a WCPFC observer on fishing trips during which the vessel at any time enters or is within the Convention Area. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section with respect to any WCPFC observer.

(2) Fishing vessels specified in paragraph (a)(3) of this section must carry an observer when required to do so under paragraph (d) of this section. The operator and each member of the crew of the fishing vessel shall act in accordance with paragraphs (c)(3), (c)(4), and (c)(5) of this section, as applicable, with respect to any WCPFC observer.

(3) The operator and crew shall allow and assist WCPFC observers to:

(i) Embark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator;

(ii) Have access to and use of all facilities and equipment as necessary to conduct observer duties, including, but not limited to: Full access to the bridge, the fish on board, and areas which may be used to hold, process, weigh and store fish; full access to the vessel's records, including its logs and documentation, for the purpose of inspection and copying; access to, and use of, navigational equipment, charts and radios; and access to other information relating to fishing;

(iii) Remove samples;

(iv) Disembark at a place and time determined by NMFS or otherwise agreed to by NMFS and the vessel operator; and

(v) Carry out all duties safely.

(4) The operator shall provide the WCPFC observer, while on board the vessel, with food, accommodation and medical facilities of a reasonable standard equivalent to those normally available to an officer on board the vessel, at no expense to the WCPFC observer.

(5) The operator and crew shall not assault, obstruct, resist, delay, refuse boarding to, intimidate, harass or interfere with WCPFC observers in the performance of their duties, or attempt to do any of the same.

(d) *Transshipment observer coverage*—(1) *Receiving vessels.* Any fishing vessel of the United States used for commercial fishing that receives in the Convention Area a transshipment of HMS at sea must have a WCPFC observer on board during such transshipment unless at least one of the following sets of conditions applies:

(i) The vessel is less than or equal to 33 meters in registered length, the transshipment does not include any fish caught by purse seine gear, the transshipment does not include any frozen fish caught by longline gear, and, during the transshipment, there is a WCPFC observer on board the vessel that offloads the transshipment;

(ii) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(iii) The transshipment is an emergency, as specified under § 300.216(b)(4).

(2) *Offloading vessels.* Any fishing vessel of the United States used for commercial fishing that offloads a transshipment of HMS at sea in the Convention Area must have a WCPFC observer on board, unless one or more of the following conditions apply:

(i) The vessel that receives the transshipment has a WCPFC observer on board;

(ii) The vessel that receives the transshipment is greater than 33 meters in registered length;

(iii) The transshipment includes fish caught by purse seine gear;

(iv) The transshipment includes frozen fish caught by longline gear;

(v) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught in such waters; or

(vi) The transshipment is an emergency, as specified under § 300.216(b)(4).

(e) *Related observer requirements.* Observers deployed by NMFS pursuant to regulations issued under other statutory authorities on vessels used for fishing for HMS in the Convention Area will be deemed by NMFS to have been deployed pursuant to this section.

■ 4. Section 300.216 is revised to read as follows:

§ 300.216 Transshipping, bunkering and net sharing.

(a) *Transshipment monitoring.* [Reserved]

(b) *Restrictions on transshipping and bunkering*—(1) *Restrictions on transshipments involving purse seine fishing vessels.* (i) Fish may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea in the Convention Area, and a fishing vessel of the United States may not be used to receive a transshipment of fish from a fishing vessel equipped with purse seine gear at sea in the Convention Area.

(ii) Fish caught in the Convention Area may not be transshipped from a fishing vessel of the United States equipped with purse seine gear at sea, and a fishing vessel of the United States may not be used to receive a transshipment of fish caught in the Convention Area from a fishing vessel equipped with purse seine gear at sea.

(2) *Restrictions on at-sea transshipments.* If a transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters, this paragraph does not apply.

(i) The owner and operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS at sea

in the Convention Area must ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment.

(ii) A fishing vessel of the United States used for commercial fishing that receives transshipments of HMS at sea in the Convention Area shall not receive such transshipments from more than one vessel at a time unless there is a separate WCPFC observer available on either the offloading or receiving vessel to monitor each additional transshipment.

(3) *General restrictions on transshipping and bunkering*—(i) *Transshipment.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in transshipment in the EEZ. Any fishing vessel of the United States used for commercial fishing shall not be used to offload or receive a transshipment of HMS in the Convention Area unless one or more of the following is satisfied:

(A) The other vessel involved in the transshipment is flagged to a Member or Cooperating Non-Member of the Commission;

(B) The other vessel involved in the transshipment is on the WCPFC Record of Fishing Vessels;

(C) The other vessel involved in the transshipment is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels; or

(D) The transshipment takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(ii) *Bunkering, supplying and provisioning.* Only fishing vessels that are authorized to be used for fishing in the EEZ may engage in bunkering in the EEZ. A fishing vessel of the United States used for commercial fishing for HMS shall not be used to provide bunkering, to receive bunkering, or to exchange supplies or provisions with another vessel in the Convention Area unless one or more of the following is satisfied:

(A) The other vessel involved in the bunkering or exchange of supplies or provisions is flagged to a Member or a Cooperating Non-Member of the Commission;

(B) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Record of Fishing Vessels; or

(C) The other vessel involved in the bunkering or exchange of supplies or provisions is on the WCPFC Interim Register of Non-Member Carrier and Bunker Vessels.

(4) *Emergency transshipments.* The restrictions in paragraphs (b)(1), (b)(2), and (b)(3)(i) of this section shall not apply to a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage.

(c) *Net sharing restrictions.* (1) The owner and operator of a fishing vessel of the United States shall not conduct net sharing in the Convention Area unless all of the following conditions are met:

(i) The vessel transferring the fish is a fishing vessel of the United States equipped with purse seine gear;

(ii) The vessel transferring the fish has insufficient well space for the fish;

(iii) The vessel transferring the fish engages in no additional purse seine sets during the remainder of the fishing trip; and

(iv) The vessel accepting the fish is a fishing vessel of the United States equipped with purse seine gear.

(2) Only fishing vessels of the United States that are authorized to be used for fishing in the EEZ may engage in net sharing in the EEZ, subject to the provisions of paragraph (c)(1) of this section.

■ 5. In § 300.218, paragraphs (b), (c), (d), (e) and (f) are added to read as follows:

§ 300.218 Reporting and recordkeeping requirements.

* * * * *

(b) *Transshipment reports.* The owner and operator of any fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment anywhere of HMS caught in the Convention Area, must ensure that a transshipment report for the transshipment is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The owner and operator of the vessel must ensure that the transshipment report is completed and signed within 24 hours of the completion of the transshipment, and must ensure that the report is submitted as follows:

(1) For vessels licensed under § 300.32, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 300.34(c)(2) for submitting the transshipment logsheet form to the Administrator as defined at § 300.31.

(2) For vessels registered for use under § 660.707 of this title, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified for the logbook form at § 660.708 of this title.

(3) For vessels subject to the requirements of § 665.14(c) and § 665.801(e) of this title, and not subject to the requirements of paragraphs (b)(1) or (b)(2) of this section, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator by the due date specified at § 665.14(c) of this title for submitting transshipment logbooks to the Pacific Islands Regional Administrator for landings of western Pacific pelagic management unit species.

(4) For all transshipments on the high seas and emergency transshipments that meet the conditions described in § 300.216(b)(4), including transshipments involving the categories of vessels specified in paragraphs (b)(1), (b)(2), and (b)(3) of this section, the report is submitted by fax or email to the address specified by the Pacific Islands Regional Administrator no later than 10 calendar days after completion of the transshipment. The report may be submitted with or without signatures so long as the original transshipment report with signatures is submitted to the address specified by the Pacific Islands Regional Administrator no later than 15 calendar days after the vessel first enters into port or 15 calendar days after completion of the transshipment for emergency transshipments in port.

(5) For all other transshipments at sea, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after the vessel first enters into port.

(6) For all other transshipments in port, the original transshipment report is submitted to the address specified by the Pacific Islands Regional Administrator no later than 72 hours after completion of the transshipment.

(c) *Exceptions to transshipment reporting requirements.* Paragraph (b) of this section shall not apply to a transshipment that takes place entirely within the territorial seas or archipelagic waters of any nation, as defined by the domestic laws and regulations of that nation and recognized by the United States, and only includes fish caught within such waters.

(d) *Transshipment notices*—(1) *High seas transshipments.* The owner and

operator of a fishing vessel of the United States used for commercial fishing that offloads or receives a transshipment of HMS on the high seas in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere on the high seas, and not subject to the requirements of paragraph (d)(2) of this section, must ensure that a notice is submitted to the Commission by fax or email at least 36 hours prior to the start of such transshipment at the address specified by the Pacific Islands Regional Administrator, and that a copy of that notice is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator at least 36 hours prior to the start of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected amount, in metric tons, of fish product to be transshipped, broken down by species and processed state.

(vi) The expected date or dates of the transshipment.

(vii) The expected location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected transshipment location is situated: high seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The expected amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(2) *Emergency transshipments.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS that offloads or receives a transshipment of HMS in the Convention Area, or a transshipment of HMS caught in the Convention Area anywhere, that is allowed under § 300.216(b)(4) but would otherwise be prohibited under the regulations in this subpart, must ensure that a notice is submitted by fax or email to the Commission at the address specified by the Pacific Islands Regional Administrator, and a copy is submitted to NMFS at the address specified by the Pacific Islands Regional Administrator within twelve hours of the completion of the transshipment. The notice must be reported in the format provided by the Pacific Islands Regional Administrator and must contain the following information:

(i) The name of the offloading vessel.

(ii) The vessel identification markings located on the hull or superstructure of the offloading vessel.

(iii) The name of the receiving vessel.

(iv) The vessel identification markings located on the hull or superstructure of the receiving vessel.

(v) The expected or actual amount, in metric tons, of fish product transshipped, broken down by species and processed state.

(vi) The expected or actual date or dates of the transshipment.

(vii) The expected or actual location of the transshipment, including latitude and longitude to the nearest tenth of a degree.

(viii) An indication of which one of the following areas the expected or actual transshipment location is situated: High seas inside the Convention Area; high seas outside the Convention Area; or an area under the jurisdiction of a particular nation, in which case the nation must be specified.

(ix) The amount of HMS to be transshipped, in metric tons, that was caught in each of the following areas: inside the Convention Area, on the high seas; outside the Convention Area, on the high seas; and within areas under the jurisdiction of particular nations, with each such nation and the associated amount specified. This information is not required if the reporting vessel is the receiving vessel.

(x) The reason or reasons for the emergency transshipment (i.e., a transshipment conducted under circumstances of force majeure or other serious mechanical breakdown that could reasonably be expected to threaten the health or safety of the vessel or crew or cause a significant financial loss through fish spoilage).

(3) *Location of high seas and emergency transshipments.* A high seas or emergency transshipment in the Convention Area or of HMS caught in the Convention Area anywhere subject to the notification requirements of paragraph (d)(1) or (d)(2) must take place within 24 nautical miles of the location for the transshipment indicated in the notice submitted under paragraph (d)(1)(vii) or (d)(2)(vii) of this section.

(e) *Purse seine discard reports.* The owner and operator of any fishing vessel of the United States equipped with purse seine gear must ensure that a report of any at-sea discards of any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*) caught in the Convention Area is completed, using a form that is available from the Pacific Islands Regional Administrator, and recording all the information specified on the form. The report must be submitted within 48 hours after any discard to the Commission by fax or email at the address specified by the Pacific Islands Regional Administrator. A copy of the report must be submitted to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email within 48 hours after any such discard. A hard copy of the report must be provided to the observer on board the vessel, if any.

(f) *Net sharing reports*—(1) *Transferring vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that transfers fish to another fishing vessel equipped with purse seine gear under § 300.216(c) shall ensure that the amount, by species, of fish transferred, as well as the net sharing activity, is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

(2) *Accepting vessels.* The owner and operator of a fishing vessel of the United States equipped with purse seine gear that accepts fish from another purse seine fishing vessel under § 300.216(c) shall ensure that the net sharing activity is recorded on the catch report forms maintained pursuant to § 300.34(c)(1), in the format specified by the Pacific Islands Regional Administrator.

■ 6. In § 300.222, paragraph (y) is revised and paragraphs (ee), (ff), (gg), (hh), (ii), (jj), (kk), (ll), (mm) (nn), (oo), (pp), and (qq) are added to read as follows:

§ 300.222 Prohibitions.

* * * * *

(y) Discard fish at sea in the Convention Area in contravention of § 300.223(d).

* * * * *

(ee) Fail to carry on board a WCPFC observer during a transshipment at sea, as required in § 300.215(d).

(ff) Offload, receive, or load fish caught in the Convention Area from a purse seine vessel at sea in contravention of § 300.216.

(gg) Fail to ensure that a WCPFC observer is on board at least one of the vessels involved in the transshipment for the duration of the transshipment in contravention of § 300.216(b)(2)(i), except as specified at § 300.216(b)(4).

(hh) Receive transshipments from more than one fishing vessel at a time in contravention of § 300.216(b)(2)(ii), except as specified at § 300.216(b)(4).

(ii) Transship to or from another vessel, in contravention of § 300.216(b)(3)(i), except as specified at § 300.216(b)(4).

(jj) Provide bunkering, receive bunkering, or exchange supplies or provisions with another vessel, in contravention of § 300.216(b)(3)(ii).

(kk) Engage in net sharing except as specified under § 300.216(c).

(ll) Fail to submit, or ensure submission of, a transshipment report as required in § 300.218(b), except as specified under § 300.218(c).

(mm) Fail to submit, or ensure submission of, a transshipment notice as required in § 300.218(d).

(nn) Transship more than 24 nautical miles from the location indicated in the transshipment notice, in contravention of § 300.218(d)(3).

(oo) Fail to submit, or ensure submission of, a discard report as required in § 300.218(e).

(pp) Fail to submit, or ensure submission of, a net sharing report as required in § 300.218(f).

(qq) Fail to submit, or ensure submission of, an entry or exit notice for the Eastern High Seas Special Management Area as required in § 300.225.

■ 7. In § 300.223, paragraph (d)(3) introductory text is revised to read as follows:

§ 300.223. Purse seine fishing restrictions.

* * * * *

(d) * * *

(3) An owner and operator of a fishing vessel of the United States equipped with purse seine gear must ensure the retention on board at all times while at sea within the Convention Area any bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), or skipjack tuna (*Katsuwonus pelamis*), except in the following circumstances and with the following conditions:

* * * * *

■ 8. Section 300.225 is added to subpart O to read as follows:

§ 300.225 Eastern High Seas Special Management Area.

(a) *Entry notices.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email at least six hours prior to entering the Eastern High Seas Special Management Area. The notice must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

(1) The vessel identification markings located on the hull or superstructure of the vessel;

(2) Date and time (in UTC) of anticipated point of entry;

(3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of entry;

(4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel intends to engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

(b) *Exit notices.* The owner and operator of a fishing vessel of the United States used for commercial fishing for HMS must ensure the submission of a notice to the Commission at the address specified by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The owner or operator must ensure the submission of a copy of the notice to NMFS at the address specified by the Pacific Islands Regional Administrator by fax or email no later than six hours prior to exiting the Eastern High Seas Special Management Area. The notices must be submitted in the format specified by the Pacific Island Regional Administrator and must include the following information:

(1) The vessel identification markings located on the hull or superstructure of the vessel.

(2) Date and time (in UTC) of anticipated point of exit.

(3) Latitude and longitude, to nearest tenth of a degree, of anticipated point of exit.

(4) Amount of fish product on board at the time of the notice, in kilograms, in total and for each of the following species or species groups: yellowfin tuna, bigeye tuna, albacore, skipjack tuna, swordfish, shark, other; and

(5) An indication of whether the vessel has engaged in or will engage in any transshipments prior to exiting the Eastern High Seas Special Management Area.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–5275–F–13]

RIN 2577–AC80

Native American Housing Assistance and Self-Determination Reauthorization Act of 2008: Amendments to Program Regulations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the Indian Housing Block Grant (IHBG) program and the Title VI Loan Guarantee program. HUD negotiated this rule with active tribal participation under the procedures of the Negotiated Rulemaking Act of 1990, pursuant to the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008. These regulatory changes implement statutory amendments and reflect the consensus decisions reached by HUD and the tribal representatives.

DATES: *Effective Date:* January 2, 2013.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4126, Washington, DC 20410; telephone number 202–401–7914 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

This final rule implements a number of amendments to the statutory requirements governing HUD's IHBG and Title VI Loan Guarantee programs under the Native American Housing Assistance Act of 1996 (25 U.S.C. 4101 *et seq.*). Specifically, it focuses on implementing provisions of the Native American Housing Assistance and Self-

Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (NAHASDA Reauthorization Act or 2008 Reauthorization Act). The NAHASDA Reauthorization Act reauthorizes the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) through September 30, 2013, and makes a number of amendments to the statutory requirements governing HUD's IHBG and Title VI Loan Guarantee programs. Among other changes, the NAHASDA Reauthorization Act amends section 106 of NAHASDA to provide that HUD shall initiate a negotiated rulemaking in order to implement provisions of the 2008 Reauthorization Act that require rulemaking. The rule also implements statutory changes to NAHASDA made by several laws enacted between 1998 and 2005.[1] After establishing the NAHASDA Negotiated Rulemaking Committee (Committee), and with the full and active participation of the Tribal representation on the Committee, HUD and the Committee published a proposed rule on November 18, 2011 (76 FR 71474), which reflected the consensus decision of the Committee. This final rule takes into consideration the public comments on the proposed rule and, as discussed in this preamble, makes some changes to the November 18, 2011, proposed rule. This final rule reflects the consensus decisions reached by HUD and the Committee.

B. Summary of Major Provisions of the Regulatory Action

This final rule would amend HUD's regulations by implementing statutory amendments to NAHASDA. The rule amends the regulations under subpart A of 24 CFR part 1000 regarding the guiding principles of NAHASDA, definitions, labor standards, environmental review procedures, procurement, tribal and Indian preference, and program income. The rule also amends subpart B of 24 CFR part 1000, which addresses eligible families, useful life of properties, and criminal conviction records, and subpart C of 24 CFR part 1000, which addresses the tribal program year, Indian Housing Plan (IHP) requirements, administrative and planning expenses, reserve accounts, local cooperation agreements, and exemption from taxation. Changes to subpart D of part 1000 address certain formula information that must be included in the IHP and Annual Performance Report (APR), as well as the date by which HUD must provide data used for the formula and projected allocation to a tribe or Tribally Designated Housing Entity (TDHE). The final rule amends subpart E of 24 CFR part 1000, which addresses financing guarantees, and subpart F of 24 CFR part 1000, which addresses HUD monitoring, APRs, APR review, HUD performance measures, recipient comments on HUD reports, remedial actions in the event of substantial noncompliance, audits, submission of audit reports, and records retention.

C. Costs and Benefits

This rule implements the NAHASDA Reauthorization Act, but does not directly address those provisions that affect the NAHASDA allocation formula, subpart D of 24 CFR part 1000. In implementing these provisions of the NAHASDA Reauthorization Act, this rule does not impose any significant additional costs on Indian tribes, tribal and regional housing authorities, or TDHEs. It provides tribes greater flexibility in administering of their IHBG and Title VI Loan programs and reduces administrative costs by, for example, exempting procurements of goods and services with a value of less than $5000 from competitive requirements and permitting recipients to use Federal supply sources made available by the General Services Administration. Accordingly, HUD has determined that this rule is not an economically significant regulatory action.

II. Background

NAHASDA reorganized and simplified HUD's system of housing assistance to Native Americans by eliminating several separate HUD programs and replacing them with a single block grant program, made directly to tribes, known as the IHBG. Title VI of NAHASDA also authorizes federal guarantees for the financing of certain tribal activities (under the Title VI Loan Guarantee Program). HUD's regulations governing the IHBG and Title VI Loan Guarantee programs are located in 24 CFR part 1000. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation under the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process (IHBG Formula). Based on the amount of funding appropriated annually for the IHBG program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An IHP for the Indian tribe is then submitted to HUD. If the IHP is found to be in compliance with statutory and regulatory requirements, the grant is made.

Under the Title VI Loan Guarantee program, HUD guarantees obligations issued by tribes or TDHEs, with tribal approval, to finance eligible affordable housing activities under Section 202 of NAHASDA and housing-related community development activities consistent with the purposes of NAHASDA. No guarantee can be approved if the total outstanding obligations exceed five times the amount of the grant for the issuer, taking into consideration the amount needed to maintain and protect the viability of housing developed or operated pursuant to the U.S. Housing Act of 1937. The program requires issuers to pledge current and future IHBG appropriations to the repayment of the guaranteed obligations. The full faith and credit of the United States is pledged to the payment of all guarantees.

The NAHASDA Reauthorization Act reauthorizes NAHASDA through September 30, 2013, and makes a number of amendments to the statutory requirements governing the IHBG and Title VI Loan Guarantee programs. Among other changes, the NAHASDA Reauthorization Act amends section 106 of NAHASDA to require that HUD establish a negotiated rulemaking committee, in accordance with the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570) to implement aspects of the 2008 Reauthorization Act that require rulemaking. On January 12, 2009 (74 FR 1227), as required by section 106 of NAHASDA, HUD announced its intention to establish a Negotiated Rulemaking Committee to develop the regulatory changes to the IHBG and Title VI Loan Guarantee programs. On September 23, 2009 (74 FR 48584), after taking nominations for membership on the committee, HUD published

[1] Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999) (Pub. L. 105–276, approved October 21, 1998); Omnibus Indian Advancement Act (Pub. L.106–568, approved December 27, 2000); Native American Housing Assistance and Self Determination Reauthorization Act of 2002 (Pub. L. 107–292, approved November 13, 2002); Homeownership Opportunities for Native Americans Act of 2004, (Pub. L. 108–393, approved October 30, 2004); Native American Housing Enhancement Act of 2005(Pub. L. 109–136, approved December 22, 2005); and Energy Policy Act of 2005 (Pub. L. 109–58, approved August 8, 2005).

membership on the Committee reflecting a balanced representation of Indian tribes.

The NAHASDA Rulemaking Committee convened for one 2-day meeting and five 3-day meetings in Scottsdale, Arizona; Westminster, Colorado; Seattle, Washington; and St. Paul, Minnesota, from March to August 2010. Under the terms of the charter approved by the Committee, the negotiations were to focus on implementation of NAHASDA, as amended, except that subpart D of 24 CFR part 1000, which governs the NAHASDA allocation formula, was generally to be excluded from the negotiations. (The committee nonetheless agreed by consensus to make minor revisions to regulations in subpart D in order to address issues that primarily involved provisions under subpart C.) With the full and active participation of the Tribes, HUD and the Committee published a proposed rule on November 18, 2011 (76 FR 71474). The November 18, 2011, proposed rule reflected the consensus decisions of HUD and the Tribal representatives. The NAHASDA Rulemaking Committee convened for a 2-day meeting in Washington, DC, on May 1–2, 2012, to review and consider public comments received on the proposed rule. This final rule takes into consideration the public comments on the proposed rule, and makes some changes, based on the public comments, to the November 18, 2011, proposed rule. It also reflects the consensus decisions reached by HUD and the Committee.

III. Changes and Clarifications Made in This Final Rule

This final rule follows publication of the November 18, 2011, proposed rule and takes into consideration the public comments received on the proposed rule. In response to public comment, a discussion of which is presented in the following section of this preamble, and in further consideration of issues addressed at the proposed rule stage, HUD and the Committee are making the following changes at this final rule stage and clarifying or correcting portions of the preamble to the November 18, 2011, proposed rule:

- HUD and the Committee are revising § 1000.16, which addresses labor standards, to accurately reflect the intent of the Committee during the negotiated rulemaking sessions held in Westminster, Colorado; specifically, that construction and development contracts are not subject to the prevailing wage provisions referenced in NAHASDA section 104(b)(1) if the contracts are subject to Tribal laws that require payment of not less than prevailing wages, as determined by the Indian tribe. HUD is also clarifying that operations and maintenance contracts and work performed by the TDHE and Tribal employees directly are excluded from Davis-Bacon and HUD wage rates where a Tribal wage provision that requires not less than prevailing wage rates is in existence. In making these changes, HUD also agrees that the preamble of the November 18, 2011, proposed rule incorrectly describes this change as one that did not reach consensus and, accordingly corrects that preamble to reflect otherwise.
- HUD and the Committee are revising § 1000.503(a) to more accurately describe the assessment factors that determine the frequency and level of monitoring recipients. Specifically, HUD and the Committee are revising paragraphs (a)(4), (a)(5) and (a)(6) of § 1000.503 to specifically reference Office of Management and Budget (OMB) Circular A–133. This revision is based on the parties' understanding during the negotiated rulemaking sessions leading to the development of the proposed rule that the delinquent audits included in HUD's risk assessment were delinquent OMB Circular A–133 audits. In addition, to reflect existing practice that considers open Inspector General audit findings as a risk assessment factor, HUD and the Committee are revising § 1000.503(a)(4) to reference open Inspector General audit findings.
- HUD and the Committee are revising § 1000.503(b) to address a perceived grammatical problem and bring greater clarity to the paragraph.
- While not changing HUD regulatory text of § 1000.532(a), HUD and the Committee are clarifying the description of this section in this final rule. Specifically, rather than covering ''significant noncompliance with a major activity of a recipient's IHP,'' as described in the proposed rule, § 1000.532 is clarified to provide that it applies to several categories of ''substantial noncompliance'' as that term is defined in § 1000.534.

IV. The Public Comments

The public comment period for the November 18, 2011, proposed rule closed on January 17, 2012, and HUD received 20 public comments, including one duplicate, on the proposed rule. Comments were submitted by federally recognized Indian tribes, tribal and regional housing authorities, TDHEs, associations comprised of tribes, a law office, a nonprofit devoted to issues of race and ethnicity, and a member of the public. On May 1 and 2, 2012, the Committee met in Washington, DC, to review and consider responses to the public comments. This section of the preamble addresses the significant issues raised in the public comments and organizes the comments by subject category, with a brief description of the issue, followed by the Committee's response. For the convenience of readers, the discussion of the public comments is organized into three sections. The first section discusses the general comments that were received on the proposed rule. The second section discusses the public comments received on specific proposed regulatory changes contained in the proposed rule. The third section discusses the public comments received on nonconsensus issues (i.e., those issues on which the Committee could not reach agreement on proposed regulatory language).

A. General Comments

Issue: Tribal and Indian preferences, generally. One commenter stated that unless there is an explicit statutory mandate to do so, there should be no preferences given on the basis of ''Indian'' (racial) as opposed to ''tribal'' (political) status. The commenter cited *Morton* v. *Mancari* to support this comment. The commenter stated that the former is a racial classification and, therefore, triggers strict scrutiny and is presumptively unconstitutional. *Adarand Constructors, Inc.* v. *Pena* and *Personnel Administrator* v. *Feeney.*

Response: The commenter stated that ''unless there is an explicit statutory mandate to do so, there should be no preferences given on the basis of 'Indian' (racial) as opposed to 'tribal' (political) status,'' asserting that ''the former is a racial classification and, therefore, triggers strict scrutiny and is presumptively unconstitutional.'' The commenter references the United States Supreme Court's decision in *Morton* v *Mancari,* 417 U.S. 535 (1974), in support of this comment. The Committee notes that there is a mandate to use Indian preference under NAHASDA, both in providing affordable housing and in hiring and contracting. 25 U.S.C. 4101, 4111, 4131. Further, the Committee notes that *Morton,* contrary to the commenter's assertion, expressly found that, ''Indian'' preference is not a racial categorization, but is rather a political one and that, therefore, the use of Indian preference does not trigger strict scrutiny review under the Constitution's equal protection clause. 417 U.S. 535, 554–555. As a result, the Committee decided not to revise any provisions providing Indian or tribal preference in this final rule.

Issue: Lack of timeliness in issuing regulations. Several commenters expressed their concern that HUD is only now promulgating regulations to implement provisions that were enacted through the NAHASDA. The commenters stated that it is imperative that HUD be timelier in proposing future regulations.

Response: HUD recognizes the concern raised by the commenters and is committed to working more timely in proposing future regulations.

B. Comments on Specific Proposed Regulatory Changes

Issue: Initiation of rulemaking; providing for periodic review (§ 1000.9(b)). Several commenters, citing section 106(b)(2)(D) of NAHASDA, as amended, stated that the proposed rule provides a mechanism for initiating rulemaking when NAHASDA is amended, but does not provide a mechanism for initiating the periodic review of the regulations as required by this section of NAHASDA.

Response: The Committee considered the comments and determined that no change is required to § 1000.9(b) as published in the proposed rule.

Issue: Initiation of rulemaking; clarifying actions that ''significantly'' amend NAHASDA (§ 1000.9(b)). Several commenters recommended that HUD clarify the standard used when determining whether an enactment has ''significantly'' amended NAHASDA. The commenters stated that without such clarification, HUD would retain too much discretion to determine when negotiated rulemaking is called for. The commenters recommended that HUD define ''significantly'' as ''any enactment that has the effect of altering the rights, privileges, duties, or responsibilities of the Secretary, Tribes, or TDHEs, that changes any aspect of the funding allocation mechanism under the statute, or that changes any procedure.'' Several other commenters agreed and opined that had HUD initiated negotiated rulemaking in 2002, many of the accounting issues facing tribes and TDHEs would not have been necessary.

Response: The Committee considered these comments and did not reach consensus on revising § 1000.9(b) as published in the propose rule. Tribal representatives stated that defining ''significantly'' would provide more clarity and certainty regarding when negotiated rulemaking was required rather than leaving the decision entirely within HUD's discretion. HUD's position was that § 1000.9(b) was intended to provide HUD the flexibility to quickly respond to minor changes or technical changes to NAHASDA without first having to establish a negotiated rulemaking committee, a process that may take considerable time and resources. HUD asserted that defining ''significantly'' as recommended by the commenters or removing the word ''significantly'' from § 1000.9(b) would be difficult and likely result in the delayed implementation of amendments to NAHASDA to the detriment of both HUD and the Tribes. As a result, the Committee did not reach consensus to revise § 1000.9(b) in response to these comments.

Issue: Labor Standards; consensus reached to exclude contracts from section 104(b)(1) of NAHASDA (§ 1000.16(e)). Several commenters stated that the Committee reached consensus on including language that would exclude construction and development contracts from being required to contain the prevailing wage provision referenced in section 104(b)(1) of NAHASDA. These commenters cited to transcripts of the negotiated rulemaking sessions held in Westminster, Colorado (Neg. Reg. Committee Transcript Vol. II, Page 168 and Issue Number 32 on the NAIHC Legislative Committee Analysis Chart) to support their position. These commenters also stated that the Committee reached agreement specifying that ''agreements for assistance, sale or lease'' included construction and development contracts. These commenters stated that the final rule should reflect the Committee's action to include regulatory language specifically excluding construction and development contracts from this provision.

These commenters also stated that HUD should clarify that contracts for operations and maintenance of NAHASDA-assisted affordable housing are not subject to the provisions of section 104(b)(1) provided that applicable tribal law requires the payment of prevailing wage rates, and that work performed directly by tribal or TDHE employees on NAHASDA-assisted housing is also excluded from that provision. Another commenter also recommended that proposed § 1000.16(e) be revised to provide a more complete description of those activities not subject to the prevailing wage requirement. The commenter recommended that proposed § 1000.16(e) be revised to add, ''including such construction and development contracts and such contracts for the maintenance and operation of NAHASDA-assisted affordable housing. Work performed directly by tribal or TDHE employees on NAHASDA-assisted housing is also not subject to the prevailing wages provisions in section 104(b)(1) if covered by one or more such laws or regulations adopted by an Indian tribe.''

Response: After reviewing this issue, the Committee agreed that consensus was reached and that construction and development contracts, if entered into pursuant to a HUD contract or agreement for assistance, sale, or lease under NAHASDA, are not required to contain the prevailing wage provision referenced in NAHASDA section 104(b)(1) if the contracts are subject to tribal laws that require payment of not less than prevailing wages. Accordingly, the Committee is revising § 1000.16 to accurately reflect this consensus position. In addition, as requested by the commenter, the Committee is also clarifying that operations and maintenance contracts and work performed by the TDHE and Tribal employees directly are excluded from Davis-Bacon and HUD wage rates under section 104(b)(1) where a Tribal wage provision that requires not less than prevailing wage rates is in existence. In making these changes, the Committee also agrees that the preamble of the November 18, 2011, proposed rule incorrectly describes this change as one that did not reach consensus and, accordingly, corrects that preamble to reflect otherwise.

Issue: Waiver of environmental review procedures; secretarial discretion to approve the waiver (§ 1000.21). Several commenters stated that the proposed regulation permits the Secretary discretion to grant a waiver from the environmental review requirements in certain circumstances, and sets out the criteria to be used by the Secretary in making his determination. The commenters recommended that the waiver be mandatory if the Secretary determines that the recipient's waiver request meets each condition provided by § 1000.21.

Response: The Committee considered these comments and did not reach consensus to change § 1000.21, regarding waiver of environmental compliance. Tribal representatives stated that adopting the comment would provide a level of certainty regarding HUD's treatment of waiver requests and would be more workable for the tribes. HUD stated that section 105 of NAHASDA provides that the Secretary ''may'' waive environmental requirements upon a showing of the stated criteria delineated by the statute and reiterated that the intent of this section was to simply codify statutory text. While tribal representatives

thought otherwise, HUD also asserted that removing Secretarial discretion to review these waiver requests would diminish HUD's ability to ensure that each criterion was met. HUD also stated that it has routinely granted such waiver requests in the past whenever a recipient has demonstrated that each criterion has been met.

Issue: Another commenter stated that HUD changed the preamble discussion of § 1000.21 following Committee consensus by referencing Notice CPD–04–08, regarding the procedures for requesting a waiver of the statutory environmental review requirements, and by adding a footnote that summarizes these procedures. According to the commenter, the inclusion of this language misleadingly implies that there has been sufficient tribal consultation to justify HUD's policies on these issues. The commenter also states that this language attempts to raise the CPD notice almost to the level of a negotiated rule by referencing it in the preamble. The commenter recommended that the wording be removed and full tribal consultation be sought before application of the referenced program notice, or some revised version of that notice.

Response: The Committee considered this comment and concluded that no action on this comment is required. Notice CPD–04–08, which has since been replaced by Notice CPD–11–010, restates the authority of the Secretary to waive environmental requirements and describes the existing procedures that HUD follows when reviewing and approving waiver requests. The Notice was referenced only to describe the process, timing, procedures, and forms used by HUD to process a request to waive environmental requirements. As a result, the Committee decided that no action on this comment is required.

Issue: Utilizing federal supply sources in procurement (§ 1000.26(11)(iv)). Several commenters stated that they welcomed this provision, which permits recipients to use federal supply sources made available by the General Service Administration (GSA). The commenters reported, however, reluctance on the part of GSA to apply the provision and recommended that the failure be remedied.

Response: The Committee notes that the comment offers an observation rather than a recommendation to change the regulatory text. As a result, the Committee agreed that no action on this comment is required. Nevertheless, the Committee agrees with the commenters that use of federal supply sources provided by GSA can be extremely cost effective for tribes, saving thousands of dollars in procurement costs during a period of scarce federal resources. HUD commits to continuing to work with GSA to reduce the difficulties associated with using these sources.

Issue: Applicability of section 3 of the Housing and Urban Development Act of 1968 (§ 1000.42). Several commenters stated that section 101(k) of NAHASDA, as amended, designated as Tribal Preference in Employment and Contracting provides that tribal employment and contract preference laws and regulations apply notwithstanding any other provision of law. The commenters stated that while section 3 of the HUD Act of 1968 requires that low-income residents receive preference in employment and contracts, low-income household members are not always Native American or members of a tribe. The commenters recommended, therefore, that the preamble or the final rule confirm that HUD will not treat the application of tribal preference laws as a violation of section 3, even if they do not contemplate preference for non-Tribal household members.

Another commenter stated that section 3 is an infringement on tribal self-determination and that § 1000.42 of the proposed rule should be eliminated. The commenter stated that application of the section 3 requirement would require that 30 percent of the aggregate number of new hires be section 3 residents and that 10 percent of all contracts be awarded to section 3 businesses. The commenter also stated that tribal education and training programs are federally funded programs for the benefit of Native Americans, and that HUD cannot dictate that this funding be directed to assist non-Indians.

Response: The Committee considered the comment and agreed that § 1000.42 does not require change. As more fully discussed in the preamble to the November 18, 2011, proposed rule, § 1000.42 addresses section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), which requires certain HUD recipients (e.g., recipients of more than $200,000 in HUD housing and community development assistance for a covered project) to provide economic opportunities to low- and very low-income residents. Section 1000.42(c) clarifies that recipients meet the section 3 requirements when they comply with employment and contract preference laws adopted by their tribe in accordance with section 101(k) of NAHASDA.

Issue: Tribal and Indian preferences; potential infringement on Tribal Sovereignty (§§ 1000.48, 1000.50, and 1000.52). One commenter stated that these sections, which provide that a recipient is required to apply Tribal preference in employment and contracting, if the Tribe has enacted Tribal preference laws, and that it must apply Indian preference to the extent that Tribal preference laws have not been enacted, may infringe on tribal sovereignty. According to the commenter, each tribe should be able to determine whether or not to implement Indian or tribal preferences and the extent to which it implements such preferences.

Response: The final rule has not been revised in response to this comment. As stated in the preamble to the proposed rule, these sections implement section 101(k) of NAHASDA, which provides that the employment and contract preference laws of a tribe that receives the benefit of a grant (or portion of a grant) apply to the administration of the grant (or portion of the grant), notwithstanding any other provision of law. More specifically, these sections clarify that a recipient is required to apply tribal preference in employment and contracting if a tribe has enacted tribal preference laws, and that only to the extent that such tribal preference laws have not been enacted, a recipient must instead apply Indian preference, as required under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). In addition, §§ 1000.48(c) and 1000.52(d) clarify that the exemption in NAHASDA section 203(g) for procurements of less than $5,000 from competitive rules and procedures serves to exempt such procurements from Indian preference requirements under section 7(b) of the Indian Self-Determination and Education Assistance Act.

Issue: Program Income; Use for Housing or housing related activities (§§ 1000.10(b), 1000.26, and 1000.64). Several commenters stated that §§ 1000.10(b), 1000.26, and 1000.64 implement changes enacted by the NAHASDA Reauthorization Act of 2002 that provide that income derived from NAHASDA funded activities are not restricted so long as they are used for housing or housing related activities. According to the commenters, this change should have been self-implementing and, as a result, HUD should authorize tribes and TDHEs to recoup any program income that they were forced to expend since 2002 on affordable housing activities, the statutory standard prior to the 2002 change.

Response: The Committee considered these comments and agreed that they raise a valid concern. Notwithstanding,

the comments raise issues outside the scope of this rulemaking and can more properly be addressed in a separate rulemaking. As a result, the Committee considered the comments and decided not to revise §§ 1000.10(b), 1000.26, or 1000.64.

Issue: The rule fails to assist recipients to determine ''useful life'' (§ 1000.142). Several commenters stated that § 1000.142 fails to inform recipients regarding how to determine the useful life of a housing unit. As a result, the useful life of a housing unit will be determined on a case-by-case determination by HUD's approval of the recipient's Indian Housing Plan. The commenters stated that HUD should provide a clear and realistic way to determine a unit's useful life rather than relying on a case-by-case determination. Another commenter agreed that § 1000.142 is not clear. The commenter opined that HUD will likely be required to publish guidance regarding the provision and cautioned that unless the guidance is subject to HUD's tribal consultation policy, such guidance could appear to infringe on tribal self-determination.

Response: The Committee considered these comments and concluded not to change § 1000.142. This provision was a consensus provision agreed to by HUD and the Committee. Moreover, § 1000.142 reflects current practice and remains useful in clarifying that recipients implement the useful life requirement by placing binding commitments on the assisted property that are satisfactory to HUD.

Issue: The requirement that binding commitments are applicable to third parties that are not family members does not make sense (§ 1000.146). Several commenters stated that § 1000.146 does not make practical sense. The commenters stated that the binding commitment is between the recipient and the homebuyer and does not pass to family or household members. As a result, the commenters stated that the family or household member cannot pass the restriction to third party buyers. The commenters recommend that HUD revise this provision by deleting the last sentence of the proposed section.

Response: As discussed in the preamble to the proposed rule, § 1000.146 incorporates section 205(c) of NAHASDA. More specifically, the sentence that the commenters recommend be deleted reflects the intent of the Committee that any subsequent transfer by the family member or household member to a third party that is not a family member or household member be subject to any remaining useful life under a binding commitment. Accordingly, HUD and the Committee determined that a change to the rule was not necessary.

Issue: Difficulty receiving criminal conviction information (§ 1000.150). Several commenters stated that most tribal housing programs and TDHEs remain unable to obtain criminal conviction information on applicants or tenants from law enforcement agencies, including the Bureau of Indian Affairs Police and local non-Indian agencies. The commenters recommended that the authorization to obtain this information be strengthened by regulation or by statutory amendment.

Response: The November 18, 2011, rule proposed to amend only the heading of § 1000.150, to conform it to section 208(a) of NAHASDA, which permits the use of criminal conviction records to screen applicants for employment. Consequently, the Committee agrees that no change to § 1000.150 is required. Nevertheless, the Committee agrees that section 208(a) of NAHASDA provides that the National Crime Information Center, police departments, and other law enforcement agencies are required to provide this information upon request. The Committee also agrees that the preamble to this final rule state that, while § 1000.150 does not explicitly list the ''other law enforcement agencies'' from which tribes and TDHEs should be able to obtain the criminal conviction records of applicants for employment and adult applicants for housing, the intent of the Committee is that such information be made available from the Bureau of Indian Affairs Police and local non-Indian agencies.

Issue: Response time not sanctioned (§§ 1000.227 and 1000.246). Several commenters stated that, unlike § 1000.114, these provisions covering the granting of waivers relating to local cooperation agreement and taxation exemption requirements, as well as waivers relating to a recipient's IHP submission deadline, do not provide consequences for HUD's failure to act within the prescribed timeframes. The commenters recommended that these sections be revised to provide that HUD's failure to issue a decision within the prescribed timeframe shall result in the waiver request being approved.

Response: The Committee considered these comments and did not reach consensus to change either § 1000.227 or § 1000.246. The deadlines for HUD action reflected in §§ 1000.227 and 1000.246 were the subject of much discussion during the negotiated rulemaking sessions leading to the proposed rule. Tribal representatives opined that establishing consequences for HUD's failure to meet its deadline would expedite the review process and provide certainty for the tribes. HUD asserted that a deadline would eliminate the flexibility it needs to fully review these requests. HUD also asserted the fact that it has delegated decisionmaking authority to the field should expedite HUD decisionmaking, and supports the conclusion that these sections not be revised to result in automatic waivers of program requirements being granted should HUD fail to issue a decision within the prescribed timeframes.

The Committee also reviewed whether to revise § 1000.246(c) to delete the second and third sentences that read, ''If the request is denied, IHBG funds may not be spent on the housing units. If IHBG funds have been spent on the housing units prior to the denial, the recipient must reimburse the grant for all IHBG funds expended.'' HUD notes that section 101(d) of NAHASDA states that grant amounts may not be used unless the dwelling units are exempt from all real and personal property taxes levied or imposed by the state, tribe, city, county or other political subdivision. Recipients would not, therefore, comply with NAHASDA if they used non-federal assistance to pay any tax imposed on the units. As a result, the Committee did not revise § 1000.246.

Issue: What is the appropriate extent of HUD monitoring (§ 1000.503(a)). One commenter stated that HUD changed one of the risk assessment factors related to a determination of the frequency of HUD monitoring in § 1000.532(a)(4) from ''delinquent IPA audits'' to ''delinquent audits.'' The commenter stated that the reference to ''delinquent audits'' should be changed back to the October 2010 version of the provision which provided, ''delinquent Independent Public Accountant (IPA) audits.''

Response: HUD agrees that the reference to ''delinquent IPA audits'' was changed to ''delinquent audits,'' after the language was negotiated and consensus reached. HUD stated that the change was intended to clarify the provision since the term ''IPA'' is not defined in the rule and may lend itself to confusion. To more accurately describe the assessment factors which determine the frequency and level of monitoring recipients, the Committee agrees to revise paragraphs (a)(4), (a)(5) and (a)(6) of § 1000.503 to reference OMB Circular A–133. The parties understood during the negotiated rulemaking sessions leading to the development of the proposed rule that

the delinquent audits included in HUD's risk assessment were delinquent OMB Circular A–133 audits. In addition, to reflect existing practice that considers open Inspector General audit findings as a risk assessment factor, the Committee agrees to revise § 1000.503(a)(5) to read, ''open OMB Circular A–133 or Inspector General audit findings.''

Issue: Potential ambiguity in § 1000.503(b). One commenter stated that there appears to be a grammatical problem with the wording in the introductory language of § 1000.503(b) that could cause ambiguity. The commenter recommended that the provision be clarified by rewriting the section to read as follows: ''(b) If monitoring indicates noncompliance, HUD may undertake additional sampling and review to determine the extent of such noncompliance. The level of HUD monitoring of a recipient once that recipient has been selected for HUD monitoring is as follows * * *''

Response: The Committee agrees that the recommendation offered by the commenter would clarify § 1000.503(b) and accordingly, revises this section. In addition, the Committee agrees to further clarify the wording in §§ 1000.503(b)(2) and (b)(3) to make the provisions easier to comprehend and apply.

Issue: HUD altered the meaning of § 1000.503(d) as negotiated by the Committee. One commenter stated that HUD has changed § 1000.503(d) in a way that alters its meaning as negotiated by the Committee. According to the commenter, the original intent agreed to by the Committee was that HUD would not monitor a recipient that has a self-monitoring agreement, absent the circumstances listed in the regulations. The language incorporated in the proposed rule, however, implies that self-monitoring agreements will include provisions for some form of HUD monitoring, even when the circumstances listed in the proposed rule are not present. The commenter recommended that the final regulation include the wording as originally shown in the October 2010 version of the rule, specifically, that ''ONAP will not monitor the recipient within the effective period of such agreement or arrangements, unless ONAP finds reasonable evidence of fraud, a pattern of noncompliance, or the significant unlawful expenditure of IHBG funds.''

Response: Section 1000.503(d) provides that a recipient may request to enter into a self-monitoring agreement with HUD, under which HUD would monitor only the recipient in accordance with the agreement, absent reasonable evidence of fraud, a pattern of noncompliance, or significant unlawful expenditure of IHBG funds. The Committee agrees that as written, § 1000.503(d) represents the intent of the parties, and as a result, does not require change at this final rule stage.

Issue: Failure of HUD to issue timely report not sanctioned (§ 1000.528). Several commenters stated that the proposed regulations require tribes to submit comments to the HUD draft report within specific timeframes, and that failure to meet the prescribed time results in consequences for the tribe. The commenters state that there are no consequences for HUD's failure to issue a report within the regulatory timelines. The commenters recommended that the regulation contain some kind of consequence for HUD, or some kind of enforcement or appeal mechanism if HUD fails to meet its obligations under the timelines.

Response: The Committee considered this comment and recognizes that § 1000.528 establishes a timeline for HUD to take action, but does not establish consequences for HUD not taking action within that time period. Tribal representatives stated that establishing consequences for HUD if it fails to meet the timeline would expedite HUD's review of a tribe's draft report and provide additional certainty for the tribes. This section was discussed during the committee meeting leading to the development of this section and there was no consensus to adopt the Tribal position. As a result, the Committee did not change the rule to address this comment.

Issue: Preamble does not accurately describe scope of § 1000.532(a). One commenter stated that HUD's preamble describing the scope of § 1000.532(a) inaccurately describes the scope of this section. The commenter stated that the preamble describes this section as covering ''significant noncompliance with major activity of a recipient's IHP'' when the proposed section covers any act of substantial noncompliance as defined in § 1000.534, which includes events that are financially significant, whether or not a major activity is involved. The commenter recommended that HUD clarify this language in the final rule.

Response: The Committee considered this comment and agrees that it does not recommend changes to the regulatory text of the final rule. As a result, the Committee agrees that § 1000.532(a) does not require change at this final rule stage. The commenter raises a concern regarding the accuracy of the section of the preamble to the proposed rule that describes § 1000.532(a) (76 FR 71479–71480). HUD and the Committee reviewed this section of the preamble and agree it does not clearly describe § 1000.532(a). Specifically, the preamble to the proposed rule states that § 1000.532(a) applies to ''significant noncompliance with a major activity of a recipients IHP.'' To clarify, the final rule at § 1000.532 applies to several categories of ''substantial noncompliance'' as that term is defined in § 1000.534.

Issue: Provision regarding how long the recipient must maintain program records should be clarified (§ 1000.552(b)). Several commenters stated that only smaller tribes will be controlled by this provision and that most tribes and TDHEs are subject to the Single Audit Act and existing § 1000.552(c). The commenters recommended that HUD combine proposed § 1000.552(b) and existing § 1000.552(c) to make one clearly stated and understandable statement.

Response: The Committee considered these comments and agrees not to change § 1000.552(b) to address this comment.

C. Comments Regarding Nonconsensus Items

Issue: Procedures to respond to HUD remedial actions are insufficient and do not conform to statute (§§ 1000.528 to 1000.536). Several commenters stated that sections 401 and 405 of NAHASDA require full due process for recipients before any NAHASDA funds can be reduced or recaptured for any reason. Full due process includes adequate and detailed notice, the right of the recipient to respond, a hearing, and a final determination made by a fair and impartial decisionmaker. Furthermore, the commenters stated that NAHASDA does not provide for the recapture of funds spent on eligible affordable housing activities under any circumstances. The commenters stated that the proposed regulations do not sufficiently or clearly address these requirements. They recommended that the Committee propose new regulations that make these due process requirements clear and state that recapture of NAHASDA funds that have already been spent on eligible affordable housing activities is prohibited under all circumstances.

Response: No change has been made to this final rule in response to these comments. As discussed in detail in the preamble to the proposed rule, the Committee could not reach consensus on the recapture of expenditures on affordable housing activities. Because decisionmaking during the negotiated rulemaking process was based on

consensus, the absence of consensus on recapture of funds, even after the full consideration of public comments, precluded the Committee from adopting the changes proposed by the commenters.

Issue: Remedial actions in the event of substantial noncompliance; HUD should reconsider opposition to three nonconsensus items (§ 1000.532).

Several commenters urged HUD to reconsider its opposition to the tribal position on three nonconsensus items. Initially, the commenters urged HUD to include in the final rule the Tribes' proposal to impose a 3-year ''statute of limitations'' on HUD enforcement actions. The commenters stated that such a limitation would provide certainty and stability to tribes and TDHEs in their operations. Second, the commenters urged HUD to incorporate the Tribes' proposal to retain the existing language that would prohibit HUD from recapturing funds that have already been distributed to recipients and expended on affordable housing activities, stating that the recapture of funds is unduly punitive to recipients and would have a potentially adverse impact on low-income tenants and homebuyers who depend on the recipients for ongoing services. Finally, the commenters urged HUD to incorporate the Tribes' proposed language to clarify that the Line of Control Credit System (LOCCS) edit is in fact a ''limitation on the availability of payments to programs, projects, or activities not affected by a failure to comply as described under section 401(a)(1) of NAHASDA.'' The commenters stated that the justification that HUD put forward to support its position is not borne out by the facts or the law.

Another commenter stated that procedures to be used for noncompliance are extremely important to recipients, and while it did not object to § 1000.532 as proposed, it is important for HUD and tribes to reach consensus concerning procedures to be used when noncompliance that is not ''substantial'' is involved.

Response: No change has been made to this final rule in response to these comments. HUD and the Committee considered these comments and for the reasons discussed in the preamble to the proposed rule, could not reach consensus on any of these three items. Because decisionmaking during the negotiated rulemaking process was based on consensus, the absence of consensus on these three items, even after the full consideration of public comments, precluded the Committee from adopting the changes proposed by the commenters.

Issue: LOCCS edit is subject to section 401(a)(1) of NAHASDA and should be reconsidered. Several commenters recommended that the rule incorporate the Tribes' proposed language that clarifies that the LOCCS edit is a ''limitation on the availability of payments to programs, projects, or activities not affected by a failure to comply,'' under section 401(a)(1) of NAHASDA, subject to notice and the opportunity for hearing before terminating, reducing, or limiting the availability of payments. The commenters stated that the justification that HUD put forward during the negotiations to support its position is not borne out by the facts or the law cited by HUD, and that HUD's efforts in other programs to avoid due process requirements when restricting or limiting access to funds have been struck down by the courts. Another commenter disagreed with HUD's position regarding the LOCCS edit and stated that HUD will likely be required to publish guidance regarding the provision. The commenter cautioned that unless the guidance is subject to HUD's tribal consultation policy, such guidance would infringe on tribal self-determination.

Response: As discussed in detail in the preamble to the November 18, 2011, proposed rule, HUD and the Tribes disagree as to whether a ''LOCCS edit'' is a ''limitation on the availability of payments to programs, projects, or activities not affected by a failure to comply,'' as described under section 401(a)(1) of NAHASDA. Interested parties are directed to review the preamble to the proposed rule for a full discussion of the position of the parties. Because decisionmaking during the negotiated rulemaking process was based on consensus, the absence of consensus, even after the full consideration of public comments, precluded the Committee from adopting the changes proposed by the commenters.

Issue: Hearing Requirements for Formula Current Assisted Stock (FCAS) overcounts should be reconsidered (§ 1000.532(b)). Several commenters stated that the tribally proposed language that would make some level of inaccuracy in FCAS reporting by the recipient a substantial noncompliance requiring a hearing should be reconsidered. The commenters strongly recommend that the Committee propose new regulations that make the statutory due process requirements clear in the case of overcounts where a recipient would lose a substantial amount of their annual funding.

Response: As discussed in detail in the preamble to the November 18, 2011, proposed rule, HUD and the Tribes disagree on the meaning of section 401(a)(2) of NAHASDA, which addresses the counting of FCAS units. Interested parties are directed to review the preamble to the proposed rule for a full discussion of the position of the parties. The Tribes also recommended the addition of a new subsection to § 1000.534 that would provide that a FCAS overcount, in itself, does not constitute substantial noncompliance. Because decisionmaking during the negotiated rulemaking process was based on consensus, the absence of consensus on FCAS overcounting, even after the full consideration of public comments, precluded the Committee from adopting the changes proposed by the commenters.

Issue: Preamble does not accurately describe hearing requirement for FCAS overcounts. One commenter stated that HUD failed to include a full explanation of the Committee's failure to reach consensus of the FCAS overcount issue in the preamble of the rule. The commenter stated that the October 2010 version of the preamble had the full explanation, including a discussion of whether section 401(a)(2) of NAHASDA, as amended, required a hearing before any grant amount adjustment by HUD. The October 2010 version also addressed the Committee's broader discussions regarding the procedural protections to be applied to both noncompliance and ''substantial'' noncompliance, and would have ensured that even in cases not involving substantial noncompliance, recipients would have minimum due process protections of notice and an opportunity for some form of hearing. The commenter stated that the failure to include the full discussion of these issues as provided in the October 2010 version downplays the significance of the importance of the issue to recipients. The commenter concluded by recommending that even if HUD persists in omitting the provisions concerning noncompliance that is not substantial, the October 2010 preamble discussion of this issue should be included in the published version of the rules.

Response: As discussed in the response immediately preceding this comment, HUD and the Tribes were unable to reach consensus on this issue. Accordingly, the lack of consensus precluded the Committee from adopting the changes proposed by the commenter.

V. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This final rule was determined not to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866. The docket file is available for public inspection in the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1–800–877–8339.

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0218. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis for any rule that is subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The requirements of this rule apply to Indian tribal governments and their tribal housing authorities. Tribal governments and their tribal housing authorities are not covered by the definition of ''small entities'' under the RFA. Accordingly, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This rule will not impose any federal mandate on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Environmental Review

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll free, at 1–800–877–8339.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number (CFDA) for Indian Housing Block Grants is 14.867, and the CFDA for Title VI Federal Guarantees for Financing Tribal Housing Activities is 14.869.

List of Subjects in 24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD amends 24 CFR part 1000 as follows:

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

■ 1. The authority citation for 24 CFR part 1000 continues to read as follows:

Authority: 25 U.S.C. 4101 *et seq.;* 42 U.S.C. 3535(d).

■ 2. Revise § 1000.2(a)(6) and (a)(7) to read as follows:

§ 1000.2 What are the guiding principles in the implementation of NAHASDA?

(a) * * *

(6) The need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the federal government shall work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for Indian tribes and their members.

(7) Federal assistance to meet these responsibilities shall be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93–638 (25 U.S.C. 450 *et seq.*).

* * * * *

■ 3. Add § 1000.9 to read as follows:

§ 1000.9 How is negotiated rulemaking conducted when promulgating NAHASDA regulations?

The negotiated rulemaking procedures and requirements set out in section 106(b) of NAHASDA shall be conducted as follows:

(a) *Committee membership.* In forming a negotiated rulemaking committee, HUD shall appoint as committee members representatives of the Federal Government and representatives of diverse tribes and program recipients.

(b) *Initiation of rulemaking.* HUD shall initiate a negotiated rulemaking not later than 90 days after the enactment of any act to reauthorize or significantly amend NAHASDA.

(c) *Work groups.* Negotiated rulemaking committees may form workgroups made up of committee members and other interested parties to meet during committee sessions and between sessions to develop specific rulemaking proposals for committee consideration.

(d) *Further review.* Negotiated rulemaking committees shall provide recommended rules to HUD. Once rules are proposed by HUD, they shall be published for comment in the **Federal Register**. Any comments will be further reviewed by the committee and HUD before HUD determines if the rule or rules will be adopted.

■ 4. In § 1000.10(b), revise the definition of ''*Indian area''* and add, in alphabetical order, the definitions for the terms ''*Housing related activities,''* ''*Housing related community development,''* ''*Outcomes,''* and ''*Tribal program year,''* to read as follows:

§ 1000.10 What definitions apply in these regulations?

* * * * *

(b) * * *

Housing related activities, for purposes of program income, means any facility, community building, infrastructure, business, program, or activity, including any community development or economic development activity, that:

(1) Is determined by the recipient to be beneficial to the provision of housing in an Indian area; and

(2) Would meet at least one of the following conditions:

(i) Would help an Indian tribe or its tribally designated housing entity to reduce the cost of construction of Indian housing;

(ii) Would make housing more affordable, energy efficient, accessible, or practicable in an Indian area;

(iii) Would otherwise advance the purposes of NAHASDA.

Housing related community development:

(1) Means any facility, community building, business, activity, or infrastructure that:

(i) Is owned by an Indian tribe or a tribally designated housing entity;

(ii) Is necessary to the provision of housing in an Indian area; and

(iii)(A) Would help an Indian tribe or tribally designated housing entity reduce the cost of construction of Indian housing;

(B) Would make housing more affordable, energy efficient, accessible, or practicable in an Indian area; or

(C) Would otherwise advance the purposes of NAHASDA.

(2) Does not include any activity conducted by any Indian tribe under the Indian Gaming Regulatory Act (25 U.S.C. 2701 *et seq.*)

* * * * *

Indian Area means the area within which an Indian tribe operates affordable housing programs or the area in which a TDHE, as authorized by one or more Indian tribes, operates affordable housing programs. Whenever the term ''jurisdiction'' is used in NAHASDA, it shall mean ''Indian Area,'' except where specific reference is made to the jurisdiction of a court.

* * * * *

Outcomes are the intended results or consequences important to program beneficiaries, the IHBG recipient, and the tribe generally from carrying out the housing or housing-related activity as determined by the tribe (and/or its TDHE).

* * * * *

Tribal program year means the fiscal year of the IHBG recipient.

* * * * *

■ 5. In § 1000.12, revise paragraph (d) to read as follows:

§ 1000.12 What nondiscrimination requirements are applicable?

* * * * *

(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. The Title VI and Title VIII requirements do not apply to actions under NAHASDA by federally recognized Indian tribes and their TDHEs. State-recognized Indian tribes and their TDHEs may provide preference for tribal members and other Indian families pursuant to NAHASDA sections 201(b) and 101(k) (relating to tribal preference in employment and contracting).

■ 6. In § 1000.16, revise paragraphs (a)(1) and (c), redesignate paragraph (e) as paragraph (f), and add new paragraph (e) to read as follows:

§ 1000.16 What labor standards are applicable?

(a) * * *

(1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale, or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 3141–44, 3146, and 3147) to be paid to laborers and mechanics employed in the development of affordable housing.

* * * * *

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of $100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701).

* * * * *

(e) Paragraphs (a) through (d) of this section shall not apply to any contract or agreement for assistance, sale, or lease pursuant to NAHASDA, or to any contract for construction, development, operations, or maintenance thereunder, if such contract or agreement for assistance, sale, or lease is otherwise covered by one or more laws or regulations adopted by an Indian tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe. Paragraphs (a) through (d) of this section shall also not apply to work performed directly by tribal or TDHE employees under a contract or agreement for assistance, sale, or lease, that is covered by one or more such laws or regulations adopted by an Indian tribe.

* * * * *

■ 7. Add § 1000.21 to read as follows:

§ 1000.21 Under what circumstances are waivers of the environmental review procedures available to tribes?

A tribe or recipient may request that the Secretary waive the requirements under section 105 of NAHASDA. The Secretary may grant the waiver if the Secretary determines that a failure on the part of a recipient to comply with provisions of this section:

(a) Will not frustrate the goals of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) or any other provision of law that furthers the goals of that Act;

(b) Does not threaten the health or safety of the community involved by posing an immediate or long-term hazard to residents of that community;

(c) Is a result of inadvertent error, including an incorrect or incomplete certification provided under section 105(c)(1) of NAHASDA; and

(d) May be corrected through the sole action of the recipient.

■ 8. In § 1000.26, revise paragraphs (a)(5) and (a)(11) to read as follows:

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) * * *

(5) Section 85.21, ''Payment,'' except that HUD shall not require a recipient to expend retained program income before drawing down or expending IHBG funds.

* * * * *

(11)(i) *General.* Section 85.36 of this title, ''Procurement,'' except paragraph (a), subject to paragraphs (a)(11)(ii) and (a)(11)(iii) of this section.

(ii) *Bonding requirements.* There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(A) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(B) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(C) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(iii) *De minimis procurement.* A recipient shall not be required to comply with § 85.36 of this title with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value of less than $5,000.

(iv) *Utilizing federal supply sources in procurement.* In accordance with Section 101(j) of NAHASDA, recipients may use federal supply sources made available by the General Services Administration pursuant to 40 U.S.C. 501.

* * * * *

■ 9. In § 1000.42, add paragraphs (c) and (d) to read as follows:

§ 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?

* * * * *

(c) *Tribal preference.* Recipients meet the section 3 requirements when they comply with employment and contract preference laws adopted by their tribe in accordance with section 101(k) of NAHASDA.

(d) *Applicability.* For purposes of section 3, NAHASDA funding is subject to the requirements applicable to the category of programs entitled ''Other Programs'' that provide housing and community development assistance (12 U.S.C. 1701u(c)(2), (d)(2)).

■ 10. Revise § 1000.48 to read as follows:

§ 1000.48 Are Indian or tribal preference requirements applicable to IHBG activities?

Grants under this part are subject to Indian preference under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) or, if applicable under section 101(k) of NAHASDA, tribal preference in employment and contracting.

(a)(1) Section 7(b) provides that any contract, subcontract, grant, or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(i) Preference and opportunities for training and employment shall be given to Indians; and

(ii) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(2) The following definitions apply:

(i) The Indian Self-Determination and Education Assistance Act defines ''Indian'' to mean a person who is a member of an Indian tribe and defines ''Indian tribe'' to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) In section 3 of the Indian Financing Act of 1974, ''economic enterprise'' is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines ''Indian organization'' to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(b) If tribal employment and contract preference laws have not been adopted by the Indian tribe, section 7(b) Indian preference provisions shall apply.

(c) Exception for de minimis procurements. A recipient shall not be required to apply Indian preference requirements under Section 7(b) of the Indian Self-Determination and Education Assistance Act with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value less than $5,000.

■ 11. Revise § 1000.50, to read as follows:

§ 1000.50 What tribal or Indian preference requirements apply to IHBG administration activities?

(a) In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA.

(b) In the absence of tribal employment and contract preference laws, a recipient must, to the greatest extent feasible, give preference and opportunities for training and employment in connection with the administration of grants awarded under this part to Indians in accordance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

■ 12. Revise § 1000.52 to read as follows:

§ 1000.52 What tribal or Indian preference requirements apply to IHBG procurement?

(a) In accordance with Section 101(k) of NAHASDA, a recipient shall apply the tribal employment and contract preference laws (including regulations and tribal ordinances) adopted by the Indian tribe that receives a benefit from funds granted to the recipient under NAHASDA.

(b) In the absence of tribal employment and contract preference laws, a recipient must, to the greatest extent feasible, give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises in accordance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

(c) The following provisions apply to the application of Indian preference under paragraph (b) of this section:

(1) In applying Indian preference, each recipient shall:

(i) Certify to HUD that the policies and procedures adopted by the recipient will provide preference in procurement

activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (An Indian preference policy that was previously approved by HUD for a recipient will meet the requirements of this section); or

(ii) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(iii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises.

(2) If the recipient selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid, or a proposal to perform the contract at a reasonable cost, then the recipient shall:

(i) Readvertise the contract, using any of the methods described in paragraph (c)(1) of this section; or

(ii) Readvertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (c)(1) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A recipient, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Recipients may require prospective contractors to provide the following information before submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management, and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The recipient shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that, to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this section 7(b) clause in every subcontract in connection with the project; shall require subcontractors at each level to include this section 7(b) clause in every subcontract they execute in connection with the project; and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

(d) A recipient shall not be required to apply Indian preference requirements under Section 7(b) of the Indian Self-Determination and Education Assistance Act with respect to any procurement, using a grant provided under NAHASDA, of goods and services with a value less than $5,000.

■ 13. In § 1000.58, revise paragraphs (f) and (g) to read as follows:

§ 1000.58 Are there limitations on the investment of IHBG funds?

* * * * *

(f) A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount.

(g) Investments under this section may be for a period no longer than 5 years.

■ 14. Revise § 1000.60 to read as follows:

§ 1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?

Yes. In accordance with the standards and remedies contained in § 1000.532 relating to substantial noncompliance, HUD will use its powers under a depository agreement and take such other actions as may be legally necessary to suspend funds disbursed to the recipient until the substantial noncompliance has been remedied. In taking this action, HUD shall comply with all appropriate procedures, appeals, and hearing rights prescribed elsewhere in this part.

■ 15. In § 1000.62, revise the heading and paragraph (b) to read as follows:

§ 1000.62 What is considered program income?

* * * * *

(b) If the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or treated as program income.

* * * * *

■ 16. Add § 1000.64 to subpart A to read as follows:

§ 1000.64 What are the permissible uses of program income?

Program income may be used for any housing or housing related activity and is not subject to other federal requirements.

■ 17. In § 1000.104, revise paragraphs (b) and (c), and add paragraph (d), to read as follows:

§ 1000.104 What families are eligible for affordable housing activities?

* * * * *

(b) A non-low-income family may receive housing assistance in accordance with § 1000.110.

(c) A family may receive housing assistance on a reservation or Indian

area if the family's housing needs cannot be reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families.

(d) A recipient may provide housing or housing assistance provided through affordable housing activities assisted with grant amounts under NAHASDA for a law enforcement officer on an Indian reservation or other Indian area, if:

(1) The officer:

(i) Is employed on a full-time basis by the federal government or a state, county, or other unit of local government, or lawfully recognized tribal government; and

(ii) In implementing such full-time employment, is sworn to uphold, and make arrests for, violations of federal, state, county, or tribal law; and

(2) The recipient determines that the presence of the law enforcement officer on the Indian reservation or other Indian area may deter crime.

■ 18. Revise § 1000.106 to read as follows:

§ 1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?

(a) Housing assistance for non-low-income families requires HUD approval only as required in §§ 1000.108 and 1000.110.

(b) Assistance for essential families under section 201(b)(3) of NAHASDA does not require HUD approval but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and that the family's housing needs cannot be reasonably met without such assistance.

■ 19. Revise § 1000.108 to read as follows:

§ 1000.108 How is HUD approval obtained by a recipient for housing for non-low-income families and model activities?

Recipients are required to submit proposals to operate model housing activities as defined in section 202(6) of NAHASDA and to provide assistance to non-low-income families in accordance with section 201(b)(2) of NAHASDA. Assistance to non-low-income families must be in accordance with § 1000.110. Proposals may be submitted in the recipient's IHP or at any time by amendment of the IHP, or by special request to HUD at any time. HUD may approve the remainder of an IHP, notwithstanding disapproval of a model activity or assistance to non-low-income families.

■ 20. Revise § 1000.110 to read as follows:

§ 1000.110 Under what conditions may non-low-income Indian families participate in the program?

(a) A family that was low-income at the times described in § 1000.147 but subsequently becomes a non-low-income family due to an increase in income may continue to participate in the program in accordance with the recipient's admission and occupancy policies. The 10 percent limitation in paragraph (c) of this section shall not apply to such families. Such families may be made subject to the additional requirements in paragraph (d) of this section based on those policies. This includes a family member or household member who takes ownership of a homeownership unit under § 1000.146.

(b) A recipient must determine and document that there is a need for housing for each family that cannot reasonably be met without such assistance.

(c) A recipient may use up to 10 percent of the amount planned for the tribal program year for families whose income falls within 80 to 100 percent of the median income without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of the amount planned for the tribal program year for such assistance or to provide housing for families with income over 100 percent of median income.

(d) Non-low-income families cannot receive the same benefits provided low-income Indian families. The amount of assistance non-low-income families may receive will be determined as follows:

(1) The rent (including homebuyer payments under a lease purchase agreement) to be paid by a non-low-income family cannot be less than: (Income of non-low-income family/Income of family at 80 percent of median income) × (Rental payment of family at 80 percent of median income), but need not exceed the fair market rent or value of the unit.

(2) Other assistance, including down payment assistance, to non-low-income families, cannot exceed: (Income of family at 80 percent of median income/Income of non-low-income family) × (Present value of the assistance provided to family at 80 percent of median income).

(e) The requirements set forth in paragraphs (c) and (d) of this section do not apply to non-low-income families that the recipient has determined to be essential under § 1000.106(b).

■ 21. Revise § 1000.114 to read as follows:

§ 1000.114 How long does HUD have to review and act on a proposal to provide assistance to non-low-income families or a model housing activity?

Whether submitted in the IHP or at any other time, HUD will have 60 calendar days after receiving the proposal to notify the recipient in writing that the proposal to provide assistance to non-low-income families or for model activities is approved or disapproved. If no decision is made by HUD within 60 calendar days of receiving the proposal, the proposal is deemed to have been approved by HUD.

■ 22. Revise § 1000.116 to read as follows:

§ 1000.116 What should HUD do before declining a proposal to provide assistance to non low-income families or a model housing activity?

HUD shall consult with a recipient regarding the recipient's proposal to provide assistance to non-low-income families or a model housing activity. To the extent that resources are available, HUD shall provide technical assistance to the recipient in amending and modifying the proposal, if necessary. In case of a denial, HUD shall give the specific reasons for the denial.

■ 23. In § 1000.118, revise the heading and paragraph (a), to read as follows:

§ 1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non-low-income families or a model housing activity?

(a) Within 30 calendar days of receiving HUD's denial of a proposal to provide assistance to non-low-income families or a model housing activity, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration.

* * * * *

■ 24. Add § 1000.141 to read as follows:

§ 1000.141 What is "useful life" and how is it related to affordability?

Useful life is the time period during which an assisted property must remain affordable, as defined in section 205(a) of NAHASDA.

■ 25. Revise § 1000.142 to read as follows:

§ 1000.142 How does a recipient determine the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?

To the extent required in the IHP, each recipient shall describe its determination of the useful life of the assisted housing units in its developments in accordance with the local conditions of the Indian area of the

recipient. By approving the plan, HUD determines the useful life in accordance with section 205(a)(2) of NAHASDA and for purposes of section 209.

■ 26. Add § 1000.143 to read as follows:

§ 1000.143 How does a recipient implement its useful life requirements?

A recipient implements its useful life requirements by placing a binding commitment, satisfactory to HUD, on the assisted property.

■ 27. Redesignate § 1000.144 and § 1000.146 as § 1000.145 and § 1000.147, respectively.

■ 28. Add § 1000.144 to read as follows:

§ 1000.144 What are binding commitments satisfactory to HUD?

A binding commitment satisfactory to HUD is a written use restriction agreement, developed by the recipient, and placed on an assisted property for the period of its useful life.

■ 29. Add § 1000.146 to read as follows:

§ 1000.146 Are binding commitments for the remaining useful life of property applicable to a family member or household member who subsequently takes ownership of a homeownership unit?

No. The transfer of a homeownership unit to a family member or household member is not subject to a binding commitment for the remaining useful life of the property. Any subsequent transfer by the family member or household member to a third party (not a family member or household member) is subject to any remaining useful life under a binding commitment.

■ 30. Revise redesignated § 1000.147, to read as follows:

§ 1000.147 When does housing qualify as affordable housing under NAHASDA?

(a) Housing qualifies as affordable housing, provided that the family occupying the unit is low-income at the following times:

(1) In the case of rental housing, at the time of the family's initial occupancy of such unit;

(2) In the case of a contract to purchase existing housing, at the time of purchase;

(3) In the case of a lease-purchase agreement for existing housing or for housing to be constructed, at the time the agreement is signed; and

(4) In the case of a contract to purchase housing to be constructed, at the time the contract is signed.

(b) Families that are not low-income as described in this section may be eligible under § 1000.104 or § 1000.110.

■ 31. In § 1000.150, revise the heading to read as follows:

§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on applicants for employment and on adult applicants for housing assistance, or tenants?

* * * * *

■ 32. Revise § 1000.152 to read as follows:

§ 1000.152 How is the recipient to use criminal conviction information?

(a) With regard to adult tenants and applicants for housing assistance, the recipient shall use the criminal conviction information described in § 1000.150 only for applicant screening, lease enforcement, and eviction actions.

(b) With regard to applicants for employment, the recipient shall use the criminal conviction information described in § 1000.150 for the purposes set out in section 208 of NAHASDA.

(c) The criminal conviction information described in § 1000.150 may be disclosed only to any person who has a job-related need for the information and who is an authorized officer, employee, or representative of the recipient or the owner of housing assisted under NAHASDA.

■ 33. Revise § 1000.201 to read as follows:

§ 1000.201 How are funds made available under NAHASDA?

Every fiscal year HUD will make grants under the IHBG program to recipients who have submitted to HUD for a tribal program year an IHP in accordance with § 1000.220 to carry out affordable housing activities.

■ 34. Revise § 1000.214 to read as follows:

§ 1000.214 What is the deadline for submission of an IHP?

IHPs must be initially sent by the recipient to the Area ONAP no later than 75 days before the beginning of a tribal program year. Grant funds cannot be provided until the plan due under this section is determined to be in compliance with section 102 of NAHASDA and funds are available.

■ 35. Revise § 1000.216 to read as follows:

§ 1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by no later than 75 days before the beginning of the tribal program year?

If the IHP is not initially sent by at least 75 days before the beginning of the tribal program year, the recipient will not be eligible for IHBG funds for that fiscal year. Any funds not obligated because an IHP was not received before this deadline has passed shall be distributed by formula in the following year.

■ 36. Revise § 1000.220 to read as follows:

§ 1000.220 What are the requirements for the IHP?

The IHP requirements are set forth in section 102(b) of NAHASDA. In addition, §§ 1000.56, 1000.108, 1000.120, 1000.134, 1000.142, 1000.238, 1000.302, and 1000.328 require or permit additional items to be set forth in the IHP for HUD determinations required by those sections. Recipients are only required to provide IHPs that contain these elements in a form prescribed by HUD. If a TDHE is submitting a single IHP that covers two or more Indian tribes, the IHP must contain a separate certification in accordance with section 102(d) of NAHASDA and IHP Tables for each Indian tribe when requested by such Indian tribes. However, Indian tribes are encouraged to perform comprehensive housing needs assessments and develop comprehensive IHPs and not limit their planning process to only those housing efforts funded by NAHASDA. An IHP should be locally driven.

■ 37. Revise § 1000.224 to read as follows:

§ 1000.224 Can any part of the IHP be waived?

Yes. HUD has general authority under section 101(b)(2) of NAHASDA to waive any IHP requirements when an Indian tribe cannot comply with IHP requirements due to exigent circumstances beyond its control, for a period of not more than 90 days. The waiver authority under section 101(b)(2) of NAHASDA provides flexibility to address the needs of every Indian tribe, including small Indian tribes. The waiver may be requested by the Indian tribe or its TDHE (if such authority is delegated by the Indian tribe), and such waiver shall not be unreasonably withheld.

■ 38. Add § 1000.225 to read as follows:

§ 1000.225 When may a waiver of the IHP submission deadline be requested?

A recipient may request a waiver for a period of not more than 90 days beyond the IHP submission due date.

■ 39. Add § 1000.227 to read as follows:

§ 1000.227 What shall HUD do upon receipt of an IHP submission deadline waiver request?

The waiver shall be decided upon by HUD within 45 days of receipt of the waiver request. HUD shall notify the recipient in writing within 45 days of receipt of the waiver request whether the request is approved or denied.

■ 40. In § 1000.230, revise paragraph (a)(1) to read as follows:

§ 1000.230 What is the process for HUD review of IHPs and IHP amendments?

* * * * *

(a) * * *

(1) Comply with the requirements of section 102 of NAHASDA, which outlines the IHP submission requirements; however, the recipient may use either the HUD-estimated IHBG amount or the IHBG amount from their most recent compliant IHP;

* * * * *

■ 41. In § 1000.236, revise paragraphs (a)(4), (a)(5), and (b), and add paragraph (a)(6), to read as follows:

§ 1000.236 What are eligible administrative and planning expenses?

(a) * * *

(4) Preparation of the annual performance report;

(5) Challenge to and collection of data for purposes of challenging the formula; and

(6) Administrative and planning expenses associated with expenditure of non-IHBG funds on affordable housing activities if the source of the non-IHBG funds limits expenditure of its funds on such administrative expenses.

(b) Staff and overhead costs directly related to carrying out affordable housing activities or comprehensive and community development planning activities can be determined to be eligible costs of the affordable housing activity or considered as administration or planning at the discretion of the recipient.

■ 42. Revise § 1000.238 to read as follows:

§ 1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

Recipients receiving in excess of $500,000 may use up to 20 percent of their annual expenditures of grant funds or may use up to 20 percent of their annual grant amount, whichever is greater. Recipients receiving $500,000 or less may use up to 30 percent of their annual expenditures of grant funds or up to 30 percent of their annual grant amount, whichever is greater. When a recipient is receiving grant funds on behalf of one or more grant beneficiaries, the recipient may use up to 30 percent of the annual expenditure of grant funds or up to 30 percent of the annual grant amount, whichever is greater, of each grant beneficiary whose allocation is $500,000 or less, and up to 20 percent of the annual expenditure of grant funds or up to 20 percent of the annual grant amount, whichever is greater, of each grant beneficiary whose allocation is greater than $500,000. HUD approval is required if a higher percentage is requested by the recipient. Recipients combining grant funds with other funding may request HUD approval to use a higher percentage based on its total expenditure of funds from all sources for that year. When HUD approval is required, HUD must take into consideration any cost of preparing the IHP, challenges to and collection of data, the recipient's grant amount, approved cost allocation plans, and any other relevant information with special consideration given to the circumstances of recipients receiving minimal funding.

■ 43. Add § 1000.239 to read as follows:

§ 1000.239 May a recipient establish and maintain reserve accounts for administration and planning?

Yes. In addition to the amounts established for planning and administrative expenses under §§ 1000.236 and 1000.238, a recipient may establish and maintain separate reserve accounts only for the purpose of accumulating amounts for administration and planning relating to affordable housing activities. These amounts may be invested in accordance with § 1000.58(c). Interest earned on reserves is not program income and shall not be included in calculating the maximum amount of reserves. The maximum amount of reserves, whether in one or more accounts, that a recipient may have available at any one time is calculated as follows:

(a) Determine the 5-year average of administration and planning amounts, not including reserve amounts, expended in a tribal program year.

(b) Establish ¼ of that amount for the total eligible reserve.

■ 44. Add § 1000.244 to subpart C to read as follows:

§ 1000.244 If the recipient has made a good-faith effort to negotiate a cooperation agreement and tax-exempt status but has been unsuccessful through no fault of its own, may the Secretary waive the requirement for a cooperation agreement and a tax exemption?

Yes. Recipients must submit a written request for waiver to the recipient's Area ONAP. The request must detail a good faith effort by the recipient, identify the housing units involved, and include all pertinent background information about the housing units. The recipient must further demonstrate that it has pursued and exhausted all reasonable channels available to it to reach an agreement to obtain tax-exempt status, and that failure to obtain the required agreement and tax-exempt status has been through no fault of its own. The Area ONAP will forward the request, its recommendation, comments, and any additional relevant documentation to the Deputy Assistant Secretary for Native American Programs for processing to the Assistant Secretary.

■ 45. Add § 1000.246 to subpart C to read as follows:

§ 1000.246 How must HUD respond to a request for waiver of the requirement for a cooperation agreement and a tax exemption?

(a) HUD shall make a determination to such request for a waiver within 30 days of receipt or provide a reason to the requestor for the delay, identify all additional documentation necessary, and provide a timeline within which a determination will be made.

(b) If the waiver is granted, HUD shall notify the recipient of the waiver in writing and inform the recipient of any special condition or deadlines with which it must comply. Such waiver shall remain effective until revoked by the Secretary.

(c) If the waiver is denied, HUD shall notify the recipient of the denial and the reason for the denial in writing. If the request is denied, IHBG funds may not be spent on the housing units. If IHBG funds have been spent on the housing units prior to the denial, the recipient must reimburse the grant for all IHBG funds expended.

■ 46. In § 1000.302, revise paragraph (2)(i)(B) of the definition of ''Formula area'' and paragraph (3) of the definition of ''Substantial housing services,'' to read as follows:

§ 1000.302 What are the definitions applicable for the IHBG formula?

* * * * *

Formula area. * * *

(2)(i) * * *

(B) Is providing substantial housing services and will continue to expend or obligate funds for substantial housing services, as reflected in its Indian Housing Plan and Annual Performance Report for this purpose.

* * * * *

Substantial housing services are: * * *

(3) HUD shall require that the Indian tribe annually provide written verification, in its Indian Housing Plan and Annual Performance Report, that the affordable housing activities it is providing meet the definition of substantial housing services.

* * * * *

■ 47. In § 1000.328, revise paragraph (b)(2) to read as follows:

§ 1000.328 What is the minimum amount that an Indian tribe may receive under the need component of the formula?

* * * * *

(b) * * *

(2) Certify in its Indian Housing Plan the presence of any households at or below 80 percent of median income.

■ 48. Revise § 1000.332 to read as follows:

§ 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide the Indian tribe or TDHE notice of the data to be used for the formula and projected allocation amount by June 1.

■ 49. Remove § 1000.408.

■ 50. In § 1000.410, revise paragraphs (c) and (d), and add paragraph (e) to read as follows:

§ 1000.410 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

* * * * *

(c) The repayment period may exceed 20 years, and the length of the repayment period cannot be the sole basis for HUD disapproval;

(d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws; and

(e) A guarantee made under Title VI of NAHASDA shall guarantee repayment of 95 percent of the unpaid principal and interest due on the notes or other obligations guaranteed.

■ 51. In § 1000.424, revise paragraph (a), remove paragraph (d)(2), and redesignate paragraphs (d)(3) through (d)(6) as paragraphs (d)(2) through (d)(5), respectively, to read as follows:

§ 1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

* * * * *

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies:

(1) As an affordable housing activity as defined in section 202 of NAHASDA; or

(2) As a housing related community development activity under section 601(a) of NAHASDA.

* * * * *

■ 52. In § 1000.428, revise paragraphs (b) and (e) to read as follows:

§ 1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

* * * * *

(b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(c) or section 605(d) of NAHASDA.

* * * * *

(e) The activities to be undertaken are not eligible under either:

(1) Section 202 of NAHASDA; or

(2) Section 601(a) of NAHASDA.

* * * * *

■ 53. Add § 1000.503 to read as follows:

§ 1000.503 What is an appropriate extent of HUD monitoring?

(a) Subject to any conflicting or supplementary requirement of specific legislation, and upon the effective date of this regulation, the frequency of HUD monitoring of a particular recipient will be determined by application of the HUD standard risk assessment factors, provided that when a recipient requests to be monitored, HUD shall conduct such monitoring as soon as practicable. The HUD standard risk assessment factors may be but are not limited to the following:

(1) Annual grant amount;

(2) Disbursed amounts—all open grants;

(3) Months since last on-site monitoring;

(4) Delinquent Office of Management and Budget (OMB) Circular A–133 audits;

(5) Open OMB Circular A–133 or Inspector General audit findings;

(6) Conclusions of OMB Circular A–133 auditor;

(7) Open monitoring findings;

(8) Delinquent Annual Performance Reports or Annual Status and Evaluation Reports;

(9) Status of Corrective Action Plan (CAP) or Performance Agreement (PA);

(10) Recipient Self-Monitoring;

(11) Inspection of 1937 Act units;

(12) Preservation of 1937 Act units; and

(13) Any other additional factors that may be determined by HUD, consistent with HUD's Tribal Consultation Policy, by which HUD will send written notification and provide a comment period. Such additional factors shall be provided by program guidance.

(b) If monitoring indicates noncompliance, HUD may undertake additional sampling and review to determine the extent of such noncompliance. The level of HUD monitoring of a recipient once that recipient has been selected for HUD monitoring is as follows:

(1) Review recipient program compliance for the current program year and the 2 prior program years;

(2) On-site inspection of no more than 10 dwelling units or no more than 10 percent of total dwelling units, whichever is greater;

(3) Review of no more than 10 client files or no more than 10 percent of client files, whichever is greater.

(c) Notwithstanding paragraph (b) of this section, HUD may at any time undertake additional sampling and review of prior program years, subject to the records retention limitations of § 1000.552, if HUD has credible information suggesting noncompliance. HUD will share this information with the recipient as appropriate.

(d) A recipient may request ONAP to enter into Self-Monitoring Mutual Agreements or other self-monitoring arrangements with recipients. ONAP will monitor the recipient only in accordance with such agreement or arrangement, unless ONAP finds reasonable evidence of fraud, a pattern of noncompliance, or the significant unlawful expenditure of IHBG funds.

■ 54. Remove § 1000.504.

■ 55. In § 1000.512, revise paragraphs (b) and (c), and add paragraphs (d) and (e), to read as follows:

§ 1000.512 Are performance reports required?

* * * * *

(b) Brief information on the following:

(1) A comparison of actual accomplishments to the planned activities established for the period;

(2) The reasons for slippage if established planned activities were not met; and

(3) Analysis and explanation of cost overruns or high unit costs;

(c) Any information regarding the recipient's performance in accordance with HUD's performance measures, as set forth in section § 1000.524; and

(d) Annual performance data to reflect the accomplishments of the recipient to include, as specified in the IHP:

(1) Permanent and temporary jobs supported with IHBG funds;

(2) Outputs by eligible activity, including:

(i) Units completed or assisted, and

(ii) Families assisted; and

(3) Outcomes by eligible activity.

(e) As applicable, items required under §§ 1000.302 and 1000.544.

■ 56. In § 1000.520, revise the heading, introductory text, and paragraph (c), to read as follows:

§ 1000.520 What are the purposes of HUD's review of the Annual Performance Report?

HUD will review each recipient's Annual Performance Report when submitted to determine whether the recipient:

* * * * *

(c) Whether the Annual Performance Report of the recipient is accurate.

■ 57. In § 1000.524, remove paragraph (a), redesignate paragraphs (b) through (f) as paragraphs (a) through (e), and revise redesignated paragraph (d) to read as follows:

§ 1000.524 What are HUD's performance measures for the review?

* * * * *

(d) The recipient has met the IHP-planned activities in the one-year plan.

* * * * *

■ 58. Revise § 1000.528 to read as follows:

§ 1000.528 What are the procedures for the recipient to comment on the result of HUD's review when HUD issues a report under section 405(b) of NAHASDA?

HUD will issue a draft report to the recipient and Indian tribe within 60 days of the completion of HUD's review. The recipient will have at least 60 days to review and comment on the draft report, as well as provide any additional information relating to the draft report. Upon written notification to HUD, the recipient may exercise the right to take an additional 30 days to complete its review and comment to the draft report. Additional extensions of time for the recipient to complete review and comment may be mutually agreed upon in writing by HUD and the recipient. HUD shall consider the comments and any additional information provided by the recipient. HUD may also revise the draft report based on the comments and any additional information provided by the recipient. HUD shall make the recipient's comments and a final report readily available to the recipient, grant beneficiary, and the public not later than 30 days after receipt of the recipient's comments and additional information.

■ 59. In § 1000.530, revise the heading and paragraph (b), to read as follows:

§ 1000.530 What corrective and remedial actions will HUD request or recommend to address performance problems prior to taking action under § 1000.532?

* * * * *

(b) Failure of a recipient to address performance problems specified in paragraph (a) of this section may result in the imposition of sanctions as prescribed in § 1000.532.

■ 60. Revise § 1000.532 to read as follows:

§ 1000.532 What are the remedial actions that HUD may take in the event of recipient's substantial noncompliance?

(a) If HUD finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provision of NAHASDA or the regulations in this part, HUD shall carry out any of the following actions with respect to the recipient's current or future grants, as appropriate:

(1) Terminate payments under NAHASDA to the recipient;

(2) Reduce payments under NAHASDA to the recipient by an amount equal to the amount of such payments that were not expended in accordance with NAHASDA or these regulations;

(3) Limit the availability of payments under NAHASDA to programs, projects, or activities not affected by the failure to comply; or

(4) In the case of noncompliance described in § 1000.542, provide a replacement TDHE for the recipient.

(b) Before undertaking any action in accordance with paragraph (a) of this section, HUD will notify the recipient in writing of the action it intends to take and provide the recipient an opportunity for an informal meeting to resolve the deficiency. Before taking any action under paragraph (a) of this section, HUD shall provide the recipient with the opportunity for a hearing no less than 30 days prior to taking the proposed action. The hearing shall be held in accordance with § 1000.540. The amount in question shall not be reallocated under the provisions of § 1000.536, until 15 days after the hearing has been conducted and HUD has rendered a final decision.

(c) Notwithstanding paragraphs (a) and (b) of this section, if HUD makes a determination that the failure of a recipient to comply substantially with any material provision of NAHASDA or these regulations is resulting, and would continue to result, in a continuing expenditure of funds provided under NAHASDA in a manner that is not authorized by law, HUD may, in accordance with section 401(a)(4) of NAHASDA, take action under paragraph (a)(3) of this section prior to conducting a hearing under paragraph (b) of this section. HUD shall provide notice to the recipient at the time that HUD takes that action and conducts a hearing, in accordance with section 401(a)(4)(B) of NAHASDA, within 60 days of such notice.

(d) Notwithstanding paragraph (a) of this section, if HUD determines that the failure to comply substantially with the provisions of NAHASDA or these regulations is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, if the recipient requests, HUD shall provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA. A recipient's eligibility for technical assistance under this subsection is contingent on the recipient's execution of, and compliance with, a performance agreement pursuant to Section 401(b) of NAHASDA.

(e) In lieu of, or in addition to, any action described in this section, if the Secretary has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA or these regulations, HUD may refer the matter to the Attorney General of the United States, with a recommendation that appropriate civil action be instituted.

■ 61. In § 1000.534, revise paragraph (a) to read as follows:

§ 1000.534 What constitutes substantial noncompliance?

* * * * *

(a) The noncompliance has a material effect on the recipient meeting its planned activities as described in its Indian Housing Plan;

* * * * *

■ 62. In § 1000.536, revise the heading to read as follows:

§ 1000.536 What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under § 1000.532?

* * * * *

■ 63. Remove § 1000.538.

■ 64. Revise § 1000.544 to read as follows:

§ 1000.544 What audits are required?

Pursuant to NAHASDA section 405(a), the recipient must comply with the requirements of the Single Audit Act (chapter 75 of title 31, United States Code), including OMB Circular A–133, which require annual audits of recipients that expend federal funds equal to or in excess of an amount specified by the Office of Management and Budget (OMB), as set out in OMB Circular A–133, subpart B, section 200. If applicable, a certification that the recipient has not expended federal funds in excess of the audit threshold that is set by OMB shall be included in

the recipient's Annual Performance Report.

■ 65. Revise § 1000.548 to read as follows:

§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

Yes. A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted to the appropriate HUD ONAP area office at the same time it is submitted to the Federal Audit Clearinghouse pursuant to OMB Circular A–133.

■ 66. Revise § 1000.552(b) to read as follows:

§ 1000.552 How long must the recipient maintain program records?

* * * * *

(b) Except as otherwise provided herein, records must be retained for 3 years from the end of the tribal program year during which the funds were expended.

* * * * *

Dated: November 27, 2012.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Cuban Assets Control Regulations to authorize the processing of funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Cuba. OFAC also is amending the Cuban Assets Control Regulations to authorize certain payments for services rendered by Cuba to United States aircraft that currently require the issuance of a specific license.

DATES: *Effective Date:* December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

The U.S. Government issued the Cuban Assets Control Regulations, 31 CFR part 515 (the ''CACR''), on July 8, 1963, under the Trading With the Enemy Act (50 U.S.C. App. 5 *et seq.*). Section 515.201 of the CACR prohibits, *inter alia,* all transfers of credit and all payments in which Cuba or a Cuban national has any interest of any nature whatsoever, direct or indirect, between, by, through, or to any banking institution wheresoever located, with respect to any property subject to the jurisdiction of the United States or by any person subject to the jurisdiction of the United States.

OFAC is amending the CACR to authorize the processing of funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Cuba. OFAC also is amending the CACR to authorize certain payments for services rendered by Cuba to United States aircraft.

Third-country diplomatic and consular funds transfers. To ensure that the prohibitions in the CACR do not impede third-country diplomatic or consular activities in Cuba, OFAC is adding new section 515.579 to the CACR. This new section authorizes the processing of funds transfers otherwise prohibited by the CACR for the operating expenses or other official business of third-country diplomatic or consular missions in Cuba.

Services rendered by Cuba to United States aircraft. OFAC is amending section 515.548 of the CACR to add a general license authorizing payments in connection with overflights of Cuba or emergency landings in Cuba by United States aircraft. Prior to this amendment, such payments required the issuance of a specific license.

Public Participation

Because the amendment of the CACR involves a foreign affairs function, the provisions of Executive Order 12866 of September 30, 1993, and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the CACR are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Aircraft, Banks, Banking, Cuba, Currency, Diplomatic and consular missions, Emergency landings, Overflights.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR part 515 as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

■ 1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010, 7201–7211; 31 U.S.C. 321(b); 50 U.S.C. App 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 104–114, 110 Stat. 785 (22 U.S.C. 6021–6091); Pub. L. 105–277, 112 Stat. 2681; Pub. L. 111–8, 123 Stat. 524; Pub. L. 111–117, 123 Stat. 3034; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

■ 2. Revise § 515.548 to read as follows:

§ 515.548 Services rendered by Cuba to United States aircraft.

Payment to Cuba of charges for services rendered by Cuba in connection with overflights of Cuba or emergency landings in Cuba by aircraft registered in the United States or owned or controlled by, or chartered to, persons

subject to U.S. jurisdiction is authorized.

■ 3. Add new § 515.579 to subpart E to read as follows:

§ 515.579 Third-country diplomatic and consular funds transfers.

Depository institutions, as defined in § 515.333, are authorized to process funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Cuba.

Dated: November 26, 2012.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–29100 Filed 11–30–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2012–0386]

RIN 1625–AA08

Special Local Regulation; Kelley's Island Swim, Lake Erie; Kelley's Island, Lakeside, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations in 33 CFR part 100 by adding a Special Local Regulation within the Captain of the Port Detroit Zone. This regulation is intended to regulate vessel movement in portions of Lake Erie during the annual Kelley's Island Swim. This special local regulated area is necessary to protect swimmers from vessel traffic.

DATES: This final rule is effective January 2, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket number USCG–2012–0386. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LTJG Benjamin Nessia, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419) 418–6040, email *Benjamin.B.Nessia@uscg.mil.* If you have questions on viewing 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
TFR Temporary Final Rule

A. Regulatory History and Information

On June 5, 2012, the Coast Guard published an NPRM entitled Special Local Regulation; Kelley's Island Swim, Lake Erie; Kelley's Island, Lakeside, OH in the **Federal Register** (77 FR 33130). We did not receive any comments in response to the proposed rule. No public meeting was requested and none was held.

B. Basis and Purpose

Each year an organized swimming event takes place in Lake Erie in which individuals swim the four miles between Lakeside and Kelley's Island, OH. The Captain of the Port Detroit has determined that swimmers in close proximity to watercraft and in the shipping channel pose extra and unusual hazards to public safety and property. Thus, the Captain of the Port Detroit has determined that establishing a Special Local Regulation around the location of the race's course will help ensure the safety of persons and property at these events and help minimize the associated risks.

C. Discussion of Comment, Changes and the Final Rule

To mitigate the dangers presented by a large number of swimmers crossing a shipping channel during a four mile competition, the Captain of the Port Detroit has determined that establishing a Special Local Regulation is necessary. Thus, the Coast Guard is amending 33 CFR part 100 by adding § 100.921 to establish a permanent Special Local Regulation. The affected area encompasses all the waters of Lake Erie between Lakeside, OH and Kelley's Island, OH bound by a line extending from a point on land at the Lakeside dock at positions 41°32′51.96″ N; 082°45′3.15″ W and 41°32′52.21″ N; 082°45′2.19″ W and a line extending to Kelley's Island dock to positions 41°35′24.59″ N; 082°42′16.61″ W and 41°35′24.44″ N; 082°42′16.04″ W (Datum: NAD 83). The precise times and dates of enforcement for this regulated area will be determined annually.

The Captain of the Port Detroit will use all appropriate means to notify the public when the Special Local Regulation in this rule will be enforced. Such means may include publication in the **Federal Register**, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimilie (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of the affected area in this section is cancelled prematurely.

No comments were received in response to and there are no changes to the rule as proposed by the NPRM published June 5, 2012.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The regulated area established by this rule will be relatively small and enforced for relatively short time. Also, the regulated area is designed to minimize its impact on navigable waters. Furthermore, this regulated area has been designed to allow vessels to transit the area affected by this regulation, provided vessel operators meet the requirements set forth by this rule. Thus, restrictions on vessel movements within any particular area are expected to be minimal. On the whole, the Coast Guard expects insignificant adverse impact to mariners from the activation of this regulated area.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a

significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the above portion of Lake Erie, Lakeside, OH between 7:00 a.m. and 11:00 a.m. on the dates of the event, which will be determined annually. The special local regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be in effect for 4 hours on the day of the event, and vessels wishing to transit through the affected area may do so with caution. The Coast Guard will give notice to the public via a local Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the special local regulation if the event for which the special local regulation is established ends earlier than the time expected.

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 this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

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

5. Federalism

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

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. 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.

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

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

12. Technical Standards

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

13. 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 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 is categorically excluded, under figure 2–1, paragraph (34)(h) of the Instruction and during the annual permitting process for this dragon boat racing event an environmental analysis will be conducted to include the effects of this Special Local Regulation.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.921 to read as follows:

§ 100.921 Special Local Regulation; Kelley's Island Swim, Lake Erie, Lakeside, OH.

(a) *Regulated area.* The regulated area includes all U.S. navigable waters of lake Erie, Lakeside, OH, contained by a line connecting the following points: two points on land at the Lakeside dock, 41°32′51.96″ N/082°45′3.15″ W and 41°32′52.21″ N/082°45′2.19″ W, and two points on Kelley's Island at the Kelley's Island Dock, 41°35′24.59″ N/082°42′16.61″ W, and 41°35′24.44″ N/082°42′16.04″ W (Datum: NAD 83).

(b) *Special Local Regulations.* The regulations of § 100.901 apply. Vessels transiting within the regulated area shall travel at a no-wake speed and remain vigilant for swimmers. Additionally, vessels shall yield right-of-way for event participants and event safety craft and shall follow directions given by event representatives during the event.

(c) *Enforcement period.* These Special Local Regulations will be enforced annually. The exact enforcement date and times will be published annually in the **Federal Register** via a Notice of Enforcement.

Dated: November 19, 2012.

J.E. Ogden,

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

[FR Doc. 2012–29134 Filed 11–30–12; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2010–0954; FRL–9757–3]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing action on a State Implementation Plan (SIP) submittal from the State of Michigan dated November 5, 2010, addressing regional haze for the first implementation period (ending in 2018). This action is being taken in accordance with the Clean Air Act and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. EPA finds that Michigan meets several regional haze planning requirements, including identification of affected Class I areas, provision of a monitoring plan, consultation with other parties, and adoption of a long-term strategy providing for reasonable progress except to the extent Michigan's plan failed to require best available retrofit technology (BART). As part of this action, EPA finds that the State's submittal addressed BART for some sources but failed to satisfy BART for two sources, namely St. Marys Cement (SMC) and Escanaba Paper Company (Escanaba Paper). EPA is promulgating a Federal Implementation Plan (FIP) including nitrogen oxide (NO_X) emission limits for these two sources in addition to sulfur dioxide (SO_2) emission limits for SMC to satisfy these requirements.

DATES: This final rule is effective on January 2, 2013.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2010–0954. All documents are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Charles Hatten, Environmental Engineer, at (312) 886–6031 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Charles Hatten, Environmental Engineer, Control Strategies Section, at 312–886–6031, *hatten.charles@epa.gov*, regarding all elements of the action, or John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, at 312–886–6067, *summerhays.john@epa.gov*, regarding issues relating to BART. Both contacts may be reached by mail at Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

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

I. Synopsis of Proposed Rule
II. Public Comments and EPA's Responses
III. What are EPA's final BART determinations?
A. SMC
B. Escanaba Paper
IV. What actions is EPA taking?
V. Statutory and Executive Order Reviews

I. Synopsis of Proposed Rule

Michigan submitted a plan to address regional haze on November 5, 2010. This plan was intended to address the requirements in Clean Air Act section 169A, as interpreted in EPA's Regional Haze Rule as codified in Title 40 Code of Federal Regulations (CFR) 51.308. The Regional Haze Rule was promulgated on July 1, 1999 (64 FR 35713), with further significant provisions promulgated on July 6, 2005 (70 FR 39104), that provided guidance related to BART.

On August 6, 2012 (77 FR 46912), EPA proposed action on Michigan's submittal addressing the Regional Haze Rule for the first implementation period, ending in 2018. That action described the nature of the regional haze problem and the statutory and regulatory background for EPA's review of Michigan's regional haze plan. The action also described at length the regional haze requirements, including requirements for mandating BART, consultation with other states in establishing goals representing reasonable further progress in mitigating anthropogenic visibility impairment, and adoption of limitations as necessary to implement a long-term strategy for reducing visibility impairment.

EPA proposed to approve Michigan's identification of five non-electric generating unit (non-EGU) sources as having sufficient impact to warrant being subject to emission limits representing BART. The five non-EGU BART-eligible sources included Lafarge Midwest, Inc.; SMC; Escanaba Paper (referenced in the proposed rulemaking as NewPage Paper Company); Smurfit Stone Container Corp.; and Tilden Mining Company.

Michigan made source-specific determinations of BART for these non-EGU sources. In the August 6, 2012 proposed rulemaking, EPA proposed to approve Michigan's BART requirements for some of the non-EGUs, based on a Federal consent decree requiring new controls for SO_2 and NO_X emissions for the Lafarge Midwest plant and based on existing limits at Smurfit Stone. EPA proposed to disapprove Michigan's plan for BART at SMC's facility in Charlevoix (SMC-Charlevoix) and at Escanaba Paper's facility in Escanaba. Specifically, EPA proposed to disapprove the NO_X and SO_2 BART determination for the cement kiln and associated equipment at SMC-Charlevoix and the NO_X BART determination for Boiler 8 and 9 at Escanaba Paper. Further, EPA proposed a FIP to impose BART NO_X and SO_2 limits for the cement kiln and associated equipment for SMC-Charlevoix, and BART NO_X limits for Boilers 8 and 9 at Escanaba Paper. EPA proposed no action regarding Tilden Mining, since that facility is a taconite plant that is being addressed in a separate action that also addresses taconite plants in Minnesota.

II. Public Comments and EPA's Responses

The publication of EPA's proposed rule initiated a 30-day public comment period that ended on September 5, 2012. During this public comment period, EPA received comments from the United States National Park Service (National Park Service), the State of Michigan Department of Environmental Quality (MDEQ), Lafarge Midwest Inc., Escanaba Paper, SMC, and Cliffs Natural Resources Inc. (Cliffs).

EPA also offered to hold a public hearing, upon request, to provide interested parties the opportunity to provide oral comments on the FIP proposal. As discussed below, one commenter requested a hearing in order to make comments not relevant to the FIP proposal for SMC-Charlevoix or Escanaba Paper. EPA denied this request. As no commenter requested to make oral comments on the proposed FIP, EPA did not hold a public hearing. Following is a summary of the comments submitted and EPA's responses.

National Park Service

Comment: National Park Service commented on EPA's proposed actions regarding BART for electric utilities. National Park Service noted that on June 7, 2012, EPA disapproved Michigan's regional haze plan (and several other states' plans) that relied on the Clean Air Interstate Rule (CAIR) to meet BART for electric utilities, and promulgated FIPs that relied on the Cross State Air Pollution Rule (CSAPR) to meet BART. National Park Service also noted the August 21, 2012, decision by the U.S. Court of Appeals for the District of Columbia to vacate CSAPR and to leave CAIR temporarily in place. ''Because EPA previously disapproved the state plans that relied on CAIR to meet BART, it appears that EPA cannot finalize the proposed approval of BART for electric utilities in Michigan.'' National Park Service recommended instead that Michigan evaluate BART for those electric utilities.

Response: The rulemaking EPA is finalizing today does not address BART for EGUs in Michigan. As noted in our proposed rulemaking, published on August 6, 2012, EPA had already taken action on BART for EGUs in Michigan and a number of other states in a separate rulemaking, published on June 7, 2012 (77 FR 33642). Thus, the comment is not pertinent to this action.

Comment: National Park Service commented that Michigan's reasonable progress goals based on the air quality modeling for Seney Wilderness Area appear to project that visibility on the 20 percent best days will be poorer in 2018 (7.7 deciviews (dv)) than in the 2000 to 2004 baseline period (7.14 dv).

Response: As discussed in section 5.2 of Michigan's submittal, best-days visibility in 2018 is projected to be modestly worse than visibility in 2000 to 2004. Notwithstanding this modeling result, EPA has several reasons to anticipate that visibility on the best days in 2018 may in fact be better and not worse than baseline best-days visibility. First, as seen in the most recent air quality data, best-days visibility in these areas has been improving, for example improving at Seney from a 2000 to 2004 average of 7.1 deciviews to a 2005 to 2009 average of 6.4 deciviews. (See *http://vista.cira.colostate.edu/improve/Publications/Reports/2011/PDF/Appendix_G.pdf*, page G-109.) Second, as Michigan noted in its submittal, the projection that visibility on the best days will worsen reflects an uncertain estimate of increasing ammonia emissions. Emissions of the other emitted pollutants important to visibility, especially SO_2 and NO_X, have decreased significantly, and are expected to continue to decline. As Michigan noted, an alternate plausible assumption that ammonia emissions are not increasing would be expected to support a finding that visibility on best-visibility days will improve. Third, recent modeling that EPA has done in support of CSAPR showed that visibility on best visibility days at Seney is expected to improve by 2014 even without CAIR or CSAPR. Fourth, oftentimes the air mass on best visibility days in Northern Michigan originates in Canada, for which the emission inventories used in the air quality modeling for the SIP are less reliable. Finally, Michigan noted some unmodeled emission reductions, such as those from BART for non-EGUs, that would be expected to lead to better visibility in 2018 than that shown in its SIP. For these reasons, EPA expects that Michigan's plan will yield visibility on the best 20 percent of days at its Class I areas in 2018 that will be either the same as or better than during the baseline period.

MDEQ

Comment: MDEQ objected to EPA's action proposing a FIP to mandate BART for SMC in Charlevoix and Escanaba Paper in Escanaba to meet regional haze visibility goals and simultaneously proposing disapproval of Michigan's plan for these sources. By doing so, Michigan commented, EPA is circumventing the process laid out in the Clean Air Act by not giving the State the opportunity to correct deficiencies in Michigan's BART SIP revision. Michigan references the August 12, 2012, opinion of the U.S. Court of Appeals for the D.C. Circuit in *EME Homer City Generation, L.P.* v. *EPA* (addressing CSAPR), an opinion that, in Michigan's view, concluded that a FIP-first process is not in accordance with the Clean Air Act.

Response: EPA disagrees with this comment. Rather than circumventing the Clean Air Act, EPA is in fact complying with the Clean Air Act's requirements. Under section 110(c)(1) of the Clean Air Act, EPA must promulgate a FIP within 2 years of a finding of failure to submit a required SIP submittal. This requirement for FIP promulgation was triggered by a finding published on January 15, 2009 (74 FR 2392), that Michigan and other states had failed to submit the required regional haze SIP. Michigan submitted its regional haze plan on November 5, 2010. EPA informed Michigan on multiple occasions that it did not expect to be able to approve the State's BART determinations for at least SMC and Escanaba Paper. Since Michigan did not submit a SIP with BART limits that EPA could approve as consistent with the Clean Air Act, EPA is obligated to promulgate FIP limits meeting BART requirements.

This situation is different from the situation addressed by the court in the *EME Homer City Generation* opinion. In the *EME Homer City Generation* litigation, a key concern raised by the court was whether EPA had provided states suitable guidance on the pertinent requirement and thus whether the states had a meaningful opportunity to meet the requirement. In this case, EPA promulgated regulations defining the criteria for meeting the BART requirement in 2005, and so there can be no question that Michigan had adequate opportunity to meet the BART requirements, both in its initial submittal and after EPA expressed concern that Michigan's submittal appeared inadequate. Today's action is more than two years later than the State's submittal, so EPA did not apply a ''FIP-first process.'' The circumstances are very different and therefore EPA does not agree that the *EME Homer City Generation* opinion is relevant to EPA's proposed rule on August 6, 2012. However, EPA would welcome Michigan's submittal of a SIP to replace the FIP and will work with the State to approve expeditiously a SIP that suitably replaces the requirements EPA is promulgating today.

Lafarge Midwest Inc.

Comment: Steve Kohl (Partner Warner Norcross & Judd LLP, Bodman Attorney & Associates) commented on behalf of his client, Lafarge Midwest Inc., that there was a typographic error in EPA's proposed approval of MDEQ's BART determination that compliance with the currently applicable Portland Cement—Maximum Achievable Control Technology (MACT) emission standard satisfies BART requirements for particulate matter (PM). EPA's proposal, as published, erroneously cites an emission standard of 0.030 pounds (lb) per ton of dry feed. The correct Portland Cement MACT emission standard is 0.30 lb per ton of dry feed.

Response: EPA acknowledges the typographic error and agrees that the Portland Cement MACT PM emission standard is 0.30 lb per ton of dry feed.

Escanaba Paper

EPA received a set of comments from Escanaba Paper addressing features of the proposed FIP for the Number 8 and Number 9 Boilers at the company's Escanaba facility.

Comment: Escanaba Paper commented that on page 46922 of the preamble and all instances thereafter, all references to NewPage Paper should be corrected and revised to reflect the correct legal entity—Escanaba Paper Company (EPC). The Escanaba Paper Company is the correct legal entity and is consistent with how the mill is identified in various business and Michigan regulatory programs (e.g., the Title V permit is issued to the Escanaba Paper Company).

Response: Per the company's request, EPA has revised all references to identify the company that owns the pertinent facility as Escanaba Paper Company (or, as shorthand in this preamble, Escanaba Paper).

Comment: Page 46922 of the preamble makes mention of the costs associated with controlling emissions on the Number 8 and Number 9 Boilers at Escanaba Paper. Escanaba Paper noted that supplemental and updated information concerning control equipment costs were submitted to both MDEQ and EPA Region 5. Escanaba Paper believes that the supplemental and updated information confirm the conclusion that the addition of control equipment is unwarranted.

Response: EPA notes the supplemental information, which supports EPA's proposed action, which proposed limits that EPA believes can be met without additional control beyond control Escanaba Paper has already installed.

Comment: On page 46924 of the preamble, EPA stated that low NO_X burners would achieve 40 percent reduction of emissions on the Number 8 Boiler and then uses this control efficiency to calculate cost effectiveness. Escanaba Paper noted that conversations with low NO_X burner vendors did not confirm that an annual 40 percent control efficiency is achievable, thus the cost effectiveness referenced by EPA could be higher.

Response: EPA used estimates of costs and benefits of control to conclude that emission control relative to baseline emissions would be cost effective. Escanaba Paper has implemented controls similar to those that EPA judged to be cost effective, which, in absence of a limit requiring these controls, suggests that Escanaba Paper also finds these controls to be cost effective. Escanaba Paper does not suggest specific alternate cost effectiveness assumptions. EPA believes that low NO_X burners can achieve 40 percent control, supporting EPA's cost effectiveness evaluation, but EPA could assume lesser control efficiency and higher costs per ton for a low NO_X burner and would still find the limits it proposed to be cost effective.

Comment: On pages 46924 and 46925 of the preamble, EPA Region 5 stated that Escanaba Paper installed a flue gas recirculation system on the Number 8 Boiler to meet MDEQ ozone season NO_X limits. Escanaba Paper noted that it can currently meet the ozone season NO_X emission limits with or without operation of the flue gas recirculation system on the Number 8 Boiler.

Response: EPA noted that Escanaba Paper had installed a flue gas recirculation system to point out that it gives the company an additional option for meeting the limit that EPA is promulgating for this boiler.

Comment: Escanaba Paper noted that EPA references a ''worst-case'' annual NO_X emission rate of 1,300 tons per year for the Number 8 Boiler. This annualized rate appears to be extrapolated by EPA and is unrepresentative of annual actual emissions. Escanaba Paper cannot verify the basis for this annualized NO_X emission rate but notes that current 2011 NO_X emissions of 33 tons are more than 1,200 tons less than those referenced by EPA.

EPA guidance for conducting the BART visibility modeling is to use a worst-case, short-term emission rate (i.e., a 24-hour emission rate) for BART applicability determinations but to use annual actual emissions for assessing cost effectiveness. It is inappropriate to interchange these emission rates in these analyses. Further, Escanaba Paper believes that if current, worst-case short-term visibility impairing pollutant emission rates for all of the BART emission units at the mill were evaluated in a visibility modeling analysis, there would be no days that exceed a 0.5 dv level.

Response: EPA agrees that the annualizing of a short-term worst case emission rate does not necessarily yield a realistic estimate of emissions for the facility being addressed here. While EPA is not speculating on the number of days that would exceed 0.5 dv impact at current worst case emission rates, EPA believes that the uncontrolled emissions are sufficiently high and the cost of controls sufficiently reasonable to warrant a determination that controls such as those that Escanaba Paper has added represent BART.

Comment: EPA proposed to limit emissions from the Number 8 Boiler according to a weighted average of fuel specific emission limits, as discussed on page 46925 of the preamble. In lieu of these limits, Escanaba Paper believes that a single emission limit is preferable. Escanaba Paper proposed a NO_X emission limit of 0.35 lb of NO_X per million British Thermal Units (MMBtu). To support this NO_X emission limit for the Number 8 Boiler, Escanaba Paper noted the following:

—The 0.35 lb NO_X/MMBtu limit is more restrictive than the 0.50 lbs NO_X/MMBtu limit proposed for fuel oil,

—The 0.35 lb NO_X/MMBtu limit will limit Escanaba Paper's use of fuel oil, which has higher SO_2 and NO_X emissions than natural gas,

—A single emission limit decreases Escanaba Paper's recordkeeping requirements and improves the efficiency of Escanaba Paper's monitoring and reporting, and

—The 0.35 lb NO_X/MMBtu emission limit is consistent with EPA's approach to determining an emission limit based on continuous emission monitoring system (CEMS) data. As with the EPA approach used to establish a NO_X emission factor for the SMC kiln, the Escanaba Paper CEMS data show that for non-idling periods, a 0.35 lb NO_X/MMBtu emission factor is equivalent to the 95th percentile 30-day average CEMS value with a 5 percent compliance margin.

Response: As recommended by Escanaba Paper, EPA is promulgating a fixed limit of 0.35 lb of NO_X per MMBTU, in lieu of the proposed limit based on separate values for oil firing and gas firing (0.26 lb/MMBTU for gas firing and 0.50 lb/MMBTU for oil firing)

and calculated as an average weighted according to the heat input for each fuel. While this limit is less restrictive when the company is firing only gas, the limit is more restrictive when the company is firing substantial quantities of oil. Since oil firing tends to result in higher emissions, a fixed limit will provide incentive for the company to fire more natural gas and less oil. Finally, since this limit simply mandates control that is already being implemented, and there is no indication in the record that Escanaba Paper has any incentive to reduce the effectiveness of the existing controls system, EPA believes that the nature of the limit and its precise level in practice will not have a significant effect on actual emissions.

Comment: On page 46925 of the preamble at footnote 2, EPA provided an assessment of NO_X emission factors for the Number 8 Boiler for the 2008/2009 and 2010/2011 periods. Escanaba Paper was unable to reproduce the 2008/2009 value cited by EPA.

Response: In this footnote, EPA first cited 30-day average emission factors for 2010 and 2011, and then comments that ''Operation in 2008 and 2009, during which the boiler was often oil-fired, yielded emission factors up to about 0.45 [lb]/MMBTU.'' As implied, this comment speaks to 30-day average emissions, and indeed the five highest average emission rates during 2008 and 2009 over 30 consecutive calendar days ranged from 0.44 to 0.48 lb/MMBTU. However, since Boiler Number 8 is operated to some degree as a backup to a larger (non-BART) boiler at the facility, it operates somewhat sporadically, so that 30 consecutive calendar days can include a substantial number of non-operating days. Therefore, EPA is expressing the limit in terms of 30 consecutive operating days. Using this method of calculating 30-day averages, the highest value in 2008 to 2009 was 0.36 lb/MMBTU.

Comment: Escanaba Paper commented, ''The extrapolation of visibility impacts is not linear. It is not possible to determine what visibility impacts associated with the NO_X emissions from the Number 9 Boiler would have occurred from improved combustion monitoring. Escanaba Paper also noted that emissions reported in 2002 and 2004 were likely overstated. Escanaba Paper updated the NO_X emission factor for the Number 9 Boiler in 2005 from the previous factors developed in 1992 and 1995.''

Response: While deciviews are a logarithmic scale, a linear approximation is an appropriate means of estimating the impact of modest emission changes. In the analysis for this final rule, EPA has used the updated emissions information for the Number 9 Boiler.

Comment: Contrary to the language in the preamble, Escanaba Paper does not believe that the NO_X limits proposed at 40 CFR 52.1183(i)(4) ''mandate the continued operation of the overfire air system that the company has installed on Boiler 9.'' Escanaba Paper wanted to confirm that there is no applicable requirement being imposed that tracks the operational status of the overfire air system on the Number 9 Boiler.

Response: EPA confirms that no requirement is being imposed that directly mandates or tracks operation of the overfire air system on the Number 9 Boiler. Consistent with EPA's BART guidelines, EPA is setting an emission limit which requires emission control but is not mandating any particular means of meeting this limit. The statement in the preamble merely reflected EPA's expectation that the practical effect of setting the emission limit would be that Escanaba Paper would have to continue operating its overfire air system.

Comment: Escanaba Paper requested clarification as to whether the requirements of 40 CFR 52.1183(i) should apply no later than five years after EPA approves the FIP per the compliance schedule contained in of 40 CFR part 51 Appendix Y or ''upon the effective date of the rulemaking promulgating these limits.'' (See page 46925 of the preamble of the proposed rule.)

Response: The Clean Air Act requires sources to meet BART limits as expeditiously as practicable. Escanaba Paper does not need to install any control devices to achieve the BART limit established in our FIP, and so EPA believes Escanaba Paper can meet the BART limits immediately. Therefore, ''expeditiously as practicable'' means immediate compliance for Escanaba Paper. Thus, the codification of these limits provides no delayed compliance date, and therefore the limits apply as soon as this final rule becomes effective.

Comment: The reference to 40 CFR part 60 appendix B, performance specification 2, at 40 CFR 52.1183(i)(2) is not necessary. Escanaba Paper has already conducted the initial start-up of the NO_X CEMS on the Number 8 Boiler and thus the reference to performance specification 2 is not appropriate. In fact, performance specification 2 states that it is not for evaluating CEMS performance over a long period as seems to be the intention of this requirement. Escanaba Paper requests clarification or elimination of this specific requirement.

Response: EPA agrees with Escanaba Paper's comment and in the final FIP is not requiring compliance with performance specification 2.

Comment: The reference to 40 CFR part 60 appendix B performance specification 2 at 40 CFR 52.1183(i)(3) should be replaced with a reference to 40 CFR part 60 appendix F. Escanaba Paper requests clarification or modification of this specific requirement.

Response: EPA agrees with Escanaba Paper's comment. Requirements for ongoing quality assurance of continuous emission monitors are specified in 40 CFR part 60 appendix F, not in 40 CFR part 60 appendix B performance specification 2. EPA is promulgating 40 CFR 52.1183(i)(3) with the recommended modification.

Comment: Escanaba Paper requests that the procedures outlined in 40 CFR part 60 appendix F be used to determine the 30-day rolling average. The use of appendix F would also be consistent with the guidance contained in 40 CFR part 51 appendix Y.

Response: 40 CFR part 60 appendix F addresses quality assurance procedures, not procedures for 30-day averaging. Nevertheless, consistent with the apparent intent of this comment, and consistent with the guidance in 40 CFR part 51 appendix Y, EPA is setting the limit for the Number 8 Boiler based on the average of emissions for 30 consecutive boiler operating days, where a day is defined as a boiler operating day if fuel is combusted at any time during the 24-hour period.

Comment: Escanaba Paper requested that the phrasing ''Compliance stack test results'' be used to replace 40 CFR 52.1183(i)(6)(ii), which as proposed read ''All stack test results.'' In a separate comment, Escanaba Paper requested that the word ''compliance'' be inserted after ''shall submit reports of any'' at 40 CFR 52.1183(i)(6)(v).

Response: The first of these comments requests that Escanaba Paper only be required to keep records of emission tests mandated by EPA or the State for purposes of compliance assessment, and that Escanaba Paper not be required to keep records of tests conducted for the company's own purposes. The second of these comments requests that the company not be required to report the results of such tests to EPA. Consistent with its general practice, EPA in this final rule is requiring the company to keep records of such tests but is not requiring the company to report the results of such tests. If a subsequent compliance test, requested by the State or EPA, shows noncompliance, the retained record of the nonmandated test

would provide useful information, for example regarding the duration of noncompliance. (If a subsequent test shows compliance, the State and EPA would have little reason to inquire about nonmandated stack tests.) On the other hand, in the interests of encouraging Escanaba Paper to assess its compliance status whenever it has concerns about its emission rate, the final FIP does not require the company routinely to report results of emission tests that neither the State nor EPA requested, again consistent with its general practice. Thus, EPA has made the requested modification to 40 CFR 52.1183(i)(7)(v), but has not modified 40 CFR 52.1183(i)(6)(ii).

Comment: Escanaba Paper requested that the phrase ''or when Boiler 8 is not operating'' be inserted after ''except for zero and span adjustments and calibration check''. As the applicable requirement is currently written, if the CEMS is not operated because the Boiler Number 8 is not operating, a quarterly report must document this situation.

Response: This final rule reflects the requested modification. EPA does not intend to require Escanaba Paper to document non-operation of its CEMS for times when its boiler is not operating.

SMC

Cortney Schmidt, environmental manager at SMC-Charlevoix, submitted comments on the proposed rulemaking on September 4, 2012. These comments elaborated on comments in a separate letter that Mr. Schmidt sent on August 2, 2012. Mr. Schmidt further sent a letter on August 8, 2012, responding to questions from EPA.[1]

Comment: SMC found it unfortunate that EPA did not communicate directly with SMC much earlier in the process, because ''surprising SMC at the last minute'' foreclosed opportunities for ''more deliberate, collaborative action.''

Response: EPA submitted comments to Michigan on June 23, 2010, stating, ''We disagree with MDEQ's assessment that a selective non-catalytic reduction system is technically infeasible and not cost-effective.'' EPA provided more detailed comments, including an assessment of the cost-effectiveness of a selective noncatalytic reduction system (SNCR), to Michigan by email on December 8, 2011. At EPA's request, Michigan forwarded these emailed comments to SMC. Finally, EPA sent comments to Michigan on May 24, 2012, and emailed a copy of the comment letter directly to SMC. Thus, EPA has ensured that SMC was aware of EPA's position and had opportunities to engage in discussions regarding the proposed BART determination for SMC-Charlevoix.

Comment: SMC quoted from three Federal circuit court opinions that, in SMC's view, demonstrate that EPA's proposal to disapprove ''the portion of Michigan's SIP related to BART requirements for [SMC-Charlevoix],'' and ''to substitute EPA's own limits in their place, is impermissible under the Clean Air Act.'' Specifically, SMC asserted that the U.S. Court of Appeals for the D.C. Circuit in *EME Homer City Generation, LP* v. *EPA,* No. 11–1302 (D.C. Cir. August 21, 2012) and the U.S. Court of Appeals for the Fifth Circuit in *Luminant Generation Co.* v. *EPA,* 675 F.3d 917 (5th Cir. 2012) and *Texas* v. *EPA,* No. 10–60614 (5th Cir. August 13, 2012) held that if a state plan meets the standards required by the Clean Air Act, EPA cannot force the states to adopt specific control measures.

Response: These decisions address rulemakings that are unrelated to regional haze and circumstances that do not invoke the same relationship between state and federal action. Moreover, these courts acknowledge that EPA has a valid role in assessing whether a state submittal is compliant with the Clean Air Act. EPA proposed to find that Michigan's submittal was not compliant with the Clean Air Act, insofar (in part) as Michigan failed to require BART for SMC-Charlevoix. SMC appears to be arguing that EPA may not disapprove a submittal that meets Clean Air Act requirements to force the State to adopt an alternative measure that EPA prefers, but EPA is not taking such an action here. Nor is EPA using the SIP process to force Michigan to adopt any particular control measure. Instead, EPA is simply fulfilling its responsibility to evaluate the State's submittal and, in the absence of a state submittal meeting applicable requirements, promulgating federal limits to meet these requirements.

Comment: SMC noted EPA's finding that Michigan's SIP ''includes a reasonable set of measures that provide its appropriate share of reductions toward achieving reasonable progress goals.'' (See 77 FR 46919.) SMC concluded that, because the emissions limits proposed by Michigan allow the State to meet the reasonable progress goals for improving visibility, ''EPA cannot * * * require emissions limits for SMC which would go beyond allowing the State to meet those progress goals.'' SMC stated that the BART requirements are included within the set of emission limits that EPA may require only as ''necessary to make reasonable progress.''

Response: Clean Air Act section 169A(b)(2) provides that the measures that are necessary to provide for reasonable progress necessarily include measures representing BART. The fact that EPA codified BART requirements separately from the requirements for reasonable progress (in 40 CFR 51.308(e) versus 40 CFR 51.308(d)) supports an interpretation that BART requirements must be satisfied irrespective of whether reasonable progress goals are being met.

Another possible reading of section 169A(b)(2) is that a plan that lacks BART measures by definition fails to include all the measures that this section mandates be part of the plan for achieving reasonable progress. That is, under this interpretation, BART is necessarily a reasonable measure, and a plan, such as Michigan's, that fails to require BART cannot be considered to provide for reasonable progress.

In response to this comment, EPA is clarifying that, insofar as Michigan's plan fails to require BART on at least two facilities, Michigan's plan fails to include all reasonable measures. To that extent, Michigan's plan may be considered to fail to provide for reasonable progress, but EPA believes that the plan, in combination with the FIP (in conjunction with BART limits for Tilden Mining, being addressed separately), meets reasonable progress requirements.

Comment: SMC cited six factors listed in the definition of BART at 40 CFR 51.301 that are to be taken into consideration in determining BART. With respect to the first factor, the technology available, SMC believes that ''EPA did not properly evaluate the capabilities of technology available for NO_X control at Charlevoix.'' SMC provided a review of the history of the SMC-Charlevoix kiln system design, including conversion in the late 1970s to a preheater/precalciner design and installation of an indirect firing system.

Response: EPA has considered the design of the SMC-Charlevoix kiln system in evaluating BART for this facility, as discussed more fully below.

[1] EPA has had a number of meetings and discussions with SMC since proposing action on Michigan's regional haze plan and the FIP imposing BART limits on SMC and Escanaba Paper. On November 12, 2012, SMC electronically submitted additional comments in which it asserts that the Charlevoix plant is not BART-eligible because construction that took place at the plant in 1979 constituted a ''reconstruction'' for BART applicability purposes. This issue was not raised in Michigan's SIP submittal or in SMC's previous written comments. Nevertheless, EPA will carefully review the new comments and take any action warranted. However, because it did not receive the comments until it was in the last stages of preparing this final action, well after the close of the comment period, EPA could not consider the comments in taking this action.

Comment: SMC maintained that ''the normal variability of NO_X formation in cement kilns justifies the 6.5 pounds per ton NO_X emission limit contained in Michigan's SIP.'' SMC provided a graph of emissions data for 2006 to 2008, and states that the ''average of [these] data is 4.56 pounds per ton, but there is a significant standard deviation of 0.64 pounds per ton, leading to a 99.7 [percent] confidence number of 6.47 pounds per ton.''

Response: EPA recognizes the variability in NO_X formation at SMC-Charlevoix. EPA addressed this variability in its proposal in part by proposing a limit in the form of a 30-day average. Further discussion of the appropriate limit in the context of this variability is provided below.

The statistic SMC cites as being the 99.7th percentile (the value three standard deviations above the mean) is in fact an even higher percentile, specifically the 99.87th percentile. Although EPA is basing its limits on the 95th percentile baseline emissions, this error is worth noting because EPA is avoiding the same error in estimating the 95th percentile baseline emissions. This error presumably reflects confusion between two statistical values, one being the percent of values within three standard deviations both above and below the mean, and the other being the percent of values between zero and a value that is three standard deviations above the mean. The latter statistic is the appropriate statistic in finding percentiles, since a given percentile is the value that exceeds that percentage of the entire distribution, including values down to zero, not just the portion of the distribution down to another value for example three standard deviations below the mean. In a normal distribution, 49.87 percent of values are between the mean and three standard deviations above the mean, and the same 49.87 percent of values are between three standard deviations below the mean and the mean, for a total of 99.74 percent of values within three standard deviations of the mean. In contrast, in determining percentile values, one must sum the 49.87 percent of values that are below three standard deviations above the mean but above the mean together with the full 50 percent of values that are below the mean. Thus, the value three standard deviations above the mean in a normal distribution is the 99.87th percentile value, not the 99.74th percentile value. For similar reasons, EPA is estimating 95th percentile baseline emissions as the value 1.645 standard deviations above the mean, rather than the value 1.96 standard deviations above the mean that SMC's approach would suggest.

Comment: SMC commented that it ''has put in place more modern technology than its competitors, such as Lafarge's Alpena plant.'' Elsewhere, SMC cited other plants with higher emission limits which, it claims have ''not been upgraded to the same degree as the Charlevoix plant,'' and noted that ''SMC already outperforms those [limits] with the improvements it already has put in place.''

Response: With the consideration of source-specific factors, as required in determining BART at each facility, dissimilarities among facilities can yield dissimilarities in control requirements. Lafarge's Alpena facility has long wet kilns, a different design with inherently more NO_X emissions than SMC-Charlevoix's preheater/pre-calciner kiln. In fact, BART at Lafarge requires similarly effective SNCR there as at SMC-Charlevoix, and BART at Lafarge requires sulfur emission control that is not required at SMC-Charlevoix.

Comment: SMC asserted that ''EPA will expect compliance with its emission limit every day, not just 'on average' over several years. Therefore, EPA also was incorrect when it derived its proposed NO_X emission limit of 2.3 [lb per ton] for the Charlevoix plant by applying a presumed 50 percent reduction against the plant's 4.56 [lb per ton] average, which was achieved over several years. * * * An 'average' value means that half of the actual performance is greater than that average. Therefore, any proposed reduction should not be applied to an average performance over several years, but instead must take into consideration the normal standard deviation from that average. This is the same rationale that was recently used by EPA in its agreement with Holcim's Montana Plant. Consequently, in this instance, if there was to be any reduction, it must be applied against the 6.5 [lb per ton] value which represents the 99.7 percent confidence value of SMC's actual performance.''

Response: SMC is noting the variability in emissions at SMC-Charlevoix, observing that a several year period will include many occasions with baseline emissions that are above average, and commenting that any emission limit should be based on those elevated baseline emission conditions. EPA addressed this concern in its proposed rulemaking. EPA proposed a limit that would require an average control of approximately 50 percent. In addition to defining the limit as a 30-day rolling average, EPA's notice of proposed rulemaking describes an examination of the variability of emissions at SMC-Charlevoix and the feasibility of achieving the proposed limit even during periods with greater emissions formation. The proposed rulemaking states, ''According to 2006 to 2008 data from the facility, [the proposed limit] would require slightly under 60 percent control from St. Marys Cement's 95th percentile 30-day average emission rate, which the evidence from tests at St. Marys Cement's facility in Dixon, Illinois (SMC-Dixon) indicates is readily achievable, particularly since a limit of 2.30 lb per ton of clinker would only occasionally require this level of control.'' 77 FR 46924. Conversely, at the 5th percentile of the 30-day average emission rates, or 3.5 lb per ton, the proposed limit would require only about 35 percent control. In this sense, EPA proposed a limit that would sometimes require about 60 percent control, sometimes require only about 35 percent control, and on average require slightly less than 50 percent control.

Thus, EPA considered the variability of baseline emissions but also considered the variability of control effectiveness in determining its proposed emission limit. Nevertheless, as discussed below, EPA is modifying its view of achievable control efficiencies and is modifying its approach for determining appropriate limits accordingly.

Comment: ''Although better performing than other old plants, unique Charlevoix design features increase NO_X formation compared to the most modern kiln designs.'' SMC discussed the ratio of the kiln length to kiln diameter at SMC-Charlevoix, as well as the need to operate the kiln in an oxidizing atmosphere to minimize the likelihood of formation and buildup of calcium sulfate. SMC concluded that these factors raise the amount of energy needed to produce a kilogram of clinker from about 800 kilocalories to about 930 kilocalories, which raises expected NO_X emissions per ton of clinker.

Response: Average NO_X emissions at SMC-Charlevoix are about 4.5 lb per ton of clinker. According to the Compilation of Air Pollution Emission Factors (AP–42), average emissions for a representative cement plant of the design of SMC-Charlevoix, i.e., a preheater/precalciner kiln, is 4.2 lb per ton of clinker. Thus, SMC-Charlevoix has very typical NO_X emissions for a facility of its type.

While it may be true that NO_X emissions at SMC-Charlevoix are slightly higher than those at newer plants, EPA is also setting a higher limit for SMC-Charlevoix than we have set for

new cement plants. The new source performance standards for cement plants require NO_X emission rates not to exceed 1.5 lb per ton of clinker. Were EPA to require similar rates for SMC-Charlevoix, but allow for the 16 percent increase in heat input noted in the comment, EPA would be imposing an emission limit of 1.74 lb per ton of clinker, rather than the 30-day average limit of 2.8 lb per ton of clinker finalized in this rule.

Comment: ''EPA's conclusion that SNCR will allow a 50 percent reduction in NO_X emissions from the Charlevoix plant is incorrect because the plant's design is incompatible with effective SNCR use.'' SMC argued that the achievement of emission rates as low as 2.3 lb per ton requires kiln design features ''(e.g., proper kiln length to diameter dimensions and increased calciner retention time)'' that are not present at SMC-Charlevoix. SMC provided a figure identifying temperatures and residence times at various locations within the kiln system, and concludes that ''nowhere in the kiln riser or flash calciner regions of the system does the plant reach the optimum temperature profile to support an effective SNCR reaction.'' SMC also found that the ''residence time at Charlevoix is not adequate for use of SNCR.'' SMC provided a graph entitled ''SNCR Efficiency based on Residence Time (Lab Trial).'' SMC stated that at SMC-Charlevoix, ''there is only a 0.11 second retention time between the reagent injection point and the time the system reaches the low end of efficiency point for the SNCR reaction.'' SMC further quotes EPA and other work suggesting that ''larger plants had lower efficiencies than smaller sized plants.''

SMC stated, ''Actual test results demonstrate that SNCR will have only limited success in NO_X control at Charlevoix.'' SMC presented results of trial urea injections conducted in 2005 to test the NO_X reductions that an SNCR system might be expected to achieve. SMC described these tests as demonstrating that urea injection achieved less NO_X reduction than expected. SMC provided results in a table that gives average NO_X reduction percentages for four sets of tests, each conducted with urea injection at a different location in the kiln system and with a different urea injection rate. The table also gives urea injection rate in terms of the normalized stoichiometric ratio (NSR).[2] ''In one test run, [with an NSR equal to 1.07], the reduction was 36.8 percent. * * * However, that was coupled with a significant amount of ammonia slip, based on the theoretical calculations from the NO_X present. The time frames for this trial were short, roughly several 10 minute runs to consolidate the average, and thus SMC is not confident that these reductions are sustainable.'' SMC provided a photograph that it considers to document excess ammonia (ammonia slip) appearing as a visible detached plume occurring at SMC-Charlevoix.

SMC provided a report from $DeNO_X$ Technologies describing the urea trials. SMC quoted from this report: ''Typically, NO_X reduction at a NSR of 1.0 is 40–60 percent; Charlevoix demonstrated 25–30 percent.'' In addition, SMC stated, ''$DeNO_X$'s owner noted * * * that he had seen SNCR effectively solve NO_X issues in multiple cement plants. However, he commented to SMC that he was amazed that SNCR is not as efficient in SMC's system, and he believed it must be because of Charlevoix's calciner design.''

Response: EPA believes that the tests of SNCR at SMC-Charlevoix do not demonstrate that SNCR would be ineffective in reducing emissions, and in particular do not demonstrate that SMC could not meet the emission limits established in this final action. EPA notes that the tests SMC described were performed with urea rather than with ammonia, which is both more commonly used for this application and significantly more effective.

SMC-Charlevoix's test results were the subject of ''SNCR emission control,'' published in the August 2006 edition of the journal International Cement Review (the Horton article).[3] The article presents NO_X reductions resulting from urea injection at ''Plant B,'' which are the results found at SMC-Charlevoix. The article also includes contrasting results from testing at ''Plant A,'' a plant with the same type of design as SMC-Charlevoix, demonstrating that NO_X reductions of more than 50 percent could be achieved with ammonia injection at an NSR as low as 0.56 (i.e., the injection of only 0.56 moles of ammonia per mole of NO_X). The article includes a graph showing that use of ammonia achieves higher NO_X reductions than urea and has maximum efficiency at lower temperatures than urea. EPA views the 50 percent reduction at Plant A as more representative of the level of emission reduction that a properly designed and operated SNCR at SMC-Charlevoix could achieve. In fact, at the temperatures at SMC-Charlevoix cited by SMC, use of ammonia is expected to provide at least 40 percent more, and possibly greater than twice as much, NO_X reduction as is expected from use of urea. Thus, while SMC's concerns may apply to SNCR using urea, EPA believes that SMC can address these concerns by using ammonia.

EPA also believes that the $DeNO_X$ Technologies report cited by SMC demonstrates that SMC-Charlevoix can achieve significant NO_X emission reductions even using urea. Table 1 presents relevant information derived from the $DeNO_X$ Technologies report. During these trials, urea was injected at three locations: (1) After the kiln but before the tertiary air inlet, (2) in a duct after the tertiary air but before the precalciner, and (3) after the first stage of the preheater that is after the precalciner. In Table 1, the reduction per mole of reagent (ammonia equivalent) is computed by dividing the NO_X reduction percentage by the NSR.

TABLE 1—NO_X EMISSION REDUCTIONS AT SMC-CHARLEVOIX FROM INJECTION OF UREA

Location	Reagent rate (gph)	NSR	NO_X reduction (percent)	Reduction per mole reagent (percent)
Before Tertiary Air	145	0.38	15.8	41.6
Before Tertiary Air	314.3	1.07	36.8	34.4
After Tertiary Air	282	0.72	28.9	40.1
After pre-calciner	180.5	0.54	21.4	39.6

[2] Normalized stoichiometric ratio expresses the ratio of the number of moles of ammonia equivalent to the pre-control number of moles of NO_X. Each molecule of urea yields the equivalent of two molecules of ammonia. Thus, for example, if 0.6 moles of urea (yielding 1.2 moles of ammonia) are injected per mole of NO_X, NSR = 1.2.

[3] Joe Horton, Suwannee American Cement/Votorantim Cimentos North America, Al Linero, Florida Department of Environmental Protection, and F. MacGregor Miller, Cement Etc., Inc, ''SNCR Emission Control,'' International Cement Review, August 2006.

These results suggest the relationship between the quantity of reagent and the NO_X reduction. Notably, as increasing amounts of urea are injected, the resulting NO_X reductions increase correspondingly. Examined in terms of NO_X reduction per mole of ammonia equivalent injected, while some loss of efficiency is expected, the efficiency of urea utilization even at the highest urea injection rate is similar to the efficiency of urea utilization at the lowest urea injection rate. These results also suggest that the control efficiency is similar across several urea injection locations.

EPA believes that these tests demonstrate that SNCR at SMC-Charlevoix as it is currently configured can readily achieve at least 30 to 37 percent NO_X reduction. As discussed above, EPA believes that use of ammonia would provide significantly greater control than was found in the tests at SMC-Charlevoix using urea. The tests, being short tests, by definition did not test the sustainability of control, but SMC provides no evidence that these short-term results could not also be achieved over longer periods. In addition to the change in reagent, SMC has a range of options for optimizing SNCR effectiveness and addressing the potential operational issues arising from SNCR use. These include: Use of facility design modifications that either reduce NO_X emissions directly or facilitate use of SNCR or both; use of reagent injection both before and after the calciner; use of lime injection; adjustment of air flows; and other changes in operating characteristics. SMC in its written comments and in discussion during meetings with EPA did not address the option of using ammonia, either to dispute the feasibility of its use or to provide evidence regarding its effectiveness at SMC-Charlevoix. Since the tests at SMC-Charlevoix used urea and are not indicative of the NO_X reduction that can be achieved using ammonia, the most pertinent evidence regarding potential effectiveness of SNCR using ammonia is the results of tests at SMC-Dixon, corroborated by results of tests at ''Plant A'' in the Horton paper and elsewhere. This evidence indicates that the 50 percent NO_X emission reduction required at other cement plants is also achievable at SMC-Charlevoix.

The issues raised in SMC's comments suggest that SMC may need more than three years to explore the various alternatives for reducing NO_X emissions at SMC-Charlevoix. Therefore, EPA is promulgating a compliance deadline for SMC that is extended by one year from the compliance deadline that EPA proposed, requiring compliance within approximately four years from the date of this rulemaking.

In response to this comment, EPA also reevaluated the appropriate NO_X limits. While EPA proposed a limit based on 50 percent control on average, effectively requiring 60 percent control when emission rates are at the 95th percentile level, EPA is promulgating a limit that will require only 50 percent control when emission rates are at the 95th percentile level.

EPA proposed a single limit, based on a 30-day average. Reconsidering the basis for determining the level of the limit, in particular considering a limit based on the 95th percentile emission level rather than based on the mean emission level, requires reconsidering the form of the standard. Whereas the proposed limit was intended to require a reasonable degree of control at all times, a 30-day average limit derived from 95th percentile emissions would allow substantially less emission reduction on other occasions. For example, at SMC-Charlevoix, a limit requiring 50 percent reduction from 95th percentile emissions would only require about 20 percent emission reduction at the 5th percentile emission level.

BART reflects controlling emissions at all times, not just on occasions with elevated emissions. For this reason, along with a 30-day average emission limit, EPA is also promulgating a limit on 12-month average emissions. In this pair of limits, the 30-day average limit ensures that days with high baseline emissions are well controlled, and the 12-month average limit ensures that BART control is achieved on days with lower baseline emissions as well.

EPA used the most recent three years of emissions data available, from 2006 to 2008, to compute 30-day averages and 12-month averages. EPA is setting the 30-day average limit as a daily-rolling average limit, based on values recomputed every operating day to include the most recent 30 operating days, and EPA is setting the 12-month average as a block average, based on values recomputed at the end of each calendar month to include the preceding 12 calendar months. EPA used these averaging approaches to determine the distribution of 30-day and 12-month averages of NO_X emissions during the 2006 to 2008 period. The 95th percentiles among these sets of values (more precisely, 1.645 standard deviations above the means, calculated assuming a normal distribution) are a 30-day average of 5.6 lb per ton of clinker and a 12-month average of 4.7 lb per ton of clinker. EPA is setting limits based on a 50 percent reduction from these values, which with rounding equal a 30-day average limit of 2.80 lb per ton of clinker and a 12-month average limit of 2.40 lb per ton of clinker.

EPA had several reasons for selecting the 95th percentile of baseline emissions as the starting point for determining the limits. First, use of the 95th percentile is an approach that EPA commonly uses in setting emission limits for similar sources in other contexts. For example, the consent decree for Lafarge Cement, which requires BART at Lafarge's Alpena facility, mandates control at the 95th percentile level. That is, this approach is responsive to SMC's concerns about EPA providing equity in its regulation of SMC and Lafarge. (Lafarge is also subject to both a 30-day average limit and a 12-month average limit.) Second, EPA considers the 95th percentile an appropriate compromise between setting the limit based on too low a percentile, which creates a higher percentage of time when the limit is more difficult to meet, and setting the limit based on too high a percentile, which too infrequently requires the company to achieve fully effective emission control. Third, EPA believes that the variability of the emission rates after control is likely to be less than the current variability. This is in part because the emission control can be operated in a manner that minimizes the difference in emission rates between the upper and the lower end of the distribution, in part because emissions control tends to be more effective when emission rates are higher, and in part because the limit will give the company incentive to use its knowledge about operating parameters that influence emission rates to minimize emissions on occasions with higher emission rates. Fourth, since emission rates above the 95th percentile by definition rarely occur, any extra effort needed to achieve the limit on such occasions would rarely be needed.

SMC cites the limit for a Holcim plant in Montana as precedent for basing a limit on an upper point on the distribution, and yet SMC recommends basing the limit for SMC-Charlevoix on a more extreme statistic than was used for Holcim in Montana. EPA set the NO_X limit for Holcim by assuming a 58 percent reduction from the 99th percentile of baseline emissions. In that case, EPA had limited information on emissions of the facility; in particular, EPA did not have information on 95th percentile emissions. SMC does not explain why it seeks the use of a more extreme statistic (supposedly the 99.7th percent, but in fact the 99.87th

percentile), but the availability of more information allows EPA to use a more appropriate statistic (the 95th percentile) for SMC-Charlevoix.

Comment: SMC stated that ''ammonia slip is a likely result of use of SNCR at Charlevoix.'' SMC quoted from EPA and the Portland Cement Association that use of SNCR under suboptimal conditions can result in unwanted ammonia emissions.

Response: SMC does not demonstrate that proper use of SNCR at SMC-Charlevoix would cause ammonia slip at problematic levels. The photo of a detached plume at SMC-Charlevoix provided by SMC in its comments does not demonstrate that ammonia concentrations in the plume were high, and SMC does not provide information about operating conditions at the time of the picture to be able to judge this and other potential explanations of a detached plume at the facility. A theoretical comparison of urea input to NO_X levels does not establish the presence or absence of ammonia slip, because such an approach fails to consider other factors reducing ammonia levels such as oxidation. In addition, for reasons discussed in the Horton paper cited above, describing the relative merits of using ammonia rather than urea, evidence that ammonia slip occurred during injection of urea does not necessarily indicate that ammonia slip would occur with a properly designed and operated SNCR using ammonia. While SMC would have to design an SNCR system carefully to avoid causing excess ammonia emissions, many other cement plants have successfully implemented SNCR without ammonia slip problems, and SMC has provided no evidence that this would be a challenge that cannot be solved at SMC-Charlevoix. As discussed above, EPA anticipates that SMC will conduct a variety of trials to assess the most effective NO_X control program, and EPA anticipates that one of the parameters to be addressed in these trials is to avoid emitting excess ammonia.

Comment: SMC stated that the ''size of Charlevoix reduces its ability to control NO_X using SNCR.'' SMC quoted an EPA report regarding NO_X control at coal-fired electric utility boilers stating that ''whereas smaller boilers may be able to achieve >60 percent NO_X reduction, larger boilers may be capable of achieving reductions of only ~30 percent.'' SMC comments that a study of cement kilns also noted a ''correlation between plant size and reduction efficiency.'' SMC provided a graph labeled ''SNCR Test Results based on Capacity.'' SMC concludes that SMC-Charlevoix ''should not be expected to have NO_X reduction efficiencies of the smaller plants.''

Response: SMC does not clarify its size in relation to the other facilities addressed in these studies. Since SMC-Charlevoix has lower heat input than many electric utility boilers, this comment would seem to suggest that SMC should be able to achieve the higher rather than the lower end of the range of utility boiler control efficiencies. The graph addressing cement plants that SMC provided is illegible, and so it is indeterminable from this graph how the size of SMC-Charlevoix compares to the size of other cement plants tested.

However, EPA also examined the size of SMC-Charlevoix relative to the size of cement plants that have been subject to best available control technology determinations for new sources or major modifications in the last 6 years. These facilities have capacities quite similar to the capacity of SMC-Charlevoix. As seen in the EPA's RACT/BACT/LAER Clearinghouse, these facilities were typically issued permits that allowed 1.95 lb of NO_X emissions per ton of clinker. Thus, even if smaller facilities are capable of even better NO_X control, this evidence makes clear that the size of SMC-Charlevoix should not prevent SMC from achieving the level of control that EPA proposed to require.

Comment: SMC submitted several comments regarding the second factor to be considered in determining BART, namely the costs of compliance. The first of these comments reflected concerns about material buildup exacerbated by injection of urea and the costs that SMC would face in addressing that problem. SMC commented ''Both SMC and EPA recognize that there are potential solutions [to this problem.] * * * The most effective solution is an extensive modification to the flash calciner including geometry changes to the process ductwork.'' SMC estimated that a new in-line calciner would cost $18,000,000. SMC also discussed a second option in which SMC uses its existing kiln system configuration. In conjunction with criticism of EPA's cost estimates, SMC provided its own cost estimates for these two options.

Response: EPA agrees that SMC has multiple options for implementing SNCR in a way that is both effective in reducing NO_X emissions and workable in avoiding operational problems such as material buildup and ammonia slip. In addition to the option of a new in-line calciner and an option with the existing equipment using urea in the existing SNCR, other options include using ammonia with existing plant equipment and making other changes to improve flue gas chemistry. In addition to these four options, EPA believes that SMC has numerous variables that it can adjust and design features it can modify to maximize control efficiency and minimize NO_X emissions.

Specifically concerning material buildup, the Horton paper cited above provides useful insights from comparison of SNCR use at various cement plants. The article observes that urea decomposes into carbon $moNO_Xide$ (CO) as well as ammonia, documents spikes in CO concentrations following urea injection, and evaluates the consequences of this CO. The article notes the propensity of the CO to consume hydroxyl radical that otherwise would help reduce nitric oxide to elemental nitrogen. The article concludes that urea is less effective in reducing NO_X than ammonia at the temperatures found at SMC-Charlevoix. Further, CO from urea decomposition may well cause localized reducing environments, potentially causing sulfur volatilization, which in turn could cause the buildup of sulfates that could form material buildup within the kiln system. That is, injecting urea may be more prone to cause buildup problems than injecting ammonia. Many other cement plants with similar SO_2 emissions have successfully operated SNCR without significant material buildup issues, and EPA believes that SMC too can find appropriate operational approaches (presumably involving use of ammonia as the NO_X reducing reagent) that will provide successful NO_X control without significant material buildup issues.

Comment: SMC commented that installation of a new in-line calciner would be a redesign of the facility that is not intended to satisfy BART. SMC quotes EPA's BART guidance: ''We do not consider BART as a requirement to redesign the source when considering available control alternatives. For example, where the source subject to BART is a coal-fired electric generator, we do not require the BART analysis to consider building a natural gas-fired electric turbine. * * * ''

Response: EPA is not requiring any particular kiln system design at SMC-Charlevoix, nor does EPA believe that the limit it proposed indirectly mandates any particular design. EPA is promulgating limits that EPA believes SMC can meet in several ways. EPA is merely observing that replacement of the pre-calciner is one of several options SMC may choose to employ to meet the limits that EPA is promulgating.

SMC-Charlevoix currently has a pre-calciner, and so EPA does not view the

modification of the facility to replace the existing pre-calciner with an improved pre-calciner, in conjunction with changes in air flow to reduce the likelihood of material buildup, as a ''redesign'' of the source. Indeed, unlike the example SMC cites, the replacement of the pre-calciner at SMC-Charlevoix would not change the fundamental design of the facility. Similarly, SMC may need to replace its SNCR system to meet EPA's limit, but EPA does not consider this to change the fundamental design of the facility either.[4] Both before and after the modification, the facility would be described as a preheater/pre-calciner type Portland cement plant.

SMC, in evaluating how best to meet BART limits, may in fact decide that the replacement of its calciner and associated air flow changes, would be ''the most effective solution'' to ''improve NO_X control and address the buildup problem.'' Indeed, as discussed below, EPA developed cost estimates predicated on SMC installing both a replacement calciner and a new SNCR. Nevertheless, as SMC implicitly concedes, other approaches may also suffice for effective operation with SNCR. Again, EPA expects that its proposed limit will require installation and operation of a SNCR system and some set of modifications to accommodate the system and maintain efficient and effective operation, but EPA does not believe that its proposed limit requires any fundamental redesign of SMC-Charlevoix.

Comment: SMC criticized EPA's estimated number of hours that heat input to the urea storage and handling system would be needed to assure that its urea would not crystallize, which SMC asserts would occur at 48° F. SMC objected to EPA's estimate that the ''cooler season'' includes 4,000 hours requiring heating; SMC asserts that review of local meteorological data finds that ''heat input would be required 6,750 hours.''

Response: EPA conducted its own analysis of Charlevoix meteorological data, available from the web site of the MDEQ. EPA's analysis considered actual heating needs each hour, reflecting the fact that an hour at 40° F, for example, would require less heating than an hour at 20° F. That is, EPA evaluated a heating degree hour metric, rather than SMC's simpler metric of the number of hours requiring heating.

EPA reviewed the most recent three years of data provided, i.e., 2008 to 2010. EPA examined the number of days below 50° F. EPA's analysis assumed that SMC's envisioned 100 kW heating system would suffice down to -30° F, and that warmer days would require proportionately less electricity. This analysis found an average of 4,900 hours per year below 50° F, and an average temperature among those hours of 31° F. That is, the average heating needs among those hours is to achieve a temperature 19° F above ambient temperature. At the company-estimated cost of $0.0732 per kilowatt-hour of electricity, this translates to an estimated electricity cost of $8,600 per year.

Comment: SMC commented on the expected lifetime of SMC-Charlevoix. ''SMC maintains that the EPA air pollution cost control manual allows for a 10 year equipment life schedule and that this would more closely match SMC's short and long-term plans.'' Consequently, SMC implicitly recommended amortizing capital costs of control equipment over 10 years rather than 15 or 20 years.

Response: The EPA Air Pollution Control Cost Manual states at page 1–37, ''an economic lifetime of 20 years is assumed for the SNCR system.'' A shorter amortization period would be appropriate only if SMC provided persuasive evidence that it will be shutting down its facility sooner. SMC has provided no such evidence. In particular, SMC does not appear to be subject to any enforceable orders to shut down within that period, nor has SMC expressed a desire to become subject to such an order. To the contrary, SMC has been investing in emission control and applied for a permit for other plant improvements (though SMC cancelled the project), suggesting that SMC expects its Charlevoix facility to be operating well more than 10 years into the future. Therefore, the most appropriate amortization period for capital costs of SNCR at SMC-Charlevoix is 20 years.

Comment: SMC objected to EPA's urea cost estimates. SMC conceded that $450 is the cost per ton of (undiluted) urea at the Gulf of Mexico, but SMC provided a vendor quote to indicate a price per gallon in Michigan, equivalent to $814 per ton of actual urea ($366/ton of 45 percent solution).

Response: EPA asked the Institute of Clean Air Companies about urea prices and received a reply from a representative of Fuel Tech, Inc., a urea supplier. Fuel Tech replied that companies have the option to purchase pure, dry urea, at a price of $400 to $500 per ton, which the company could mix with water (using purchased mixing equipment) before use, but companies normally purchase 50 percent urea from a supplier. Fuel Tech quoted a price range for 50 percent urea solution in Central Michigan of $1.60 to $1.80 per gallon. The upper end of this range equates to about $758 per ton of urea. EPA has adjusted its urea-based cost estimates (discussed below) to use this urea cost. However, use of ammonia is cheaper and more effective, so the cost of urea was not a significant factor in EPA's evaluation of the cost effectiveness of SNCR.

Comment: As noted above, SMC provided cost-effectiveness estimates for an option that may be labeled a ''replacement pre-calciner'' option and for an option that may be labeled an ''existing equipment'' option. These estimates were that NO_X emission reduction would cost $6,767 and $6,249 per ton, respectively, which SMC considers too expensive to be found to be BART.

Response: SMC's estimates include a number of elements that SMC includes without comment that nevertheless warrant review. SMC's cost estimates include a number of ancillary costs ostensibly related to installation of a purchased SNCR, including instrumentation, freight, foundations and supports, handling and erection, electrical equipment, piping, insulation, painting, engineering, construction and field expenses, contractor fees, start-up costs, performance test costs, and contingencies. These cost estimates are substantial, adding up to more than 150 percent of the purchased equipment cost, i.e. yielding a total capital cost that is more than two and a half times the cost of the equipment itself.

While SMC cites the EPA Air Pollution Control Cost Manual as the basis for these cost estimates, SMC used an inappropriate method from this manual. The EPA Air Pollution Control Cost Manual recommends different cost estimation approaches for different types of control devices, and SMC appears to have used the approach recommended for estimating costs of gas absorbers[5] rather than the approach recommended for SNCR. The approach recommended in the EPA Air Pollution Control Cost Manual for estimating costs of SNCR does not include all the costs listed above for gas absorbers. Instead, the Control Cost Manual recommends assuming only the following costs: A

[4] The existing SNCR was installed to provide an option to meet State limits on ozone-season NO_X emissions. However, SMC asserts that it is able to meet the State limits without operating the SNCR, and EPA understands that SMC rarely if ever operates the SNCR, so that the SNCR has no significant effect on current emissions.

[5] SMC's approach also resembles the approach recommended for several other control devices. Nevertheless, for simplicity, SMC's approach may be labeled the gas absorber approach.

general facilities cost (5 percent of SNCR purchase cost), engineering and home office fees (10 percent), process contingency cost (5 percent), project contingency (15 percent of installed cost), pre-production cost (2 percent of total plant cost), and inventory cost (cost of two weeks of reagent). These costs are estimated to add about 42 percent to the purchase cost of the SNCR. Thus, the cost estimation approach used by SMC significantly overestimates SNCR installation costs.

In using the cost estimation approach recommended for gas absorbers rather than the approach recommended for SNCR, SMC has also overestimated the annual cost of operating SNCR. Most significantly, as EPA noted in its proposed rulemaking notice, EPA recommends assuming that overhead for operating SNCR is negligible, unlike the 60 percent of labor and materials that the Control Cost Manual recommends for gas absorbers. Similarly, the Control Cost Manual recommends assuming administrative charges and insurance for SNCR (unlike for gas absorbers) are also negligible. This results in a significant difference in cost estimates: For the replacement pre-calciner option, for example, SMC estimates the sum of overhead, administrative charges, and insurance to be $4,397,697, whereas EPA finds these costs to be negligible.

In addition, SMC inappropriately assumes that the multipliers used to estimate ancillary costs associated with installation of emission control systems based on emission control equipment purchase costs may also be applied to modifications of SMC's kiln system such as replacement of its pre-calciner. SMC provides no justification for applying these SNCR-related multipliers to the cost of a replacement pre-calciner, and EPA believes that installation of a replacement pre-calciner would not require such costs.

In many respects, the cost estimates EPA provided in its notice of proposed rulemaking also mistakenly used the gas absorber approach to estimate costs. Thus, EPA's proposed rule also substantially overestimated the costs of SNCR. An exception concerns overhead costs: The gas absorber approach recommends significant costs, but the notice of proposed rulemaking observed that the SNCR approach in the EPA Air Pollution Control Cost Manual recommends assuming that overhead costs are negligible. (SMC neglected this observation and continued in its comments to estimate substantial, unjustified overhead costs.)

For this final rule, the primary basis of EPA's views on the cost effectiveness of SNCR at SMC-Charlevoix are revised cost estimates derived according to the approach recommended in the EPA Air Pollution Control Cost Manual for estimating costs of SNCR. Nevertheless, EPA for this final rule also prepared cost estimates using an approach that was similar to the approach used in its proposed rule. This approach resembled the gas absorber approach, except that the approach assumed negligible overhead costs, which the notice of proposed rulemaking observed is the recommended assumption for SNCR. These estimates assumed the use of ammonia as the reagent, based on information indicating that urea is a less effective reagent. While EPA believes this approach overstates likely costs, insofar as it includes significant estimated installation costs that should not be assumed to apply to SNCR installations, these cost estimates nevertheless provide further perspective on the likely cost effectiveness of SNCR at SMC-Charlevoix.

SMC is currently equipped with an SNCR system. SMC nevertheless includes the cost of new SNCR equipment (estimated as $1,371,630) in all of its cost estimates. SMC did not explain why it would be unable to use the existing equipment, except to say that $400,000 of the costs would provide for winter storage of reagent. One possibility is that the remaining $971,630 would be necessary to purchase a system that works more effectively than the system that is currently installed. Another possibility is that SMC will incur no such expense. EPA has evaluated cost effectiveness for both possibilities, to assess the range of cost effectiveness according to whether replacement SNCR equipment is necessary.

A significant factor affecting the cost of SNCR is the quantity of reagent needed to achieve the expected emission reduction. The BART review that SMC provided to Michigan assumed that 180 gallons per hour of 40 percent urea solution, costing $1.06 per gallon, would be used for 8,000 hours and would reduce NO_X emissions by 524 tons per year. Assuming 9.5 lb per gallon of urea solution, this translates to an estimate that 182,400 pound-moles of ammonia-equivalent[6] would be needed to achieve a reduction of 22,800 pound-moles of NO_X, i.e., that each mole of ammonia-equivalent achieves only 0.125 moles of NO_X reduction. This efficiency is less than one third of the efficiency shown in the $DeNO_X$ Technology trials discussed above.

For all of its reagent cost estimates, EPA estimated reagent usage according to the targeted NO_X reduction and the expected amount of reagent needed per mole of NO_X reduction. EPA's expected NO_X reduction for both the replacement calciner option and the existing system option differs substantially from SMC's values. SMC apparently used a peak allowable baseline (pre-control) NO_X emission rate (5,741 tons per year), whereas EPA used a 2006 to 2008 average actual baseline rate (2,518 tons per year).

Based on comments regarding inefficient control at SMC-Charlevoix using urea, most of EPA's cost effectiveness estimates were based on the use of ammonia, though a few estimates were based on the use of urea. As discussed above, EPA assumed a urea cost of $758 per ton of urea. Based on information provided by Fuel Tech, EPA assumed an ammonia cost of $600 per ton.

EPA then estimated reagent usage according to various estimates of the quantity of NO_X reduced per mole of injected or created ammonia. One of these estimates used the results of the tests conducted at SMC-Dixon, in which injection of reagent at an NSR of 0.62 sufficed to reduce NO_X emissions by 50 percent. These results suggest the need for greater use of reagent than is indicated in test results at ''Plant A'' in the Horton paper, which indicates on average that the NO_X reduction is 92 percent of the amount of ammonia injection, so that an NSR of 0.54 would suffice to reduce NO_X emissions by 50 percent. Another estimate used the average of the tests at SMC-Charlevoix using urea, i.e., that the number of moles of NO_X reduced is 40 percent of the number of moles of ammonia that the injected urea creates.

Table 2 shows cost effectiveness estimates for an option in which SMC uses largely its existing configuration and injects ammonia. This option is assumed at most to have only minor modifications, except for installation of a replacement SNCR system and except for installation of ammonia storage equipment, which is assumed to have the same cost as SMC's estimate for urea winter storage equipment. This table assumes the effectiveness of ammonia found at SMC-Dixon. This table assumes that sufficient ammonia is added to achieve a 12-month average limit of 2.40 lb per ton of clinker (the limit in the final FIP), which is estimated on average to require a 47 percent emission reduction, a reduction from baseline

[6] The molecular weight of urea is 60. Each molecule of urea yields two molecules of ammonia. Therefore, 30 pounds of urea yields one pound-mole of ammonia. That is, 30 pounds of urea is one pound-mole of ammonia equivalent.

NO_X emission levels of 1182 tons per year.

TABLE 2—COST EFFECTIVENESS USING AMMONIA WITH EXISTING CONFIGURATION

[With replacement of the SNCR system]

Capital costs	Percent	Cost	Notes
SNCR	.....	$1,371,630	Includes winterizing cost.
General facilities	5	68,582	
Engineering	10	137,163	
Process contingency	5	68,582	
Project contingency	15	246,893	
Subtotal SNCR	.....	1,892,849	
Preproduction	2	37,857	
Ammonia inventory	.....	12,465	2 weeks inventory.
Total Capital cost	.....	1,943,171	
Annual costs:			
Ammonia	.....	324,970	
Maintenance	1.5	28,393	
Electricity	.....	8,600	
Power loss	.....	16,427	
Total direct Annual	.....	378,389	
Capital recovery	.....	183,435	Amortizes over 20 years.
Total	.....	561,825	
Cost per ton	.....	475	Reduction is 1182 tons/yr.

This cost effectiveness estimate in Table 2 assumes that SMC will need to replace its existing SNCR. Alternatively, EPA estimated cost effectiveness for the possibility that SMC will be able to use its existing SNCR. This evaluation assumed the same estimate of ancillary costs (e.g., general facilities costs, engineering, and contingency costs) as are shown in Table 2 but assumed that the equipment purchase cost would only be $400,000 for a reagent winter storage system. This resulted in a cost effectiveness estimate of $398 per ton of NO_X, somewhat below the $475 per ton of NO_X estimated assuming the need for a replacement SNCR.

Although EPA, consistent with the Horton paper, believes that ammonia would be considerably more efficient at reducing NO_X than urea, EPA also estimated ammonia costs assuming that SMC achieved the same efficiency with ammonia as it achieved with urea. Specifically, these cost estimates assumed that each mole of ammonia reduced 0.4 moles of NO_X. To achieve a reduction of 1182 tons per year, this resulted in an estimate that ammonia costs would be $655,181, leading to a total annualized cost of $893,032, or $756 per ton of NO_X reduced.

These estimates reflect considerably less expense for using ammonia than for using urea. This is partly because ammonia is likely to be more effective, but this is also because ammonia is somewhat cheaper per ton and because the ammonia content of a ton of ammonia is almost twice the amount of ammonia yielded by a ton of urea. For the plant as currently configured, EPA did not estimate costs using urea.

A second set of scenarios EPA evaluated reflect an option noted by SMC involving replacing the pre-calciner, which would provide conditions more suitable for use of urea for reducing NO_X emissions. SMC estimated that this replacement would cost $18,000,000. Although SMC does not document the basis for this estimate, EPA nevertheless used SMC's estimate of this cost. EPA viewed this as an estimate of total installed cost. Therefore, EPA believes that the typical approach in the EPA Air Pollution Control Cost Manual, starting with the cost of purchasing control equipment and adding multipliers to account for various installation costs, would double count these installation costs.

Arguably, much of the cost of replacing the pre-calciner at SMC-Charlevoix would be offset by savings to the company through more efficient operation and ability to use cheaper fuels. Indeed, the fact that SMC applied for and received a permit to replace its pre-calciner but then cancelled the permit suggests that the company believed that this replacement would have had benefits that mostly but not entirely would have offset the costs of its implementation. To address this issue, EPA evaluated cost effectiveness both for a scenario in which none of the costs of a replacement pre-calciner are offset and for a scenario in which all of the costs are offset, in order to evaluate the range of cost effectiveness estimates according to the range of possible degrees to which the costs of a replacement pre-calciner would be offset by economic benefits to SMC. EPA estimated costs both for the use of ammonia and for the use of urea. EPA agrees with SMC's view that a redesigned pre-calciner would address the issues that SMC asserts make urea usage problematic under the current plant design, and so EPA's cost estimates for this option assumed that NO_X removal efficiency under this option would match that found at SMC-Dixon.

The resulting estimates were that the option using a replaced pre-calciner, with no cost offset, would cost $2,252 per ton of NO_X removed using urea and $1,901 per ton using ammonia. With a full cost offset, using urea as the reagent, the cost was estimated to be $815 per ton of NO_X removed. The derivation of these estimates is shown in more detail in a technical support document for this rulemaking.

SMC's comments indicate that the replacement calciner will improve the efficiency of SMC-Charlevoix and reduce the baseline NO_X emission rate to 3.9 lb per ton of clinker. This suggests that achievement of a limit of 2.4 lb per ton of clinker on average would require about a 40 percent NO_X emission reduction rather than about a 50 percent reduction, requiring correspondingly

less reagent. EPA estimated reagent costs accordingly, yielding an estimate of $1,835 per ton of NO_X removed using ammonia as the reagent.

As discussed above, EPA believes that SMC has a variety of options for meeting the limits EPA is promulgating. Thus, EPA prepared additional cost estimates reflecting other scenarios that may be associated with achievement of the limits EPA is promulgating. One scenario involves various physical changes to the plant to facilitate use of SNCR, such as straightening flows to minimize the likelihood of problems from material buildup. EPA's proposed rulemaking reflected consideration of such an option, and SMC's comments include cost estimates for such an option as well. EPA and SMC assumed that these physical changes would require a capital expenditure equal to half the cost of the SNCR plus the urea winter storage system. (SMC commented that this cost estimate was unjustified, but SMC used this estimate nevertheless, and EPA believes that this cost estimate provides a useful indication of whether control options that involve varying degrees of plant modifications would be cost effective.) As proposed by SMC, the cost estimates for this scenario also assumed that the use of SNCR would result in the need for two additional days of shutdown to address material buildup, costing SMC $387,200 of production. As noted above, EPA believes that SMC can implement SNCR at SMC-Charlevoix without significant material buildup or production loss, particularly if it uses ammonia as the reagent, to achieve the successful SNCR operation that other companies have achieved. However, EPA prepared this estimate to assess whether such production loss would significantly alter the cost effectiveness of SNCR use. Finally, while this scenario could involve use of either urea or ammonia, EPA estimated costs for this scenario using ammonia because available evidence suggests that the promulgated emission limits are most likely to be met using ammonia. To obtain conservative cost estimates, EPA assumed the NO_X removal efficiency found in the $DeNO_X$ Technologies tests at SMC-Charlevoix, even though EPA expects SMC to be able to achieve better efficiency through use of ammonia. As discussed in the technical support document, EPA estimated that this scenario would cost $1,138 per ton of NO_X removed.

Another scenario EPA examined involved lime injection. Material buildup is a function of the chemistry of the gases within the kiln system, and one option for addressing material buildup may be to inject lime at an appropriate point to minimize the sulfur concentration in the gases, to reduce the potential for sulfate formation. SMC has provided material to EPA suggesting that it already operates a bypass system to achieve this purpose. Nevertheless, EPA believes that it may be helpful to supplement this bypass system with lime injection, and in any case the costs for a scenario involving lime injection may be viewed as a representation of likely costs for a broad range of options (including, for example, the use of additional excess air) that may be warranted for optimizing gas chemistry to optimize SNCR effectiveness. This scenario involved capital costs of $300,000 to install a lime injection system and an annual cost of $300,000 for lime. (To the extent that SMC could use lime it produces itself without loss of production, the annual cost could be considerably lower.) Again, to obtain conservative cost estimates, EPA made these estimates assuming the NO_X reduction efficiency found in the $DeNO_X$ Technologies tests, even though EPA anticipates that SMC will be able to obtain better efficiency. The resulting estimate, based on the use of ammonia, was that annualized costs would be $1,034 per ton of NO_X removed.

In discussions between SMC and EPA, SMC raised the possibility that it could achieve 10 percent reduction of NO_X emissions through facility modifications and operational changes. These might include mid-kiln firing, other burner changes, water suppression, tire firing, and other changes that might reduce NO_X formation. EPA did not attempt to estimate the costs of these approaches. Nevertheless, these approaches constitute additional options that SMC has to achieve the limits that EPA is promulgating. Some of these approaches may well be cheaper for SMC to implement than SNCR, in which case the use of the approaches would allow SMC to reduce NO_X more cost effectively.

As noted above, the cost effectiveness estimates underlying EPA's proposed rulemaking in most respects reflected the method recommended in the EPA Air Pollution Control Cost Manual for estimating costs of gas absorbers. The technical support document describes two cost estimates using this method, reflecting the efficiency found at SMC-Dixon and the efficiency found using urea at SMC-Charlevoix, respectively. Both cost estimates amortize capital costs over 20 years, both use ammonia as the reagent, and both assume that new SNCR equipment will be needed. These resulting cost effectiveness estimates were $720 and $999 per ton of NO_X removed, respectively. Thus, using the gas absorber method, like using the more appropriate SNCR method, leads to the conclusion that control using SNCR is cost effective.

Comment: SMC stated, ''The economic impact of EPA's proposed NO_X limit would be devastating to northern Michigan.'' SMC cited statistics regarding the employment and taxes paid by SMC-Charlevoix. SMC commented on the fragile economy. ''In particular, the cement industry has been hit hard.'' SMC noted that it ''was forced to shift production from its Dixon, Illinois facility to Charlevoix * * * to make a return on its investment.'' SMC raised the possibility of SMC suspending or ceasing operations in Charlevoix, and comments on the devastating effect this would have on the northern Michigan economy.

Response: EPA has thoroughly considered the expected costs of several available options for controlling NO_X at SMC, evaluating SMC's estimates and information we gathered from vendors and analyses performed for other comparable facilities. SMC has not justified a statement that implementing a set of controls that many other facilities are currently implementing, and incurring the costs to do so, would make SMC-Charlevoix unprofitable to operate or otherwise cause SMC to suspend or cease operations. EPA believes further that the costs of control would be considerably lower than SMC estimates. EPA does not believe that meeting the BART limits in the FIP would lead to the shutdown of SMC-Charlevoix.

Comment: SMC cited a third factor in determining BART, namely the energy and non-air quality environmental impacts of compliance. SMC commented that addition of urea would cause ammonia slip.

Response: As stated above, SMC has not demonstrated that ammonia slip would be a problem at SMC-Charlevoix. Numerous cement plants are successfully operating SNCR in a manner that does not cause significant ammonia slip, and EPA believes that SMC would be able to operate SMC-Charlevoix in a manner that avoids significant ammonia slip as well.

Comment: SMC cited a fourth factor in determining BART, namely any pollution control equipment in use or in existence at the source. SMC noted that it has ''purchased and installed a state of the art fabric filter baghouse and has installed an Indirect Fire system which includes low NO_X burners.''

Response: EPA recognizes the presence of these control systems.

Indeed, the indirect fire system facilitates the achievement of lower NO_X emissions, and EPA believes that this system in combination with SNCR is necessary to achieve the BART emission limit that EPA proposed. Given the availability and costs effectiveness of additional NO_X controls, however, these existing controls alone do not meet the BART requirement.

Comment: SMC cited a fifth factor in determining BART, namely the remaining useful life of the source. SMC repeated its statement, addressed above, that the EPA Control Cost Manual allows for 10 year equipment life schedules which more closely match SMC's short- and long-term plans.

Response: EPA has addressed this comment above. The consolidation of cement production at SMC-Charlevoix, mentioned in SMC's comments, further suggests that SMC-Charlevoix is unlikely to be shut down in 10 years.

Comment: SMC commented, ''EPA is not empowered to substitute its judgment for that of the State of Michigan as to the appropriate BART limit.''

Response: The Clean Air Act gives EPA the authority and responsibility to determine whether Michigan has met the applicable requirements. In selected circumstances, such as apply here, if the state plan does not meet the requirements, the Clean Air Act does empower EPA to promulgate limits in lieu of those proposed by the state. Further discussion of this topic is provided in response to a similar comment by Michigan. As noted above, however, EPA prefers SIPs to FIPs, and will work with Michigan if it wants to submit a SIP to replace the FIP.

Comment: SMC cited a sixth factor in determining BART, namely the degree of improvement in visibility that a control option would yield. SMC did not dispute EPA's estimate of the benefit of SNCR but argues that a reduction of permitted emission levels would yield greater visibility benefits.

SMC ''proposes to reduce its permitted emission levels to meet a 30-day rolling average limit for NO_X of 4.85 [lb per ton, which] represents a 25 percent reduction in potential NO_X emissions.'' SMC also ''proposes that it meet a 30-day rolling average limit for SO_2 of 7.5 [lb per ton, which] represents a 16 percent reduction in potential SO_2 emissions.'' Finally, ''SMC proposes a cap on its clinker production,'' representing ''a 9.4 percent reduction from its current maximum.''

SMC conducted CALPUFF modeling to assess the visibility improvement associated with its proposed reduction in permitted emissions. ''The results show an improvement of 1.6 dv at Seney, which is significantly better than the 0.4 dv improvement EPA projected would be achieved with its proposed NO_X limit.''

Response: SMC proposes a reduction in permitted emissions, but its proposed limits would only require minimal actual emission reductions. According to emissions data for 2006 to 2008, which is the most recent detailed data that SMC has provided to EPA, most 30-day average emission levels are well below SMC's proposed limit. For the occasions in 2006 to 2008 in which the 30-day averages exceeded 4.85 lb per ton of clinker, the emission reductions that would have been needed to meet this limit are only about 3 percent of annual total emissions. EPA's proposed SO_2 limit, which SMC proposes to apply on a 30-day average basis, expressly requires no actual emission reductions. SMC's proposed production cap is well above 2006 to 2008 production levels, and thus also would require no actual emission reductions.

In contrast, EPA proposed a limit that would require approximately a 50 percent reduction in actual NO_X emissions. EPA's assessment of the visibility benefits of BART was based on projected actual emission reductions. A comparable analysis of SMC's proposal would find no reductions and thus no benefits for the SO_2 limit or the production cap. SMC's proposal is estimated to require about a 3 percent NO_X emission reduction, compared to EPA's approximately 50 percent, and so an assessment using EPA's methodology would likely estimate a real visibility benefit of about 0.02 dv.

SMC does not explain why its proposal, which clearly requires less emission reduction than EPA's proposal, nevertheless would show significantly more visibility benefit. While SMC does not provide sufficient information about its modeling to make a complete comparison, the disparity reflects significant differences between the two benefit assessments, in particular including the fact that SMC compared its suggested limits to current allowable emissions, whereas EPA assessed the benefits of actual emission reductions that would be expected with imposition of EPA's proposed limits.

Cliffs

Comment: Cliffs objected to EPA addressing Tilden Mining in a separate rulemaking focused on Michigan and Minnesota taconite facilities (August 15, 2012 rulemaking) rather than in the rulemaking addressing most of the rest of Michigan's plan. Cliffs commented ''EPA fails to provide an adequate basis for regulating Tilden separately.'' Cliffs acknowledged that EPA stated that this approach was ''to ensure that the Tilden Mining taconite plant and similar facilities in Minnesota are subject to similar requirements.'' However, Cliffs objected that EPA provided neither factual data nor explanation of its legal interpretations in support of this approach. Furthermore, Cliffs objected to EPA's rationale for rulemaking on Tilden Mining in conjunction with rulemaking on other taconite plants, arguing that the Regional Haze Rule requires case-by-case BART determinations.

Response: The Clean Air Act requires that EPA complete rulemaking on Michigan's submittal but does not limit EPA's flexibility in choosing to conduct rulemakings on selected elements of the State's submittal, potentially in combination with similar elements of other states' submittals, even simply for EPA's administrative convenience. Cliffs provides no rationale to the contrary. Moreover, Cliffs identifies no basis for concluding that rulemaking on Tilden Mining along with the Minnesota taconite plants could be expected to yield an inappropriate conclusion regarding Tilden Mining or is otherwise harmful to Cliffs' interests. EPA believes that case-by-case review of sources should reach similar conclusions for similar facilities, but EPA need not find Tilden Mining similar to Cliffs' other taconite facilities to have the discretion to conduct rulemaking on all of the taconite facilities together.

Comment: Cliffs stated, ''EPA does not give Michigan's [BART] determinations the requisite deference.'' Further, ''EPA can only disapprove a SIP where it fails to meet minimum Clean Air Act requirements.'' Cliffs noted its intent to identify its detailed concerns regarding BART for Tilden Mining in comments addressing the August 15, 2012, rulemaking that in fact prompts these concerns. Nevertheless, Cliffs commented that ''EPA improperly tries to substitute its own judgment for Michigan's.''

Response: EPA has not tried in this rulemaking to ''substitute its own judgment for Michigan's'' with respect to Cliff's facility, because EPA is taking no action with respect to this facility in this rulemaking. More generally, this proposal was promulgated more than three years after EPA published a notice in which EPA found that Michigan failed to submit the required regional haze SIP. (74 FR 2392, January 15, 2009) In the absence of an adequate state submittal, more than two years after this finding, the Clean Air Act mandates that

EPA promulgate a federal plan. *See Clean Air Act section 110(c).* A more detailed response is provided in response to a similar comment by Michigan. To the extent that Cliffs' comment pertains to EPA's proposal on the separate rulemaking that promulgates federal limits for taconite plants including the Tilden Mining facility, this comment is not germane to this rulemaking.

Comment: Cliffs requested that EPA hold ''the public hearing proposed for September 19, 2012. That hearing must be broad enough to address both comments on this Proposed Rule and concerns associated with EPA's related determinations for the Tilden taconite facility.'' Cliffs commented that a hearing with this alternate purpose ''is necessary * * * to allow local parties [in Michigan] to provide feedback on the proposed Tilden implementation plan.''

Response: By letter dated September 14, 2012, EPA denied Cliffs' request because it related to matters addressed in the separate proposed rulemaking published August 15, 2012. Under Clean Air Act section 307(d), EPA must offer interested parties the opportunity for oral presentation of their comments on a proposed FIP but need not offer such opportunity for comments relevant to reviews of state plans, such as the proposed partial approval and partial disapproval of the Michigan SIP. Cliffs requested that EPA hold a public hearing in Michigan, but Cliffs urged that this hearing be held to provide Cliffs opportunity to provide extensive comments regarding Tilden Mining. Cliffs expressed no intent to comment on the proposed FIP elements for BART for SMC or Escanaba Paper. That is, Cliffs in its request did not demonstrate that it was an interested party with respect to the proposed federal limits for SMC or Escanaba Paper.

Implicit in EPA's proposed rulemaking was that EPA was offering to hold a public hearing for purposes of receiving oral comments on its proposed federal limits for SMC and Escanaba Paper. This purpose was clarified in EPA's letter to Cliffs and in EPA's Web site announcing terms of the potential hearing, which stated, ''EPA is providing the public the opportunity to request a public hearing regarding its proposal to establish emission limits for two facilities in Michigan: St. Mary's Cement facility in Charlevoix, and NewPage Paper in Escanaba.''

Finally, Cliffs has had multiple opportunities to provide oral comments on EPA's proposed actions regarding Tilden Mining and Cliffs' other taconite facilities and on any other issues Cliffs may have wished to address. These opportunities included a public hearing on August 29, 2012, in St. Paul, Minnesota (at which a Cliffs representative testified) and multiple meetings with EPA.

III. What are EPA's final BART determinations?

As noted above, in absence of a state submittal that satisfies the BART requirements for SMC-Charlevoix and for Escanaba Paper's Escanaba facility, EPA is under an obligation to promulgate a FIP satisfying these requirements. The following summary reflects EPA's final evaluation of appropriate limits that satisfy the BART requirement for these facilities. As noted above, EPA is addressing Tilden Mining's facility near Ishpeming in a separate rulemaking.

A. SMC

EPA proposed to determine that BART for SMC-Charlevoix includes operation of SNCR achieving an average of 50 percent reduction of NO_X emissions. EPA continues to believe that BART for this facility includes operation of SNCR. SMC provided results of tests using urea showing achievement of only 30 to 37 percent reduction of NO_X, which SMC believes reflect conditions that yield suboptimal results for use of urea. Available evidence suggests that use of ammonia is likely to be considerably more effective at SMC-Charlevoix, and in fact most cement plants using SNCR use ammonia as the NO_X control reagent. EPA finds this control to be cost effective, and a review of relevant factors supports the conclusion that effective implementation of SNCR is BART for this facility. EPA continues to believe that a requirement for 50 percent reduction in NO_X emissions is warranted.

However, the proposed limit would have required approximately 60 percent NO_X reduction on occasions when the emission rates equaled the 95th percentile of baseline emission rates. In response to comments, EPA is promulgating a limit that requires 50 percent control of such emissions, in order to provide increased confidence that the limit can be met. To limit peak emissions, EPA is promulgating a limit based on the rolling average emissions of 30 consecutive operating days. In addition, to ensure BART level control on days with typical emissions as well as on days with elevated emissions, EPA is also promulgating a limit on 12-month average emissions. These limits are 2.8 lb of NO_X per ton of clinker and 2.4 lb of NO_X per ton of clinker, respectively. EPA is requiring that SMC comply with these limits by January 1, 2017, such that the averaging periods beginning on January 1, 2017, are the first periods for which emissions must be at or below the required level. This provides a four year period for compliance instead of three years as proposed, because EPA believes that four years represents the most expeditious schedule for SMC to install appropriate controls to meet the limit.

EPA proposed to limit SO_2 emissions at SMC-Charlevoix to 7.5 lbs per ton of clinker, based on a view that add-on control is not warranted under current circumstances but would be warranted if higher sulfur feed materials were used. EPA's proposed rule cited estimated costs of $3,500 and $4,500 per ton of SO_2 removed (estimated for emissions at permitted levels), but this proposal reflected consideration of a variety of factors that needed to be considered in assessing BART at SMC-Charlevoix, including the fact that at normal emission rates for this facility, costs per ton of SO_2 removed would be much higher. EPA is promulgating its proposed SO_2 emission limit.

B. Escanaba Paper

In its proposed rulemaking, EPA proposed to determine that BART for boilers 8 and 9 at Escanaba Paper's Escanaba facility included combustion control as a means of reducing NO_X emissions. The notice of proposed rulemaking provides detailed discussion of particular control options and the cost effectiveness of these options. The notice of proposed rulemaking further observed that Escanaba Paper has already implemented improvements in its combustion control, such that EPA proposed to establish limits that merely mandated that Escanaba continue to maintain the current level of NO_X emission control.

No commenters objected to this proposed BART determination, and EPA has no reason to change its views regarding BART for Escanaba Paper. As discussed above, EPA received various comments from Escanaba Paper regarding the emission limits that are to be established to require BART and the test method, recordkeeping, and reporting requirements that are to be established. Pursuant to these comments, EPA is promulgating a modified form of the limit for Boiler Number 8, based on a fixed limit of 0.35 lb of NO_X per MMBTU, rather than limit emissions based on the weighted average of separate limits for emissions from oil firing and for emissions from gas firing. The limits for Boilers Number 8 and Number 9 are effective

immediately upon the effective date of this rule, as proposed. As discussed above, EPA is also modifying assorted elements of the test methods, recordkeeping, and reporting requirements that will apply to Escanaba Paper.

IV. What actions is EPA Taking?

EPA is finalizing approval of elements of Michigan's SIP submittal, submitted on November 5, 2010, addressing regional haze for the first implementation period. The submittal was intended to satisfy Clean Air Act and Regional Haze Rule requirements for states to remedy any existing anthropogenic and prevent future impairment of visibility at Class I areas.

EPA finds that Michigan's submission satisfies BART requirements for some of the non-EGUs, based in part on existing SIP emission limits and most notably based on a Federal consent decree requiring new controls for SO_2 and NO_X emissions for the Lafarge plant. On the other hand, EPA is finalizing disapproval of the NO_X and SO_2 BART determination for the cement kiln and associated equipment at SMC-Charlevoix and of the NO_X BART determination for boilers Number 8 and Number 9 at Escanaba Paper. Further, EPA is promulgating a FIP that imposes NO_X and SO_2 limits mandating BART for the cement kiln and associated equipment for the SMC-Charlevoix and NO_X limits mandating BART for boilers Numbers 8 and 9 at Escanaba Paper.

EPA is not addressing Michigan's BART determination for Tilden Mining taconite plant in this action. EPA has proposed separate action and plans separate final action regarding this facility in separate rulemaking action that also addresses taconite facilities in Minnesota.

Michigan's submission provides an approvable analysis of the emission reductions needed to satisfy reasonable progress and other regional haze planning requirements. Michigan's submittal includes a long-term strategy that provides for reasonable progress except to the extent that the deficiencies with respect to BART for SMC and Escanaba Paper (and, according to a separate proposed rule, Tilden Mining) constitute shortfalls in the set of measures needed to provide reasonable progress. EPA is approving Michigan's submittal as meeting other regional haze planning requirements including identification of affected Class I areas, provision of a monitoring plan, and consultation with other parties.

V. Statutory and Executive Order Reviews

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

This action will promulgate requirements for two facilities and is therefore not a rule of general applicability. This type of action is exempt from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). Because this FIP only applies to two facilities, the Paperwork Reduction Act does not apply.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The net result of this FIP action is that EPA is promulgating emission controls on selected units at only two facilities. The facilities in question are a large cement plant and a large paper mill that are not owned by small entities, and therefore are not small entities.

D. Unfunded Mandates Reform Act (UMRA)

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. It is a rule of particular applicability that affects only two facilities in Michigan. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule only applies to two facilities in Michigan.

E. Executive Order 13132 Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action addresses Michigan not meeting its obligation to adopt a SIP that meets the regional haze requirements under the Clean Air Act. Thus, Executive Order 13132 does not apply to this action. Although section 6 of Executive Order 13132 does not apply to this action, EPA did consult with Michigan in developing this action.

F. Executive Order 13175

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because the action EPA is taking neither imposes substantial direct compliance costs on tribal governments, nor preempts tribal law. It will not have substantial direct effects on tribal government. Thus, Executive Order 13175 does not apply to this action. However, to the extent this rule will limit emissions, the rule will have a beneficial effect on tribal health by reducing air pollution.

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

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific standards established by Congress in statutes. However, to the

extent this rule will limit emissions, the rule will have a beneficial effect on children's health by reducing air pollution.

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

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

I. National Technology Transfer and Advancement Act

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

This action does not involve technical standards. Today's action does not require the public to perform activities conducive to the use of voluntary consensus standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629, February 16, 1994), establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

We have determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This rule limits emissions from two facilities.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 2013. Pursuant to Clean Air Act section 307(d)(1)(B), this action is subject to the requirements of Clean Air Act section 307(d) as it promulgates a FIP under Clean Air Act section 110(c). Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See Clean Air Act section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: November 26, 2012.

Lisa P. Jackson,

Administrator.

Title 40, chapter I, of the Code of Federal regulations is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.1170 is amended by adding a new entry at the end of the table in paragraph (e) for ''Regional Haze Plan'' to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approved date	Comments
*	*	*	*	*
Regional Haze Plan	statewide	11/5/2010	12/3/2012 [Insert page number where the document begins].	Addresses all regional haze plan elements except BART emission limitations for EGUs, St. Marys Cement, Escanaba Paper, and Tilden Mining

■ 3. Section 52.1183 is amended by adding paragraphs (g), (h), and (i), to read as follows:

§ 52.1183 Visibility protection.

* * * * *

(g) The requirements of section 169A of the Clean Air Act are not met because the regional haze plan submitted on November 5, 2010, does not meet the best available retrofit technology requirements of 40 CFR 51.308(e) with respect to emissions of NO_X and SO_2 from Saint Marys Cement in Charlevoix and NO_X from Escanaba Paper Company in Escanaba. These requirements for these two facilities are satisfied by 40 CFR 52.1183(h) and 40 CFR 52.1183(i), respectively.

(h)(1) For the 30-day period beginning January 1, 2017, and thereafter, Saint Marys Cement, or any subsequent owner or operator of the Saint Marys Cement facility located in Charlevoix, Michigan, shall not cause or permit the emission of oxides of nitrogen (expressed as NO_2) to exceed 2.80 lb per ton of clinker as a 30-day rolling average.

(2) For the 12-month period beginning January 1, 2017, and thereafter, Saint Marys Cement, or any subsequent owner or operator of the Saint Marys Cement facility located in Charlevoix, Michigan, shall not cause or permit the emission of NO_X (expressed as NO_2) to exceed 2.40 lb per ton of clinker as a 12-month average.

(3) Saint Marys Cement, or any subsequent owner or operator of the Saint Marys Cement facility located in Charlevoix, Michigan, shall not cause or permit the emission of SO_2 to exceed 7.50 lb per ton of clinker as a 12-month average.

(4) Saint Marys Cement, or any subsequent owner or operator of the Saint Marys Cement facility located in Charlevoix, Michigan, shall operate continuous emission monitoring systems to measure NO_X and SO_2 emissions from its kiln system in conformance with 40 CFR part 60 appendix F procedure 1.

(5) The reference test method for assessing compliance with the limit in paragraph (h)(1) of this section shall be use of a continuous emission monitoring system operated in conformance with 40 CFR part 60, appendix F, procedure 1. A new 30-day average shall be computed at the end of each calendar day in which the kiln operates, based on the following procedure: First, sum the total pounds of NO_X (expressed as NO_2) emitted during the operating day and the previous twenty-nine operating days, second, sum the total tons of clinker produced during the same period, and third, divide the total number of pounds by the total clinker produced during the thirty operating days.

(6) The reference test method for assessing compliance with the limit in paragraphs (h)(2) and (h)(3) of this section shall be use of a continuous emission monitoring system operated in conformance with 40 CFR part 60, appendix F, procedure 1. A new 12-month average shall be computed at the end of each calendar month, based on the following procedure: First, sum the total pounds of NO_X or SO_2, as applicable, emitted from the unit during the month and the previous eleven calendar months, second, sum the total tons of clinker production during the same period, and third, divide the total number of pounds of emissions of NO_X or SO_2, as applicable, by the total clinker production during the twelve calendar months.

(7) *Recordkeeping.* The owner/operator shall maintain the following records for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) All records of clinker production, which shall be monitored in accordance with 40 CFR 60.63.

(iii) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix F, Procedure 1.

(iv) Records of all major maintenance activities conducted on emission units, air pollution control equipment, CEMS and clinker production measurement devices.

(v) Any other records required by 40 CFR part 60, subpart F, or 40 CFR part 60, appendix F, procedure 1.

(8) *Reporting.* All reports under this section shall be submitted to Chief, Air Enforcement and Compliance Assurance Branch, U.S. Environmental Protection Agency, Region 5, Mail Code AE–17J, 77 W. Jackson Blvd., Chicago, IL 60604–3590.

(i) The owner/operator shall submit quarterly excess emissions reports for SO_2 and NO_X BART limits no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limits specified in paragraph (h)(1), (h)(2), and (h)(3) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(ii) Owner/operator of each unit shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iii) The owner/operator shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, Procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(iv) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by paragraphs (h)(7)(i) and (ii) of this section.

(i) Escanaba Paper Company, or any subsequent owner or operator of the Escanaba Paper Company facility in Escanaba, Michigan, shall meet the following requirements and shall not cause or permit the emission of NO_X (expressed as NO_X) to exceed the following limits:

(1) For Boiler 8, designated as EU8B13, a rolling 30-day average limit of 0.35 lb per MMBTU.

(2) A continuous emission monitoring system shall be operated to measure NO_X emissions from Boiler 8 in conformance with 40 CFR part 60, appendix F.

(3) The reference test method for assessing compliance with the limit in paragraph (i)(1) of this section shall be a continuous emission monitoring system operated in conformance with 40 CFR part 60, appendix F. A new 30-day average shall be computed at the end of each calendar day in which the boiler operated, based on the following procedure: first, sum the total pounds of NO_X emitted from the unit during the operating day and the previous twenty-nine operating days, second sum the total heat input to the unit in MMBTU during the same period, and third, divide the total number of pounds of NO_X emitted by the total heat input during the thirty operating days.

(4) For Boiler 9, also identified as EU9B03, a limit of 0.27 lb per MMBTU.

(5) The reference test method for assessing compliance with the limit in paragraph (i)(4) of this section shall be a test conducted in accordance with 40 CFR part 60, appendix A, Method 7.

(6) *Recordkeeping.* The owner/operator shall maintain the following

records regarding Boiler 8 and Boiler 9 for at least five years:

(i) All CEMS data, including the date, place, and time of sampling or measurement; parameters sampled or measured; and results.

(ii) All stack test results.

(iii) Daily records of fuel usage, heat input, and data used to determine heat content.

(iv) Records of quality assurance and quality control activities for emissions measuring systems including, but not limited to, any records required by 40 CFR part 60, appendix F, Procedure 1.

(v) Records of all major maintenance activities conducted on emission units, air pollution control equipment, and CEMS.

(vi) Any other records identified in 40 CFR 60.49b(g) or 40 CFR part 60, appendix F, Procedure 1.

(7) *Reporting.* All reports under this section shall be submitted to the Chief, Air Enforcement and Compliance Assurance Branch, U.S. Environmental Protection Agency, Region 5, Mail Code AE–17J, 77 W. Jackson Blvd., Chicago, IL 60604–3590.

(i) Owner/operator of Boiler 8 shall submit quarterly excess emissions reports for the limit in paragraph (i)(1) no later than the 30th day following the end of each calendar quarter. Excess emissions means emissions that exceed the emissions limit specified in paragraph (i)(1) of this section. The reports shall include the magnitude, date(s), and duration of each period of excess emissions, specific identification of each period of excess emissions that occurs during startups, shutdowns, and malfunctions of the unit, the nature and cause of any malfunction (if known), and the corrective action taken or preventative measures adopted.

(ii) Owner/operator of Boiler 8 shall submit quarterly CEMS performance reports, to include dates and duration of each period during which the CEMS was inoperative (except for zero and span adjustments and calibration checks or when Boiler 8 is not operating), reason(s) why the CEMS was inoperative and steps taken to prevent recurrence, and any CEMS repairs or adjustments.

(iii) Owner/operator of Boiler 8 shall also submit results of any CEMS performance tests required by 40 CFR part 60, appendix F, procedure 1 (Relative Accuracy Test Audits, Relative Accuracy Audits, and Cylinder Gas Audits).

(iv) When no excess emissions have occurred or the CEMS has not been inoperative, repaired, or adjusted during the reporting period, such information shall be stated in the quarterly reports required by paragraph (i)(7) of this section.

(v) Owner/operator of Boiler 9 shall submit reports of any compliance test measuring NO_X emissions from Boiler 9 within 60 days of the last day of the test. If owner/operator commences operation of a continuous NO_X emission monitoring system for Boiler 9, owner/operator shall submit reports for Boiler 9 as specified for Boiler 8 in paragraphs (i)(7)(i) to (i)(7)(iv) of this section.

[FR Doc. 2012–29014 Filed 11–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0492; FRL–9757–1]

Approval and Promulgation of Implementation Plans; California; Determinations of Attainment for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is making a number of determinations relating to 1997 8-hour ozone nonattainment areas in California. First, EPA is determining that six 8-hour ozone nonattainment areas in California (Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, and Sutter County) (''six CA areas'') attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by their applicable attainment dates. Second, in conjunction with its determinations for Mariposa and Tuolumne Counties and Nevada County, EPA is granting these areas one-year attainment date extensions. Lastly, EPA is determining that the six CA areas and the Ventura County 8-hour ozone nonattainment area in CA have attained and continue to attain the 1997 8-hour ozone NAAQS based on the most recent three years of data. Under the provisions of EPA's ozone implementation rule, these determinations suspend the requirements to submit revisions to the state implementation plans (SIP) for these areas related to attainment of the 1997 8-hour ozone standard for as long as these areas continue to meet the 1997 8-hour ozone NAAQS.

DATES: *Effective Date:* This rule is effective on January 2, 2013.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R09–OAR–2011–0492. The index to the docket is available electronically at *www.regulations.gov* and in hard copy at EPA Region 9, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some may be publicly available only at the hard copy location (e.g., copyrighted material) and some may not be publicly available at either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: John Ungvarsky, Air Planning Office, AIR–2, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone number (415) 972–3963, or email *ungvarsky.john@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever ''we'', ''us'' or ''our'' are used, we mean EPA. We are providing the following outline to aid in locating information in this final rule.

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I. What determinations is EPA making?

EPA is making a number of determinations with respect to 1997 8-hour ozone nonattainment areas in California. First, pursuant to section 181(b)(2) of the Clean Air Act (CAA), EPA is determining that the Amador and Calaveras Counties (Central Mountain Counties), Chico (Butte County), Kern County (Eastern Kern), Mariposa and Tuolumne Counties (Southern Mountain Counties), Nevada County (Western Nevada County), and Sutter County (Sutter Buttes) 8-hour ozone nonattainment areas in California (herein referred to as the ''six CA areas'') attained the 1997 8-hour ozone NAAQS by their respective applicable attainment dates. Second, in connection with these determinations, EPA is also granting, pursuant to section 181(a)(5) and 40 CFR 51.907, applications submitted by the California Air Resources Board (CARB) for extensions to the applicable attainment dates for the Southern Mountain Counties and

Western Nevada County nonattainment areas.

The six CA areas have differing applicable attainment dates. For Butte County and Sutter Buttes, EPA is determining that these areas attained the 1997 8-hour ozone standard by their applicable attainment deadline of June 15, 2007, based on complete, quality-assured, and certified ambient air quality monitoring data for 2004–2006. For the Central Mountain Counties and Eastern Kern ozone nonattainment areas, EPA is determining that they attained the 1997 8-hour ozone standard by their applicable attainment deadline of June 15, 2010, based on complete, quality-assured and certified air quality data for 2007–2009. For the Southern Mountain Counties and Western Nevada County, whose original attainment date was June 15, 2010, EPA is granting a one-year attainment date extension until June 15, 2011 and determining that these areas attained the 1997 8-hour ozone NAAQS by that extended attainment date, based on complete, quality-assured data for 2008–2010.

In addition, for all the areas listed above and for Ventura County,[1] EPA is determining, based on complete, quality-assured and certified air quality monitoring data for 2009–2011, that these areas have attained and continue to attain the 1997 8-hour ozone NAAQS. Preliminary data for 2012 indicate that these areas continue to attain the NAAQS. Under the provisions of 40 CFR 51.918, these latter determinations suspend the obligation of the State to submit certain planning requirements related to attainment for as long as the areas continue to attain the standard.

II. What is the background for these actions?

On September 14, 2012, EPA published in the **Federal Register** a direct final rule (77 FR 56775) that made the same determinations for the same areas addressed in today's final rule. On that same date, we also published a document (77 FR 56797) that was to serve as the proposed rule addressing the same actions as the direct final rule if we were to withdraw the direct final rule in response to receipt of adverse comments.

In our direct final rule, we provided background for these actions by describing the 1997 8-hour ozone NAAQS (0.08 parts per million averaged over an eight-hour time frame), the designations and classifications of the six CA areas and Ventura County with respect to the 1997 8-hour ozone NAAQS (see Table 1 from the direct final rule), and the statutory and regulatory provisions that allow EPA to grant attainment date extensions and that act to suspend attainment-related SIP submittal obligations. In the direct final rule, we also describe the basis upon which we evaluate whether an area has attained the 1997 8-hour ozone standard, and present area-specific monitoring network information and data in support of our conclusions: That two of the six CA areas—the Southern Mountain Counties and Western Nevada County—qualified for one-year extensions of their applicable attainment dates; that the six CA areas attained by their respective attainment dates, that all six CA areas and Ventura County have attained the NAAQS based on the most recent complete three-year monitoring period (2009–2011); and that the most recent available ambient data for 2012 are consistent with continued attainment of the standard. Lastly, we explained how, under 40 CFR 51.918, the determinations of attainment based upon the most recent three-year period (2009–2011) suspend attainment-related SIP submittal obligations for these areas with respect to the 1997 8-hour ozone standard for so long as the areas continue to attain the standard, although the areas remain designated nonattainment until they are redesignated to attainment. Please see the direct final rule for detailed information concerning the subject areas, ozone monitoring networks and data, and our review and evaluation.

In our direct final rule, we indicated that, if we received adverse comments, then we would publish a withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. We received such adverse comments and have withdrawn the direct final rule. See 77 FR 66715 (November 7, 2012). In our direct final rule, we stated that EPA would respond to comments received on the proposed rule, but that we would not institute a second comment period. In this final rule and in responding to comments, we continue to rely on the information and analysis that were set forth in the direct final rule.

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

First, EPA received one anonymous comment that generally supports the proposed actions, while emphasizing the need for continued monitoring for the ozone standard. Second, and with respect only to EPA's proposed determination for the Central Mountain Counties, EPA also received two adverse comment letters from one individual. These were submitted on behalf of the Ione Valley Land, Air, and Water Defense Alliance (''Ione Valley Alliance''), and expressed concern over the proposed determination related to a portion (Amador County) of the Central Mountain Counties area (Amador and Calaveras Counties). See letters, Douglas Carstens, September 10 and October 3, 2012. EPA received no adverse comments with respect to its determinations for any of the other CA areas in its direct final and proposed rulemakings. The general, supportive anonymous comment and the two comments related to Amador County are summarized and addressed below.

Comment 1: The anonymous commenter states that he/she generally agrees with our proposed determinations and the related suspension of the obligation to submit attainment-related SIP planning requirements, but emphasizes the need to continue ambient monitoring to ensure that the standard is maintained and to avoid the return of excessive ozone levels.

Response 1: We agree that continued ambient air monitoring by CARB and the individual air districts (where applicable) in the seven nonattainment areas that are the subject of this action is necessary to ensure that continuing attainment of the 1997 8-hour ozone standard is verified. While our final determinations will suspend certain attainment-related SIP submittal requirements, they will not suspend any monitoring-related requirements and CARB and the local air districts (where applicable) will continue to be required to operate ozone monitoring networks in compliance with EPA monitoring regulations.

Lastly, as described in our direct final rule, the suspension of attainment-related SIP requirements continues only until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS. If EPA subsequently determines, after notice-and-comment rulemaking, that any one of the nonattainment areas has violated the 1997 8-hour ozone NAAQ, the basis for the suspension of the requirements for that area, provided by 40 CFR 51.918, would no longer exist, and the violating ozone nonattainment area would thereafter have to address those requirements. See 77 FR 56775, at 56778 (September 14, 2012).

Comment 2: The Ione Valley Alliance objects to our proposed determination of

[1] Ventura County is classified as a ''serious'' nonattainment area for the 1997 8-hour ozone standard. As such, the applicable attainment date for Ventura County is June 15, 2013.

attainment for Amador County and contends that Amador County has not implemented sufficient measures that will ensure that it can maintain attainment status.

Response 2: Amador County is part of a two-county 1997 8-hour ozone nonattainment area that, together with Calaveras County, is referred to as ''Central Mountain Counties.'' As to the Central Mountain Counties area, we are finalizing our proposed determination of attainment by the applicable attainment date (i.e., June 15, 2010 for this area) based on 2007–2009 data, as well as our separate proposed determination that the area currently attains the standard based on the most recent three-year monitoring period (2009–2011). See pages 56779 and 56780 from our September 14, 2012 direct final rule. We have made these determinations after reviewing the complete, quality-assured data from the ozone monitoring station located in Jackson, California, which is the county seat of Amador County. As shown in Table 3 in the direct final rule (page 56780), the design value based on the data from the Jackson monitoring site was 0.080 ppm during the 2007–2009 period and 0.071 ppm during the 2009–2011 period. These values show levels in the area that are well below the 1997 8-hour ozone NAAQS.[2] Moreover, the preliminary ozone data available for 2012 indicate that the area continues to attain the standard.

EPA's determinations of attainment for the Amador and Calaveras Counties area are solely based on complete, quality-assured air monitoring data. EPA's review of these data does not involve any evaluation of the sufficiency of the measures adopted for the area to maintain the NAAQS, and it is not dependent on any conclusions regarding those measures. Thus the comments of Ione Valley Alliance are not germane to the action we are taking today, i.e., determinations based solely on air quality data. CAA Section 181(b)(2) expressly provides that a determination that an area has attained by its attainment date is ''based on the area's design value (as of the attainment date).'' Similarly, EPA's determination that the area continues currently to attain the standard is based entirely on data establishing the area's design value for the most recent three years. The commenter does not challenge these air quality determinations themselves. Moreover, since our determinations of attainment for Central Mountain Counties are based solely on air quality, they do not constitute a redesignation of the area to attainment. In order for EPA to redesignate an area to attainment, EPA must, among other criteria, determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations. To approve a redesignation to attainment, EPA must also review and approve a maintenance plan that covers the first ten years beyond redesignation. See CAA sections 107(d)(3)(E)(iii) and (iv) and section 175A. At this time, California has not submitted a redesignation request or maintenance plan for Central Mountain Counties. EPA again notes that, under 40 CFR section 51.918, EPA's determination that the area is currently attaining the standard based on the most recent three years of data will be withdrawn if, after notice-and-comment rulemaking, EPA determines that the area is once again in violation of the standard.

Comment 3: The Ione Valley Alliance contends that EPA's issuing of a blanket attainment ruling without public notice and comment during a formal rulemaking process may inappropriately expose the County to overdevelopment without sufficient oversight to ensure meaningful measures are implemented to maintain attainment status. In support of this contention, Ione Valley Alliance enclosed, with its September 10, 2012 comment letter, a copy of a letter the Alliance sent to the Amador County Air Pollution Control District (APCD) regarding a Public Records Act request and a request for notices related to a specific quarry project, General Plan Amendment and related environmental impact report.

Response 3: EPA has addressed the commenter's claims as to lack of notice and opportunity to comment by withdrawing our direct final rule in response to receipt of adverse comments and by fully responding to the comments in this final rule, which is based on EPA's proposed rule, published the same day (September 14, 2012) as our direct final rule.

Second, as to the concern the commenter expressed regarding the risk of overdevelopment without sufficient oversight, EPA's determinations today, which derive solely from ambient ozone monitoring data, do not in and of themselves affect development in the county. The determination that the area attained the standard by its attainment date fulfills EPA's statutory obligation under section 181(b)(2). Our determination that the area is currently attaining the standard based on the most recent three years of quality-assured monitoring data reflects the reality of recent air quality in the area. It does not redesignate the area to attainment status, or relax control requirements. Pursuant to 40 CFR 51.918, the determination has the effect of suspending only those SIP submittal requirements related to attainment, but the suspension of these requirements lasts only for so long as the area continues to attain the 1997 8-hour ozone NAAQS. As explained generally on page 56778 of the direct final rule with respect to all of the subject areas, if EPA subsequently determines, after notice-and-comment rulemaking, that the Central Mountain Counties area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the requirements for that area would no longer exist, and the area would thereafter have to address those requirements.

Lastly, as noted above, the enclosure sent with the September 10th comment letter is a letter to the Amador County APCD containing a Public Records Act Request and a request for notices related to a quarry project and related Environmental Impact Report (EIR) prepared under the State's California Environmental Quality Act (CEQA). The letter to Amador County APCD also asserts that the EIR prepared by Amador County is deficient and cannot be relied upon by the APCD in issuing permits to project-related emissions sources; that the project would violate certain APCD rules and regulations; that the emissions from the project would be significant; that sensitive receptors in the area would be adversely affected; that feasible, less damaging alternatives are available; and that the permit applications therefore must be denied.

The contents of the letter to the Amador County APCD are not germane to today's determinations because today's determinations are based solely on ambient air quality data, and the comments do not challenge the data or EPA's review and evaluation of the data. In addition, EPA's action today does not change the status of Amador County as nonattainment with respect to the 1997 8-hour ozone standard nor would it affect the permit requirements for the quarry project. Rather, our action today simply suspends attainment-related SIP submittal requirements so long as the area continues to monitor attainment of the 1997 8-hour ozone standard.

Comment 4: The Ione Valley Alliance believes that the attainment determination does not change the designation of Amador County and that the status of the area continues to be

[2] Design values less than or equal to 0.084 ppm represent attainment of the 1997 eight-hour ozone standard.

''nonattainment'' until official action is taken to change that designation.

Response 4: We agree that the neither the determination of attainment by the applicable attainment date, nor the determination of attainment based on the most recent three-year period, for the Central Mountain Counties area changes the designation or classification of the area with respect to the 1997 8-hour ozone NAAQS. Central Mountain Counties will remain ''moderate'' nonattainment for the 1997 8-hour ozone standard until EPA takes final action to approve a maintenance plan for the area and a request to redesignate the area to attainment under CAA section 107(d)(3)(E). No such maintenance plan or redesignation request is pending before EPA at the present time for the Central Mountain Counties 8-hour ozone nonattainment area.

IV. What are the effects of these actions?

A. Attainment Date Extensions

Pursuant to CAA section 181(a)(5) and 40 CFR 51.907, the State has requested, and EPA is approving one-year attainment date extensions, until June 15, 2011, for the Southern Mountain Counties and Western Nevada County nonattainment areas. The effect of granting the attainment date extensions is to extend the 1997 8-hour ozone attainment deadline for the Southern Mountain Counties and Western Nevada County nonattainment areas for an additional year until June 15, 2011 and to enable EPA, pursuant to section 181(b)(2) of the CAA, to determine that the areas attained the 1997 8-hour ozone NAAQS by their extended deadlines.

B. Determinations of Attainment by Areas' Applicable Attainment Dates

Pursuant to section 181(b)(2) of the CAA, EPA is determining that the Butte County, Central Mountain Counties, Eastern Kern, Southern Mountain Counties, Sutter Buttes, and Western Nevada County ozone nonattainment areas attained the 1997 8-hour ozone NAAQS by their applicable attainment dates.

These determinations discharge EPA's obligations under section 181(b)(2) with respect to determining whether these areas attained by their respective attainment deadlines, and establish that these areas are not subject to reclassification for failure to attain by these deadlines.

C. Determinations of Current Attainment and 40 CFR 51.918

In addition, EPA is separately determining that the six CA areas and Ventura County have attained the standard based upon the most recent three years of data (without reference to their attainment deadlines). Under the provisions of 40 CFR 51.918, these determinations of attainment suspend the obligation for the State to submit certain planning requirements described above; however, they do not constitute redesignations to attainment under section 107(d)(3) of the CAA. The designation status of the six CA areas and Ventura County remains nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that each area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

In accordance with 40 CFR 51.918, based on these determinations, the obligation under the CAA for the State of California to submit an attainment demonstration and reasonably available control measures (RACM), reasonable further progress plans (RFP), contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for these seven ozone nonattainment areas is suspended for so long as the areas continue to attain the 1997 8-hour ozone NAAQS.

The suspension continues until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS. It is separate from, and does not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS. It remains in effect regardless of whether EPA designates the area as a nonattainment area for purposes of any new or revised ozone NAAQS.

If EPA subsequently determines, after notice-and-comment rulemaking, that any one of these nonattainment areas has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the requirements for that area, provided by 40 CFR 51.918, would no longer exist, and the violating ozone nonattainment area would thereafter have to address those requirements.

V. EPA's Final Actions

Based on the information and rationale presented in the direct final rule and in this notice of final rulemaking and after due consideration of all comments received, EPA is taking final action to make a number of determinations for certain areas in California for the 1997 8-hour ozone NAAQS.

First, pursuant to section 181(b)(2), EPA is determining that six 8-hour ozone nonattainment areas in California [Amador and Calaveras Counties (Central Mountain Counties), Chico (Butte County), Kern County (Eastern Kern), Mariposa and Tuolumne Counties (Southern Mountain Counties), Nevada County (Western Nevada County), and Sutter County (Sutter Buttes)] attained the 1997 8-hour ozone NAAQS by their respective applicable attainment dates based on complete, quality-assured, and certified ambient air quality monitoring data. Second, in conjunction with its determinations for Southern Mountain Counties and Western Nevada County, EPA is determining that these areas qualified for one-year extensions and is granting these extensions under CAA section 181(a)(5) and 40 CFR 51.907.

Specifically, for Butte County and Sutter Buttes, EPA is determining that these areas attained the 1997 8-hour ozone standard by their applicable attainment deadline of June 15, 2007, based on complete, quality-assured, and certified ambient air quality monitoring data for 2004–2006. For the Central Mountain Counties and Eastern Kern ozone nonattainment areas, EPA is determining that they attained the 1997 8-hour ozone standard by their applicable attainment deadline of June 15, 2010, based on complete, quality-assured and certified air quality data for 2007–2009. For the Southern Mountain Counties and Western Nevada County, whose original attainment date was June 15, 2010, EPA is granting a one-year attainment date extension until June 15, 2011 and determining that these areas attained the 1997 8-hour ozone NAAQS by that extended attainment date, based on complete, quality-assured data for 2008–2010.

Third, EPA is separately determining that Central Mountain Counties, Butte County, Eastern Kern, Southern Mountain Counties, Western Nevada County, Sutter Buttes, and Ventura County have each attained the 1997 8-hour ozone standard based on the most recent three years of complete, quality-assured, and certified data for 2009–2011. Preliminary data available for 2012 show that these areas continue to attain the standard. As provided in 40 CFR 51.918, these determinations of attainment suspend the requirements for the State of California to submit, for each of these seven ozone nonattainment areas, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS, for as long as the areas

continue to attain the 1997 8-hour ozone NAAQS.

VI. Statutory and Executive Order Reviews

These actions make determinations of attainment based on air quality, result in the suspension of certain federal requirements, grant attainment date extensions, and/or would not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not ''significant regulatory actions'' 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 disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, these actions do not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP obligations discussed herein do not apply to Indian Tribes and thus will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 1, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 19, 2012.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.282 is amended by adding paragraph (e) to read as follows:

§ 52.282 Control Strategy and regulations: Ozone.

* * * * *

(e) *Determinations of Attainment:* Effective January 2, 2013.

(1) *Approval of applications for extensions of applicable attainment dates.* Under section 181(a)(5) of the Clean Air Act, EPA is approving the applications submitted by the California Air Resources Board dated March 23, 2010 and May 24, 2010 for extensions of the applicable attainment date for the Mariposa and Tuolumne Counties and Nevada County 8-hour ozone nonattainment areas, respectively, from June 15, 2010 to June 15, 2011.

(2) *Determinations of attainment by the applicable attainment dates.* EPA has determined that the Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, and Sutter County 8-hour ozone nonattainment areas in California attained the 1997 8-hour ozone national ambient air quality standard (NAAQS) by their applicable attainment dates. The applicable attainment dates are as follows: Amador and Calaveras Counties (June 15, 2010), Chico (June 15, 2007), Kern County (June 15, 2010), Mariposa and Tuolumne Counties (June 15, 2011), Nevada County (June 15, 2011), and Sutter County (June 15, 2007).

(3) *Determinations of attainment.* EPA is determining that the Amador and Calaveras Counties, Chico, Kern County, Mariposa and Tuolumne Counties, Nevada County, Sutter County and Ventura County 8-hour ozone nonattainment areas have attained the 1997 8-hour ozone standard, based upon complete quality-assured data for 2009–2011. Under the provisions of EPA's ozone implementation rule (see 40 CFR 51.918), these determinations suspend the attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment for as long as the areas continue to attain the 1997 8-hour ozone standard. If EPA determines, after notice-and-comment rulemaking, that any of these areas no longer meets the 1997 ozone NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

* * * * *

[FR Doc. 2012–29013 Filed 11–30–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0781; FRL–9370–6]

Halosulfuron-Methyl; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of halosulfuron-methyl in or on multiple commodities which are identified and discussed later in this document. Canyon Group L.L.C., c/o Gowan Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective December 3, 2012. Objections and requests for hearings must be received on or before February 1, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0781, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Maggie Rudick, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 347–0257; email address: *rudick.maggie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

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

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

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

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.* To access the OCSPP test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select ''Test Methods and Guidelines.''

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2011–0781 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before February 1, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2011–0781, by one of the following methods:

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

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

II. Summary of Petitioned-for Tolerance

In the **Federal Register** of December 8, 2011 (75 FR 76676) (FRL–9328–8), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 1F7916) by Canyon Group L.L.C., c/o Gowan Company, 370 South Main St., Yuma, AZ 85364. The petition requested that 40 CFR 180.479 be amended by establishing tolerances for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino]carbonylamino sulfonyl]-3-chloro-1-methyl-1H-pyrazole-4-carboxylate, in or on millet, proso, forage at 7.0 parts per million (ppm); millet, proso, hay at 0.02 ppm; millet, proso, grain at 0.01 ppm; millet, proso, straw at 0.01 ppm; grass, forage, fodder, and hay, group 17, forage at 17 ppm; and grass, forage, fodder, and hay, group 17, hay at 0.90 ppm. That document referenced a summary of the petition prepared by Canyon Group, L.L.C., the registrant, which is available in the docket, *http://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels, determined that established tolerances for certain livestock commodities should be increased and multiple new livestock commodity tolerances should be established. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

result to infants and children from aggregate exposure to the pesticide chemical residue * * *.''

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

A. Toxicological Profile

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

Halosulfuron-methyl has a low acute toxicity via the oral, dermal, and inhalation routes of exposure. Halosulfuron-methyl is a non-irritant for skin and eyes and is not a dermal sensitizer.

With repeated dosing, halosulfuron-methyl produces non-specific effects, which are frequently characterized by reduced body weight/body weight gain in the test animals. The available data show that the dog is the most sensitive mammalian species. In the dog, decreased body weight was seen in the chronic oral toxicity study and decreased body weight gain was observed in females in the subchronic oral toxicity study. In the rat and mouse, there was a decrease in body weight gains at high dose levels in short- and long-term oral and dermal studies.

In the prenatal developmental toxicity study in rats, increases in resorptions, soft tissue (dilation of the lateral ventricles) and skeletal variations, and decreases in body weights were seen in the fetuses compared to clinical signs and decreases in body weights and food consumption in the maternal animals at similar dose level.

In the rabbit developmental toxicity study, increases in resorptions and post-implantation losses and decrease in mean litter size was seen in the presence of decreases in body weight and food consumption in maternal animals were observed. However, a clear no-observed-adverse-effect-level (NOAEL) for these effects was established in both rat and rabbit developmental toxicity studies.

Halosulfuron-methyl did not produce reproductive effects. No neurotoxic effects were observed in the acute or subchronic neurotoxicity studies. Halosulfuron-methyl is classified as ''not likely to be carcinogenic to humans'' because in both rat and mouse carcinogenicity studies halosulfuron-methyl does not cause; compound-related increases in tumor incidence. It is negative for mutagenicity in a battery of genotoxicity studies. Specific information on the studies received and the nature of the adverse effects caused by halosulfuron-methyl as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document Halosulfuron-methyl: ''Human Health Risk Assessment for Proposed New Uses on Proso Millet and Crop Group 17 (Grass, Forage, Fodder, and Hay)'' at p. 19 in docket ID number EPA–HQ–OPP–2011–0781.

B. Toxicological Points of Departure/Levels of Concern

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

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (Females 13–50 years of age).	NOAEL = 50 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Acute RfD = 0.5 mg/kg/day. aPAD = 0.5 mg/kg/day	Developmental Toxicity—Rabbit. LOAEL = 150 mg/kg/day based on decreased mean litter size, increased number of resorptions (total and per dam) and increased post-implantation loss (developmental toxicity).
Acute dietary (General population including infants and children).	N/A	N/A	No adverse effect attributable to a single dose was identified; therefore, no dose/endpoint was selected for this exposure scenario.
Chronic dietary (All populations)	NOAEL = 10 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	Chronic RfD = 0.1 mg/kg/day. cPAD = 0.1 mg/kg/day.	Chronic Toxicity—Dog. LOAEL = 40 mg/kg/day based on decreased body weight gains in females.

TABLE—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR HALOSULFURON-METHYL FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/scenario	Point of departure and uncertainty/ safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Incidental oral short-term (1 to 30 days).	NOAEL = 50 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	Developmental Toxicity—Rabbit. LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency (maternal toxicity).
Incidental oral intermediate-term (1 to 6 months).	NOAEL = 10 mg/kg/day. UF_A= 10X UF_H= 10X FQPA SF = 1X	LOC for MOE = 100	13 Week Subchronic Toxicity—Dog. LOAEL = 40 mg/kg/day based on decreased body weight gains and food efficiency along with hematological and clinical chemistry changes.
Dermal short-term (1 to 30 days).	NOAEL = 100 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	21 Day Dermal Toxicity Study—Rats. LOAEL = 1,000 mg/kg/day based on decreased body weight gains in males.
Dermal intermediate-term (1 to 6 months).	NOAEL = 10 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	13 Week Subchronic Toxicity—Dog. LOAEL = 40 mg/kg/day based on decreased body weight gains and food efficiency along with hematological and clinical chemistry changes.
Inhalation short-term (1 to 30 days).	NOAEL = 50 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	Developmental Toxicity—Rabbit. LOAEL = 150 mg/kg/day based on decreased body weight gain, food consumption, and food efficiency (maternal toxicity).
Inhalation (1 to 6 months)	NOAEL = 10 mg/kg/day. UF_A = 10X UF_H = 10X FQPA SF = 1X	LOC for MOE = 100	13 Week Subchronic Toxicity—Dog. LOAEL = 40 mg/kg/day based on decreased body weight gains and food efficiency along with hematological and clinical chemistry changes.
Cancer (Oral, dermal, inhalation).	Based on the results of carcinogenicity studies in rats and mice, EPA classified halosulfuron-methyl as ''not likely to be carcinogenic to humans.'' Therefore, an exposure assessment to evaluate cancer risk is unnecessary for this chemical.		

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to halosulfuron-methyl, EPA considered exposure under the petitioned-for tolerances as well as all existing halosulfuron-methyl tolerances in 40 CFR 180.479. EPA assessed dietary exposures from halosulfuron-methyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for halosulfuron-methyl. In estimating acute dietary exposure, EPA used food consumption information from the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, EPA conducted an unrefined assessment that assumed 100 percent crop treated (PCT), dietary exposure evaluation model (DEEM™) 7.81 default concentration factors, and tolerance-level residues for all existing and proposed uses. There was no indication of an adverse effect attributable to a single dose for the general U.S. population. Therefore, an acute dietary assessment was not conducted for the general U.S. population.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA conducted a chronic dietary assessment that utilized the same food residue assumptions as in the acute dietary exposure assessment discussed in Unit III.C.1.i.

iii. *Cancer.* In both rat and mouse carcinogenicity studies, halosulfuron-methyl does not produce compound related increases in tumor incidence; EPA has concluded that halosulfuron-methyl does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for halosulfuron-methyl. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for halosulfuron-methyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of halosulfuron-methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at

http://www.epa.gov/oppefed1/models/water/index.htm.

Based on the Tier 1 Rice Model and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of halosulfuron-methyl for acute and chronic exposures are estimated to be 59.2 parts per billion (ppb) for surface water and 0.065 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For both acute and chronic dietary risk assessments, the water concentration value of 59.2 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Halosulfuron-methyl is currently registered for the following uses that could result in residential exposures: Residential turf. EPA assessed residential exposure using the default assumptions of the 2012 Residential Standard Operating Procedures (SOPs). Residential handler short-term (1–30 days) dermal and inhalation exposures, and residential post-application short-term dermal and incidental oral (hand-to-mouth, object-to-mouth, and soil ingestion) exposures are expected from activities associated with the existing uses. Intermediate-term exposures are not likely because of the intermittent nature of applications by homeowners. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' EPA has not found halosulfuron-methyl to share a common mechanism of toxicity with any other substances, and halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that halosulfuron-methyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* The pre-natal and postnatal toxicity database for halosulfuron-methyl includes rat and rabbit developmental toxicity studies and a 2-generation reproduction toxicity study in rats. As discussed in Unit III.A, there was qualitative evidence of increased susceptibility of fetuses in the rat and rabbit developmental studies. Fetal effects e.g., increased incidences of soft tissue and skeletal variations, decreased mean fetal body weight and mean litter size in the rat study; increases in resorptions and post-implantation losses and a decrease in mean litter size in the rabbit study, occurred at doses resulting in less severe maternal toxicity e.g., increased incidence of clinical observations, reduced body weight gains, reduced food consumption and food efficiency in the rat study; decreases in body weight and food consumption in the rabbit study. The degree of concern for these effects is low, and there are no residual uncertainties for prenatal toxicity in rats and rabbits for the following reasons: In both studies, there are clear NOAELs/LOAELs for developmental and maternal toxicities; developmental effects were seen in the presence of maternal toxicity; and effects were seen only at the high dose. Additionally, in rats, developmental effects were seen at a dose which is approaching the limit-dose.

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

i. The toxicity database for halosulfuron-methyl is complete except for an immunotoxicity study. In accordance with 40 CFR part 158, Toxicology Data Requirements, an immunotoxicity study is required for halosulfuron-methyl. In the absence of specific immunotoxicity studies, EPA has evaluated the available halosulfuron-methyl toxicity data to determine whether an additional uncertainty factor is needed to account for potential immunotoxicity. The toxicology database for halosulfuron-methyl does not show any evidence of biologically relevant effects on the immune system following exposure to this chemical. The overall weight of evidence suggests that this chemical does not directly target the immune system. Based on these considerations, EPA does not believe that conducting immunotoxicity testing will result in a POD lower than those already selected for halosulfuron-methyl risk assessment, and an additional database uncertainty factor is not needed to account for the lack of this study.

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

iii. Although there is evidence of increased qualitative susceptibility in *in utero* rats and rabbits in the prenatal developmental studies, the degree of concern for developmental effects is low, and EPA did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs to be used in the risk assessment of halosulfuron-methyl.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to halosulfuron-methyl in drinking water. EPA used similarly conservative assumptions to assess post application exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by halosulfuron-methyl.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the

estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to halosulfuron-methyl will occupy <1% of the aPAD for females 13–49 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to halosulfuron-methyl from food and water will utilize 6% of the cPAD for all infants, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of halosulfuron-methyl is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Halosulfuron-methyl is currently registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to halosulfuron-methyl.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and residential exposures result in aggregate MOEs of 1,800 for adults and 840 for children. For adults, potential pathways of exposure include oral (background) and dermal (post-application primary) routes, while for children, potential pathways of exposure include oral (background) and incidental oral and dermal (primary) routes. Because EPA's level of concern for halosulfuron-methyl is a MOE of 100 or below, these MOEs are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, halosulfuron-methyl is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for halosulfuron-methyl.

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

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies are available to enforce the tolerance expression: A gas chromatography with nitrogen phosphorus detection; GC/NPD method for crop commodities and a gas chromotagraphy with electron capture detection (GC/ECD) method for livestock commodities. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

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

C. Response to Comments

An anonymous citizen objected to the presence of any pesticide residues on food. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of the FFDCA contemplates that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-for Tolerances

EPA has revised the requested tolerances by increasing the tolerance values for millet, proso, forage and grass, forage, fodder, and hay, group 17, forage and reducing the tolerance values for millet, proso, hay and grass, forage, fodder, and hay, group 17, hay. Differences in proposed and recommended tolerances may be attributed to the petitioner having used the North American Free Trade Agreement (NAFTA) tolerance calculation procedures for determining the tolerance and EPA's use of the Organization for Economic Cooperation and Development (OECD) tolerance calculation procedures. Recently, EPA has adopted use of the OECD tolerance calculation procedures to increase international harmonization of tolerance levels. For grass hay, the petitioner used values below the level of quantitation (LOQ) in the tolerance calculation whereas EPA used LOQ values. In addition, already established tolerances for cattle, goat, horse, and sheep meat byproducts are being increased and multiple new livestock commodity tolerances are being established. Livestock tolerances are derived from reevaluation of the dairy/beef cattle diet with new feed items (millet and grass).

V. Conclusion

Therefore, tolerances are established for residues of halosulfuron-methyl, including its metabolites and degradates, as set forth in the regulatory text.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: November 21, 2012.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In § 180.479 revise the table in paragraph (a)(1) and add alphabetically the following new entries to the table in paragraph (a)(2).

The revised and added text read as follows:

§ 180.479 Halosulfuron-methyl; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	1.0
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	1.0
Hog, meat byproducts	0.1
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	1.0
Milk	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	1.0

(2) * * *

Commodity	Parts per million
* * * * *	
Grass, forage, fodder, and hay, group 17, forage	20
Grass, forage, fodder, and hay, group 17, hay	0.5
* * * * *	
Millet, proso, forage	10
Millet, proso, grain	0.01
Millet, proso, hay	0.01
Millet, proso, straw	0.01
* * * * *	

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 716

[EPA–HQ–OPPT–2011–0363; FRL–9355–9]

RIN 2070–AJ89

Health and Safety Data Reporting; Addition of Certain Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule requires manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA. The Interagency Testing Committee (ITC), established under section 4(e) of the Toxic Substances Control Act (TSCA) to recommend chemicals and chemical mixtures to EPA for priority testing consideration, amends the TSCA section 4(e) *Priority Testing List* through periodic reports submitted to EPA. The ITC added cadmium and cadmium compounds to the *Priority Testing List* through its 69th ITC Report.

DATES: This final rule is effective January 2, 2013. For purposes of judicial review, this final rule shall be promulgated at 1 p.m. eastern daylight/standard time on December 17, 2012. (See 40 CFR 23.5.)

A request to withdraw a chemical from this final rule pursuant to § 716.105(c) must be received on or

before December 17, 2012. (See Unit IV. of the **SUPPLEMENTARY INFORMATION**.)

For dates for reporting requirements, see Unit III.B. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2011–0363, by one of the following methods:

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

• *Mail:* Document Control Office (2822–1T), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1301 Constitution Ave. NW., Washington, DC 20004.

• *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave. NW., Washington, DC. ATTN: Docket ID Number EPA–HQ–OPPT–2011–0363. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2011–0363. EPA's policy is that all comments received will be included in the docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or email. The regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Robert Jones, Chemical Control Division (7405M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: 202–564–8161; email address: *jones.robert@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be affected by this rule if you are a manufacturer (including importer) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products.

In addition to this final rule, EPA plans to propose, under a separate notice and comment rulemaking, to require the submission of TSCA section 8(d) health and safety studies from processors and distributors of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA. The proposed rule will be published in a subsequent **Federal Register** document. As provided in this rule, health and safety studies regarding cadmium or cadmium compounds in articles must be reported, with the exception of studies not subject to reporting as described at § 716.20.

While EPA has broad authority to require submission of health and safety studies on chemical substances, for the purposes of this rule EPA has limited the scope of this rule to those chemical substances within the listed category that have been, or are reasonably likely to be, incorporated into consumer products, based on EPA's determination of what is necessary to carry out the purposes of TSCA. ''Consumer product'' is defined in § 716.21(a)(9)(iii) of this rule to mean ''any product that is sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas.'' This definition is based on the definition of ''consumer use'' promulgated in 40 CFR 710.43 and the definition of ''consumer product'' promulgated in 40 CFR 721.3. Potentially affected entities may include but are not limited to:

• Manufacturers of basic inorganic chemicals (except industrial gases, inorganic dyes and pigments, alkalis and chlorine, and carbon black) (NAICS code 325188).

• Manufacturers (including importers) of inorganic dyes and pigments (NAICS code 325131).

• Manufacturers of basic organic chemical products (except aromatic petrochemicals, industrial gases, synthetic organic dyes and pigments, gum and wood chemicals, cyclic crudes and intermediates, and ethyl alcohol) (NAICS code 325199).

• Establishments primarily engaged in the primary production of nonferrous metals by smelting ore and/or the primary refining of nonferrous metals by electrolytic methods or other processes (except copper and aluminum) (NAICS code 331419).

• Establishments engaging in secondary smelting, refining, and alloying of nonferrous metal (except copper and aluminum) (NAICS code 331492).

• Wholesalers of toy and hobby goods, establishments with product line 12812 (NAICS code 42392).

• Discount department stores (NAICS code 452112).

• Warehouse clubs and supercenters (NAICS code 45291).

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

B. How do I submit CBI information?

If you wish to claim information submitted to be CBI, it will be handled in accordance with procedures set forth in 40 CFR part 2, subpart B. If you do not assert a confidentiality claim at the time of submission, the information may be made available to the public by EPA without further notice. See 40 CFR 2.203 (Ref. 1). Do not submit this information to EPA through regulations.gov or by email. Clearly mark the part of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2 and in § 716.55. Pursuant to § 716.55, to assert a claim of confidentiality for information contained in a submitted record, you must submit two copies of the document. One copy must be complete, and you must indicate what information, if any, is claimed as confidential by marking the specific information on each page with a label such as ''company confidential,'' ''proprietary,'' or ''trade secret'' and briefly state the basis of the claim. The second copy must be complete, except that all the information claimed as CBI in the first copy must be deleted. The second copy will be placed in the public docket. Failure to furnish a second copy when information is claimed as CBI in the first copy will be considered a presumptive waiver of confidentiality. EPA will notify the respondent by certified mail that a finding of a presumptive waiver of the claim of confidentiality has been made. The respondent will be given 30 days from the date of receipt of notification to submit the required second copy. If the respondent fails to submit the second copy within the 30 days, EPA will place the first copy in the docket.

II. Background

A. Why is the agency taking this action?

EPA has classified cadmium as a Group B1, probable human carcinogen (Ref. 2). Further, EPA has determined acute (short-term) effects of cadmium in humans through inhalation exposure consisting mainly of effects on the lung, such as pulmonary irritation. Chronic (long-term) inhalation or oral exposure to cadmium leads to a build-up of cadmium in the kidneys which can cause kidney disease. Cadmium has been shown to be a developmental toxicant in animals, resulting in fetal malformations and other effects, but no conclusive evidence exists in humans. Animal studies have demonstrated an increase in lung cancer from long-term inhalation exposure to cadmium (Refs. 2–4). Due to the potential health effects of exposure to cadmium or cadmium compounds, EPA and the Consumer Product Safety Commission (CPSC) are concerned about the possible presence and bioavailability of cadmium or cadmium compounds in consumer products generally and especially those consumer products used by or around children (Ref. 5).

B. What action is the agency taking?

EPA is issuing a final TSCA section 8(d) rule under procedures in the Health and Safety Data Reporting rule, 40 CFR part 716, to require manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to submit certain unpublished health and safety studies to EPA.

EPA has reviewed CPSC's recalls of cadmium-contaminated children's products. Most of the recalled products were produced abroad and imported from other countries (Ref. 6). Based in part on this information, EPA expects to capture health and safety studies conducted by importers of such products through this final rule. These parties are located primarily in the United States and may be subject to CPSC certification requirements and, depending on the product, may be conducting testing using Standard Consumer Safety Specification for Toy Safety, ASTM International (ASTM) F–963 (Ref. 7).

The regulatory text of this final rule lists the category cadmium and cadmium compounds. The regulatory text also lists the data reporting requirements imposed by this amendment to the TSCA section 8(d) model rule.

C. What is the agency's authority?

Section 8(d) of TSCA authorizes EPA to require ''any person who manufactures, processes, or distributes in commerce or who proposes to manufacture, process, or distribute in commerce, any chemical substance or mixture'' to submit lists of health and safety studies conducted or initiated by or for such person with respect to such substance or mixture at any time, known to such person, or reasonably ascertainable by such person; and copies of any study contained on a list submitted pursuant to section (8)(d)(1) of TSCA or otherwise known by such person. Under TSCA section 3(7), import is included in the definition of ''manufacture.''

The term health and safety study should be interpreted broadly and is defined in § 716.3.

Since the TSCA section 8(d) model rule is codified in 40 CFR part 716, EPA uses this TSCA section 8(d) model rule to quickly gather information on chemical substances. The TSCA section 8(d) model rule requires past, current, and prospective manufacturers (including importers) and (if specified by EPA in a particular rule or notice under TSCA section 8(d)) processors to submit to EPA copies and lists of health and safety studies on the listed chemical substances that they manufacture, import, or process. These studies provide EPA with useful information and have provided significant support for EPA's decisionmaking under TSCA sections 4, 5, 6, 8, and 9.

The TSCA section 8(d) model rule provides for the addition of TSCA section 4(e) *Priority Testing List* chemical substances or categories of chemical substances. EPA s amending the TSCA section 8(d) model rule by adding the recommended category of chemical substances consistent with § 716.105(b) and (c). In doing so, EPA must provide a 14-day period, which starts upon publication of the amendments to the TSCA section 8(d) model rule in the **Federal Register**, for persons to submit information showing why a chemical substance, mixture, or category of chemical substances should be withdrawn from the amendment. The amendment adding these chemical substances to the TSCA section 8(d) model rule is effective 30 days after date of publication in the **Federal Register**. If the EPA Administrator withdraws a chemical substance from the amendment, then no later than 30 days after the date of publication of the amendment in the **Federal Register**, a **Federal Register** document announcing this decision will publish.

D. Why is this action being issued as a final rule?

EPA is publishing this action as a final rule pursuant to the procedures set forth in § 716.105(b) and (c). EPA finds that there is ''good cause'' under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) to make these amendments without prior notice and comment. EPA believes notice and an opportunity for comment on this action are unnecessary. TSCA directs the ITC to add chemical substances to the *Priority Testing List* for which EPA should give priority consideration. EPA also lacks the authority to remove a chemical substance from the *Priority Testing List* once it has been added by the ITC. As explained earlier in this preamble, pursuant to § 716.105(b) and (c), once the ITC adds a chemical substance to the *Priority Testing List,* EPA adds that chemical substance to the list of chemical substances subject to the TSCA section 8(d) model rule reporting requirements, unless the ITC designated and recommended more than 50 chemical substances or categories of chemical substances in a calendar year or EPA withdraws the chemical substance from the TSCA section 8(d) model rule for good cause. EPA promulgated this procedure in 1985 after having solicited public comment on the need for and mechanics of this procedure (Ref. 8). Because that rule established the procedure for adding ITC chemical substances to the TSCA section 8(d) model rule, it is unnecessary to request comment on the procedure in this action. Finally, § 716.105(b) and (c) do provide EPA with the discretion to withdraw a chemical substance from the TSCA section 8(d) model rule for good cause, including if a party submits to EPA information showing good cause that a chemical substance should be removed from the TSCA section 8(d) model rule.

III. Final Rule

A. What chemicals are to be added?

EPA is adding the category of cadmium and cadmium compounds to the TSCA section 8(d) model rule as requested by the ITC in the 69th ITC Report (Ref. 9). This final rule requires manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA.

B. What are the general reporting requirements and deadlines?

This final rule, issued pursuant to TSCA section 8(d) and its regulations, requires manufacturers (including importers) of cadmium or cadmium compounds, including as part of an article, that have been, or are reasonably likely to be, incorporated into consumer products to report certain unpublished health and safety studies to EPA. Listed in this unit are the reporting requirements for the chemical substances being added by this action to the TSCA section 8(d) model rule.

The following types of persons need to report:

1. Persons who, in the 10 years preceding the date a chemical substance is listed at § 716.120, either have proposed to manufacture or import or have manufactured or imported the listed substance must submit to EPA, during the 60-day reporting period specified in § 716.65 and according to the reporting schedule set forth at § 716.60, a copy of each health and safety study which is in their possession at the time the chemical substance is listed.

2. Persons who, at the time the chemical substance is listed, propose to manufacture or import, or are manufacturing or importing the listed chemical substance must submit to EPA during the 60-day reporting period specified in § 716.65 and according to the reporting schedule set forth at § 716.60:

i. A copy of each health and safety study which is in their possession at the time the chemical substance is listed.

ii. A list of the health and safety studies known to them but not in their possession at the time the chemical substance is listed.

iii. A list of the health and safety studies that are ongoing at the time the chemical substance is listed and are being conducted by or for them.

iv. A list of the health and safety studies that are initiated after the date the chemical substance is listed and will be conducted by or for them.

v. A list of unpublished studies which have been sent to a Federal agency with no claims of confidentiality or copies of each such study.

vi. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated (i.e., listed in accordance with reporting requirements described at Unit III.B.2.iii. and iv. respectively) when complete—regardless of completion date.

3. Persons who, after the time the substance is listed, propose to manufacture or import the listed chemical substance must submit to EPA during the reporting period specified in § 716.65 and according to the reporting schedule set forth at § 716.60:

i. A copy of each health and safety study which is in their possession at the time they propose to manufacture or import the listed chemical substance.

ii. A list of the health and safety studies known to them but not in their possession at the time they propose to manufacture or import the listed chemical substance.

iii. A list of the health and safety studies that are ongoing at the time they propose to manufacture or import the listed chemical substance, and are being conducted by or for them.

iv. A list of the health and safety studies that are initiated after the time they propose to manufacture or import the listed chemical substance, and will be conducted by or for them.

v. A list of unpublished studies which have been sent to a Federal agency with no claims of confidentiality or copies of each such study.

vi. A copy of each health and safety study that was previously listed as ongoing or subsequently initiated (i.e., listed in accordance with reporting requirements described in Unit III.B.3.iii. and iv. respectively) when complete—regardless of the completion date.

Generally, the reporting described in Unit III.B. is required by March 4, 2013. Any person who manufactures or imports, or who proposes to manufacture or import, the listed chemical substance as described in Unit III.B. from January 2, 2013 to March 4, 2013 must inform EPA by submitting a list of any studies initiated during the period from January 2, 2013 to March 4, 2013 within 30 days of their initiation, but in no case later than April 2, 2013. In addition, if any such person has submitted lists of studies that were ongoing or initiated during the period from January 2, 2013 to March 4, 2013 to EPA, such person must submit a copy of each study within 30 days after its completion, regardless of the study's completion date. See §§ 716.60 and 716.65.

Detailed requirements for reporting unpublished health and safety studies are published in 40 CFR part 716. Also found there are explanations of the reporting exemptions.

C. What are the chemical specific reporting requirements?

Pursuant to § 716.20(b)(5), the types of health, and/or environmental effects studies that need to be reported and the chemical substance grade/purity

requirements that need to be met or exceeded in individual studies for cadmium and cadmium compounds are as follows:

1. For the category ''cadmium and cadmium compounds'' (defined as compounds including any unique chemical substance that contains cadmium as part of that chemical's structure), reporting would extend to all unpublished health and safety studies generally reportable under §§ 716.10 and 716.20, for example but not limited to those that:

i. Relate to the cadmium content (either from cadmium or cadmium compounds) of consumer products (including the specific cadmium compound (defined in Unit III.A.) used in the products such as surface coatings and filler), data related to the product formulations, and function of the cadmium (e.g., stabilizer, colorant, etc.) in the products.

ii. Relate to the assessment of consumer exposure to cadmium from such products (including studies of bioavailability, description of the consumer use (e.g., paints used on plastics), physical form of the product containing cadmium, method of consumer product application (e.g., spray applied, etc.), number of potentially exposed consumers).

iii. Include data on cadmium migration from products (e.g., conducted using acid extraction or saline solution tests).

iv. Include bio-monitoring data on cadmium presence in tissues.

v. Focus on route, duration, and frequency of exposure to cadmium in products.

vi. Provide toxicity data on cadmium or cadmium compounds including *in vitro, in vivo,* epidemiological, computational, or other studies on effects of exposure to or use of the cadmium-containing product, material, or component.

vii. Discuss the function or use of cadmium or cadmium compounds in a product, material or component including typical concentration.

viii. Include data conducted in compliance with ASTM certification standards and studies focusing on the effects of the cadmium or cadmium compounds in consumer products on the health and safety of children.

2. With regard to purity, studies showing any measurable content of cadmium or cadmium compounds must be submitted.

D. What are the economic implications of this action?

EPA's economic analysis for the addition of cadmium and cadmium compounds to the Health and Safety Data Reporting rule is entitled ''TSCA Section 8(d): Economic Impact Analysis for the Addition of Manufacturers and Importers of Consumer Products Containing Cadmium and Cadmium Compounds From the Sixty-Ninth Report of the TSCA Interagency Testing Committee to the Health and Safety Data Reporting Rule'' (Ref. 10), and can be found in the docket for this rule.

EPA has estimated that 1,384 firms are subject to the rule and that 28 firms will have relevant studies to submit to EPA. EPA believes firms that are subject to the rule will need to perform various activities in order to comply with its requirements. The estimated cost of this TSCA section 8(d) rule to firms is approximately $481,000.

The estimated cost of this TSCA section 8(d) rule to the Federal Government is approximately the time of 300 hours. That will amount to a cost to the Federal Government of approximately $23,500.

IV. Requesting a Chemical Substance Be Withdrawn From the Final Rule

As specified in § 716.105(c), EPA may remove a chemical substance or category of chemical substances from this final rule for good cause prior to the effective date of this final rule. Any person who believes that the reporting required by this final rule is not warranted for a chemical substance, or the category of chemical substances listed in this final rule may submit to EPA reasons for that belief. You must submit your request to EPA on or before December 17, 2012 and in accordance with the instructions provided in § 716.105(c) and (d), which are briefly summarized here. In addition, to ensure proper receipt by EPA, you should identify docket ID number EPA–HQ–OPPT–2011–0363 on your request and must submit that request in accordance with the instructions in § 716.105(c) and (d). If the Assistant Administrator, Office of Chemical Safety and Pollution Prevention, withdraws a chemical substance or the category of chemical substances from this TSCA section 8(d) amendment, in accordance with § 716.105(c), a **Federal Register** document announcing this decision will be published no later than January 2, 2013.

V. References

The docket for this final rule has been established under docket ID number EPA–HQ–OPPT–2011–0363. The docket is available for review as specified in **ADDRESSES**. The following is a listing of the documents referenced in this preamble that have been placed in the docket for this final rule:

1. EPA. Requests for Information; Confidentiality of Business Information; Final Rule. **Federal Register** (41 FR 36902, September 1, 1976).

2. EPA. Integrated Risk Information System. Cadmium (CASRN 7440–43–9) IRIS Summary. June 1992. Available online at: *http://www.epa.gov/iris/subst/0141.htm.*

3. Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Health and Human Services (HHS). ATSDR Toxicological Profile for Cadmium (Draft). September 2008. Available online at: *http://www.atsdr.cdc.gov/toxprofiles/tp.asp?id=48&tid=15.*

4. Technology Transfer Network Air Toxics Web Site, Cadmium Compounds (A). January 2000. Available online at: *http://epa.gov/ttn/atw/hlthef/cadmium.html.*

5. ITC. Sixty-Eighth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice. **Federal Register** (76 FR 46174, August 1, 2011) (FRL–8879–3). Available online at: *http://www.gpo.gov/fdsys/pkg/FR-2011-08-01/pdf/2011-19414.pdf.*

6. CPSC. Recalls and Product Safety News. Available online at: *http://www.cpsc.gov/cgi-bin/haz.aspx* and select ''Cadmium.''

7. Standard Consumer Safety Specification for Toy Safety, ASTM F–963. Available online at: *http://www.astm.org/Standards/F963.htm* and also available online at: *http://www.regulations.gov* in docket ID number EPA–HQ–OPPT–2011–0363.

8. EPA. Chemical Information Rules; Additional Automatic Reporting; Final Rule. **Federal Register** (50 FR 34809, August 28, 1985).

9. ITC. Sixty-Ninth Report of the TSCA Interagency Testing Committee to the Administrator of the Environmental Protection Agency; Receipt of Report and Request for Comments; Notice. **Federal Register** (77 FR 30856, May 23, 2012) (FRL–9346–3). Available online at: *http://www.gpo.gov/fdsys/pkg/FR-2012-05-23/pdf/2012-12493.pdf.*

10. EPA. TSCA Section 8(d): Economic Impact Analysis for the Addition of Manufacturers and Importers of Consumer Products Containing Cadmium and Cadmium Compounds From the Sixty-Ninth Report of the TSCA Interagency Testing Committee to the Health and Safety Data Reporting Rule. May 14, 2012.

VI. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), entitled ''Regulatory Planning and Review,'' this action is not a ''significant regulatory action'' and was therefore not reviewed by the Office of Management and Budget (OMB) under Executive Orders 12866 and 13563, entitled ''Improving

Regulation and Regulatory Review'' (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

The information collection requirements contained in TSCA section 8(d) model rules have already been approved by OMB under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* and OMB control number 2070–0004 (EPA ICR No. 0575). The collection activities in this final rule are captured by the existing approval and do not require additional review and/or approval by OMB.

EPA estimates that the information collection activities related to health and safety data reporting for the category of cadmium and cadmium compounds in this final rule will result in a total public reporting burden of 7,019 hours. Of that total, an estimated 2,768 hours are estimated to be spent performing an initial review of the final rule. The remaining hours are associated with the actual required reporting activities (Ref. 10). As defined by PRA and 5 CFR 1320.3(b), ''burden'' means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to: Review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Under PRA, an agency may not conduct or sponsor, and a person is not required to respond to, an information collection request unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, including its regulations implementing TSCA section 8(d) at 40 CFR part 716, are listed in the table in 40 CFR part 9 and included on the related collection instrument. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the display requirements of PRA and OMB's implementing regulations at 5 CFR part 1320.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the ''good cause'' exemption under 5 U.S.C. 553(b)(3)(B), therefore it is not subject to the notice and comment requirement.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act, 2 U.S.C. 1531–1538, EPA has determined that this final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this final rule will not significantly or uniquely affect small governments. Accordingly, the final rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

E. Federalism

Under Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), EPA has determined that this final rule does not have federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Executive Order. The rule establishes reporting requirements that apply to manufacturers (including importers) of a category of cadmium and cadmium compounds. The requirements of this final rule are not expected to apply to States and localities and would not affect State and local governments.

F. Indian Tribal Governments

This action will not have tribal implications as specified in Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000). EPA has determined that this final rule will not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. EPA has no information to indicate that any tribal government manufactures or imports the chemical substances covered by this action.

G. Protection of Children

This action is not subject to Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because this action is not an economically significant regulatory action as defined by Executive Order 12866. However, cadmium and cadmium compounds are used in toys that are intended for use by children, and thus presents a disproportionate risk to children. The agency adequately considered children's health issues during rule development.

H. Effect on Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply Distribution'' (66 FR 28355, May 22, 2001), because this action is not an economically significant regulatory action as defined by Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. Technical Standards

Because this action will not involve any technical standards, section 12(d) of the National Technology Transfer and Advancement Act, 15 U.S.C. 272 note, does not apply to this action.

J. Environmental Justice

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled ''Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). This action is expected to have a positive impact on children in low-income and minority communities by increasing the amount of cadmium health and safety data available to EPA and consumers.

VII. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. 801 *et seq.,* EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to

publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 716

Environmental protection, Chemicals, Hazardous substances, Health and safety studies, Reporting and recordkeeping requirements.

Dated: November 20, 2012.

Wendy C. Hamnett,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 716—[AMENDED]

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

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

■ 2. In § 716.21, add new paragraph (a)(9) to read as follows:

§ 716.21 Chemical specific reporting requirements.

(a) * * *

(9) (i) Reporting requirements for the category ''cadmium and cadmium compounds'' apply only to persons that manufacture (including import) cadmium or cadmium compounds that have been, or are reasonably likely to be, incorporated into consumer products.

(A) All unpublished health and safety studies generally reportable under 40 CFR 716.10 and 716.20 must be reported.

(B) [Reserved]

(ii) With regard to purity, studies showing any measurable content of cadmium or cadmium compounds in such products must be reported.

(iii) For the purposes of this paragraph (a)(9), *consumer product* means any product that is sold or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas.

* * * * *

3. In § 716.120, add, before the entry ''Chlorinated benzenes, mono-, di-, tri-, tetra-, and penta-,'' the category ''Cadmium and cadmium compounds'' and its entry in alphabetical order to the table in paragraph (c) to read as follows:

§ 716.120 Substances and listed mixtures to which this subpart applies.

* * * * *

(c) * * *

Category	CAS No. (examples for category)	Special exemptions	Effective date	Sunset date
* *	*	*	*	* *
Cadmium and cadmium compounds (any unique chemical substance that contains cadmium as part of that chemical's structure).	.....	.....	January 2, 2013	March 4, 2013.
Manufacturers (including importers)	.....	§ 716.21(a)(9)		
* *	*	*	*	* *

* * * * *

[FR Doc. 2012–28840 Filed 11–30–12; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 77, No. 232
Monday, December 3, 2012

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

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–68071A; File No. S7–08–12]

RIN 3235–AL12

Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; correction.

SUMMARY: Technical corrections are being made to the Commission's Release No. 34–68071, which proposed capital and margin requirements for security-based swap dealers (''SBSDs'') and major security-based swap participants (''MSBSPs''), segregation requirements for SBSDs, and notification requirements with respect to segregation for SBSDs and MSBSPs, as well as increases to the minimum net capital requirements for broker-dealers permitted to use the alternative internal model-based method for computing net capital.

FOR FURTHER INFORMATION CONTACT: Sheila Dombal Swartz, Special Counsel, at (202) 551–5545, or Valentina Minak Deng, Attorney, at (202) 551–5778, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

SUPPLEMENTARY INFORMATION: Specifically, corrections are being made to the table in footnote 172 on page 70233 and paragraph 6.c. of page 70332 of volume 77 of the **Federal Register**. The following corrections are hereby made to Release No. 34–68071 (October 18, 2012), which was published in FR Doc. 2012–26164 and appeared on page 70214 of the **Federal Register** on November 23, 2012 (77 FR 70214):

1. In footnote 172 in the first column of page 70233, the first row of the table, which currently reads ''Time to Maturity and Deduction'', is corrected to read: ''Time to Maturity Category—Deduction''.

2. In the third column of page 70332, paragraph 6.c. identifying an amendment to 17 CFR 240.15c3–1e(c)(2)(ii), which currently reads ''In paragraph (c)(2)(ii), removing the phrase ''$5 billion'' and adding in its place the phrase ''$6 billion''; and'', is corrected to read: ''In paragraph (c)(2)(ii), removing the phrase ''less than 50%'' and adding in its place the phrase ''less than or equal to 50%''; and''.

Dated: November 27, 2012.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–29048 Filed 11–30–12; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0237; FRL–9757–2]

Approval and Promulgation of Implementation Plans; Tennessee; Interstate Transport Infrastructure Requirements (Prevention of Significant Deterioration) for the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: EPA is proposing to conditionally approve the State Implementation Plan (SIP) submission, submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC). This proposal pertains to the Clean Air Act (CAA) requirements pertaining to prevention of significant deterioration (PSD) (concerning the $PM_{2.5}$ increments) for the for the 2008 8-hour ozone national ambient air quality standards (NAAQS) infrastructure SIPs. The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an ''infrastructure'' SIP. TDEC certified that the Tennessee SIP contains provisions that ensure the 2008 8-hour ozone NAAQS are implemented, enforced, and maintained in Tennessee (hereafter referred to as ''infrastructure submission''). EPA is proposing to supplement the earlier proposed approval related to sections related to prevention of significant deterioration (PSD) (concerning the $PM_{2.5}$ increments) by proposing conditional approval of the State's infrastructure submission based upon a October 4, 2012, commitment by the State to submit a SIP revision to address current deficiencies in these sections. EPA is proposing to conditionally approve these sections related to PSD because the current Tennessee SIP does not include provisions to fully comply with the requirements of these sections. All of the other required infrastructure elements for the 2008 8-hour ozone NAAQS are being addressed in a separate rulemaking.

DATES: Written comments must be received on or before December 24, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0237, 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–2012–0237,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, 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–2012–0237. 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: Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9140. Ms. Ward can be reached via electronic mail at *ward.nacosta@epa.gov.*

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I. Background

On March 27, 2008, EPA promulgated a new NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour standard to 0.075 parts per million (ppm). *See* 77 FR 16436. Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS. Section 110(a)(2) requires states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the NAAQS. States were required to submit such SIPs for the 2008 8-hour ozone NAAQS to EPA no later than March 2011.

Midwest Environmental Defense and Sierra Club submitted a complaint on November 20, 2011, related to EPA's failure to issue findings of failure to submit related to the infrastructure requirements for the 2008 8-hour ozone NAAQS. On December 13, 2011, and March 6, 2012, Midwest Environmental Defense and Sierra Club submitted amended complaints for failure to promulgate prevention of significant deterioration (PSD) regulations within two years and failure to approve or disapprove SIP submittals, and to remove claims regarding states that have submitted SIPs for the 2008 8-hour ozone NAAQS, respectively. Tennessee was among the states named in the November 2011 complaint, and the December 2011 and March 2012 amended complaints. Specifically, the plaintiffs claim that EPA has failed to perform its mandatory duty by not approving in full, disapproving in full, or approving in part and disapproving in part Tennessee's 2008 ozone infrastructure SIP addressing sections 110(a)(2)(A)–(H) and (J)–(M) by no later than April 19, 2011.

Tennessee's infrastructure submission was received by EPA on October 19, 2009, for the 2008 8-hour ozone NAAQS. The submission was determined to be complete on April 19, 2010. On July 3, 2012, Tennessee submitted a letter to EPA withdrawing the portion of its October 19, 2009, SIP submission that purported to address the requirements related to section 110(a)(2)(D)(i)(I) interstate transport. On August 22, 2012, EPA proposed approval of Tennessee's 2008 8-hour ozone infrastructure SIP, with the exception of section 110(a)(2)(D)(i)(I).[1] *See* 77 FR 50651. The proposed approval included sections 110(a)(2)(C), 110(a)(2)(D)(i)(II), and 110(a)(2)(J); however, it was subsequently found that Tennessee's SIP did not contain all of the requisite provisions in its SIP necessary to fully approve these elements. The deficient portion of Tennessee's SIP pertains to $PM_{2.5}$ PSD increments.

On October 4, 2012, Tennessee submitted a request for conditional approval of sections 110(a)(2)(C), 110(a)(2)(D)(i)(II) with respect to the PSD requirements (hereafter referred to as prong 3 of 110(a)(2)(D)(i)),[2] and 110(a)(2)(J) to address the SIP deficiencies concerning $PM_{2.5}$ PSD increments for these elements. Today's action proposes conditional approval for these sections based upon a commitment by Tennessee to submit the necessary SIP revisions to address $PM_{2.5}$ PSD increments for the 2008 8-hour ozone NAAQS.

II. What elements are required under sections 110(a)(1) and (2)?

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS, or within such shorter period as EPA may prescribe. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP

[1] Section 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS will be addressed through a separate rulemaking.

[2] Section 110(a)(2)(D)(i) includes four requirements referred to as prongs 1 through 4. Prongs 1 and 2 are provided at section 110(a)(2)(D)(i)(I); prongs 3 and 4 are provided at section 110(a)(2)(D)(i)(II).

submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS.

More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned above, these requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements that are the subject of this proposed rulemaking are listed below.[3]

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.[4]
- 110(a)(2)(D): Interstate transport.[5]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.[6]
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

III. Scope of Infrastructure SIPs

EPA notes that this rulemaking does not address four substantive issues that are not integral to the state's infrastructure SIP submission. These four issues are: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources (SSM), that may be contrary to the CAA and EPA's policies addressing such excess emissions; (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (director's discretion); (iii) existing provisions for minor source new source review (NSR) programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (minor source NSR); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (NSR Reform).

Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's June 11, 2012, proposed rule entitled, ''Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2) Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards'' in the section entitled, ''Scope of Infrastructure SIPs'' (*See* 77 FR 34306). It can also be found in EPA's August 22, 2012, proposed rule entitled, ''Approval and Promulgation of Implementation Plans; Tennessee 110(a)(1) and (2) Infrastructure Requirements for the 2008 8-Hour Ozone Matter National Ambient Air Quality Standards'' in the section entitled, ''Scope of Infrastructure SIPs.'' *See* 77 FR 50651.

IV. What is EPA's analysis of how Tennessee addressed sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) ''infrastructure'' provisions?

In this action, EPA is proposing to conditionally approve Tennessee's infrastructure SIP for the following infrastructure sections for the 2008 8-hour ozone NAAQS: (1) Section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, (2) prong 3 of section 110(a)(2)(D)(i) to include adequate provisions prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amount which will interfere with measure required to be include in the applicable SIP for any State necessary to prevent significant deterioration, and (3) section 110(a)(2)(J) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved.

There are four revisions to the Tennessee SIP that are necessary to meet the requirements of infrastructure requirements of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J). These four revisions are related to (1) the Ozone Implementation NSR Update (November 29, 2005, 70 FR 71612), (2) the ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (June 3, 2010, 75 FR 31514), (3) the NSR $PM_{2.5}$ Rule (May 16, 2008, 73 FR 28321), and (4) the portion of the final rulemaking entitled ''Final Rule Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC): Final Rule'' that relates to the $PM_{2.5}$ PSD increments requirements (hereafter referred to as the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ PSD Increments) (75 FR 64864).

[3] Two elements identified in section 110(a)(2) are not governed by the three year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to section 172. These requirements are: (1) Submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA; and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. Today's proposed rulemaking does not address infrastructure elements related to section 110(a)(2)(I) or the nonattainment planning requirements of 110(a)(2)(C).

[4] This rulemaking only addresses requirements for this element as they relate to attainment areas.

[5] Today's proposed rulemaking does not address element 110(a)(2)(D)(i)(I) (Interstate Transport) for the 2008 8-hour ozone NAAQS. Interstate transport requirements were formerly addressed by Tennessee consistent with the Clean Air Interstate Rule (CAIR) for the 1997 8-hour ozone NAAQS. On December 23, 2008, CAIR was remanded by the D.C. Circuit Court of Appeals, without vacatur, back to EPA. *See North Carolina* v. *EPA,* 531 F.3d 896 (D.C. Cir. 2008). Prior to this remand, EPA took final action to approve Tennessee's SIP revision, which was submitted to comply with CAIR. *See* 72 FR 46388 (August 20, 2007). In so doing, Tennessee's CAIR SIP revision addressed the interstate transport provisions in section 110(a)(2)(D)(i)(I) for the 1997 8-hour ozone NAAQS. In response to the remand of CAIR, EPA has promulgated a new rule to address interstate transport. *See* 76 FR 48208 (August 8, 2011) (the Transport Rule). That rule was recently vacated by the D.C. Circuit Court of Appeals. As a result of both the remand of CAIR and vacatur of the Transport Rule, Tennessee has not yet made a submission to address interstate transport. EPA's action on element 110(a)(2)(D)(i)(I) for the 2008 8-hour ozone NAAQS will be addressed in a separate action.

[6] This requirement was inadvertently omitted from EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' but as mentioned above is not relevant to today's proposed rulemaking.

Tennessee's Ozone Implementation NSR Update revision was submitted by TDEC on May 28, 2009, and approved by EPA on February 7, 2012. *See* 77 FR 6016. Tennessee submitted its Greenhouse Gas (GHG) Tailoring Rule, to EPA on January 11, 2012, and EPA approved it on February 28, 2012. *See* 77 FR 11744. Tennessee submitted its NNSR requirements related to the implementation of the NSR $PM_{2.5}$ Rule on July 29, 2011, and EPA approved this revision on July 30, 2012. *See* 77 FR 44481. On October 4, 2012, Tennessee submitted a letter to EPA requesting conditional approval of specific enforceable measures related to 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) concerning the October 20, 2010, PSD $PM_{2.5}$ Increments, SILs and SMC Rule because Tennessee's SIP does not currently contain provisions to address requirements associated with $PM_{2.5}$ increments. Tennessee's October 4, 2012, letter to EPA contained a schedule and commitment to provide the necessary SIP revision to address its SIP deficiencies related to the $PM_{2.5}$ increments. Today's conditional approval applies only to the $PM_{2.5}$ increments portion of the $PM_{2.5}$ Increments, SILs and SMC Rule. The $PM_{2.5}$ Increments, SILs and SMC Rule provided additional regulatory requirements under the PSD program regarding the implementation of the $PM_{2.5}$ NAAQS for NSR by specifically establishing $PM_{2.5}$ increments pursuant to section 166(a) of the CAA to prevent significant deterioration of air quality in areas meeting the NAAQS. The letter can be accessed at *www.regulations.gov* using Docket ID No. EPA–R04–OAR–2012–0237. The four SIP revisions outlined above [7] address the requisite requirements of sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) and are necessary for approval of these infrastructure requirements.

In accordance with section 110(k)(4) of the CAA, EPA is proposing to conditionally approve these sections based upon a commitment from Tennessee that the State will submit a SIP revision addressing the increments associated with the $PM_{2.5}$ PSD Increment-SILs-SMC Rule (only as it relates to $PM_{2.5}$ Increments) to EPA for approval within one year from EPA's final conditional approval action. In its October 4, 2012, letter, TDEC committed to adopt the above-specified provisions and submit them to EPA for incorporation into the SIP by no later than one year from the publication date of EPA's final conditional approval action for that requirement. Failure by the State to adopt these provisions and submit them to EPA for incorporation into the SIP within one year from the effective date of EPA's final conditional approval action would result in this proposed conditional approval being treated as a disapproval. Should that occur, EPA would provide the public with notice of such a disapproval in the **Federal Register**.[8]

As a result of Tennessee's formal commitment to correct the deficiency contained in the Tennessee SIP pertaining to $PM_{2.5}$ PSD increments, EPA is proposing to conditionally approve sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), and 110(a)(2)(J) requirements consistent with section 110(k)(4) of the Act.

V. Proposed Action

As described above, EPA is proposing to conditionally approve Tennessee's infrastructure submissions pertaining to sections 110(a)(2)(C), prong 3 of 110(a)(2)(D)(i), 110(a)(2)(J) related to PSD, provided to EPA on October 4, 2012, as addressing the infrastructure requirements for the 2008 8-hour ozone NAAQS. Specifically, this conditional approval is based upon Tennessee's commitment that TDEC will provide the necessary SIP revision to address its SIP deficiencies related to the October 20, 2010, final rulemaking related to PSD $PM_{2.5}$ Increments. EPA is proposing to conditionally approve Tennessee's SIP submission consistent with section 110(k)(4) of the CAA.

VI. Statutory and Executive Order Reviews

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

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

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

[7] (1) EPA's approval of Tennessee's PSD/NSR regulations which address the Ozone Implementation NSR Update requirements, (2) EPA's approval of Tennessee's PSD GHG Tailoring Rule revisions which addresses the thresholds for GHG permitting applicability in Tennessee, (3) EPA's approval of Tennessee's NSR $PM_{2.5}$ Rule, which adopts required federal PSD and NNSR permitting provisions governing the implementation of the NSR program for $PM_{2.5}$ as promulgated in the NSR $PM_{2.5}$ Rule, and (4) EPA's proposed conditional approval of Tennessee's PSD $PM_{2.5}$ Increments, SILs, and SMC rulemaking to the extent it addresses the $PM_{2.5}$ Increments portion of the $PM_{2.5}$ PSD Increment-SILs-SMC Rule..

[8] EPA notes that pursuant to section 110(k)(4), a conditional approval is treated as a disapproval in the event that a State fails to comply with its commitment. Notification of this disapproval action in the **Federal Register** is not subject to public notice and comment.

List of Subjects in 40 CFR Part 52

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

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

Dated: November 21, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–29107 Filed 11–30–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 232

Monday, December 3, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection: comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of USDA Rural Development or individually as Housing and Community Programs, Business and Cooperative Programs, Utility Programs, to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by February 1, 2013 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: William R. Downs, Supervisory Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Avenue SW., Washington, DC 20250–0761, Telephone (202) 720–1499 or (202) 720–9619 or via email at *william.downs@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, ''Planning and Performing Construction and Other Development.''

OMB Number: 0575–0042.

Expiration Date of Approval: April 30, 2013.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables the Agencies to effectively administer the policies, methods, and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings; farm buildings; and/or related facilities to provide decent, safe, and sanitary living conditions, as well as adequate farm buildings and other structures in rural areas.

Section 506 of the Act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 of the Act grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban Rural Recovery Act of 1983 amended section 509(a) and section 515 to require residential buildings and related facilities to comply with the standards prescribed by the Secretary of Agriculture, the standard prescribed by the Secretary of Housing and Urban Development, or the standards prescribed in any of the nationally recognized model building codes.

Similar authorizations are contained in sections 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended, which authorized loans and grants for essential community services.

In several sections of both acts, loan limitations are established as percentages of development cost, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken in an economic manner and will not be of elaborate or extravagant design or materials.

The Rural Utilities Service (RUS) is the credit Agency for rural water and wastewater development within Rural Development of the United States Department of Agriculture (USDA). The Rural-Business-Cooperative Service (RBS) is the credit Agency for rural business development within Rural Development of USDA. These Agencies adopted use of forms in RD Instruction 1924–A. Information for their usage is included in this report.

Other information collection is required to conform to numerous Pubic Laws applying to all Federal agencies, such as: Civil Rights Acts of 1964 and 1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act, and to conform to Executive Orders governing use of Federal funds. This information is cleared through the appropriate enforcing Agency or other executive Departments.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office. Electronic submittal of information is also possible through email or USDA's Service Center eForms Website.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work, and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies' loan/grant programs and to monitor the prudent use of Federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with Federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .31 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 16,000.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 251,016.

Estimated Total Annual Burden on Respondents: 77,528 hours.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 16, 2012.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. 2012–29131 Filed 11–30–12; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: Current Population Survey, Annual Social and Economic Supplement.

OMB Control Number: 0607–0354.

Form Number(s): CPS–580 (ASEC), CPS–580 (ASEC)SP, CPS–676, CPS–676(SP).

Type of Request: Revision of a currently approved collection.

Burden Hours: 36,400.

Number of Respondents: 78,000.

Average Hours per Response: 28 minutes.

Needs and Uses: The purpose of this request for review is to obtain clearance for the Annual Social and Economic Supplement (ASEC), which we will conduct in conjunction with the February, March, and April Current Population Survey (CPS). Congressional passage of the State Children's Health Insurance Program, or Title XXI, led to a mandate from Congress in 1999 that the sample size for the CPS, and specifically the Annual Social and Economic Supplement (ASEC), be increased to a level whereby more reliable estimates can be derived for the number of individuals participating in this program at the state level. By administering the ASEC in February, March, and April, we have been able to achieve this goal.

The U.S. Census Bureau has conducted this supplement annually for over 60 years. The Census Bureau and the Bureau of Labor Statistics (BLS) sponsor this supplement.

The proposed supplement, as it will appear in the CPS instrument, contains the same items that were in the 2012 ASEC instrument, with the exception that questions on current public assistance (Q96—Q97) are no longer included.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: November 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–29054 Filed 11–30–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

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

Agency: U.S. Census Bureau.

Title: 2013 Current Population Survey Annual Social & Economic Supplement.Content Test.

OMB Control Number: None

Form Number(s): The automated survey instrument has no form number.

Type of Request: New collection.

Burden Hours: 10,000.

Number of Respondents: 15,000.

Average Hours Per Response: 40 minutes.

Needs and Uses: The Current Population Survey (CPS) Annual Social and Economic Supplement (ASEC) is used to produce official estimates of income and poverty, and it serves as the most widely-cited source of estimates on health insurance and the uninsured. These statistics have far-ranging implications for policy and funding decisions. Alternative sets of questions on income and health insurance have been developed and are now slated for a large-scale field test to evaluate the questions and the estimates they generate.

With regard to income, the CPS ASEC was converted to computer assisted interviewing (CAI) in 1994. This conversion, however, essentially took the questions and skips patterns of the paper questionnaire, and put them on a computer screen. Automated data collection methods allow for complicated skips, respondent-specific question wording, and carry-over of data from one interview to the next. The computerized questionnaire also permits the inclusion of several built-in editing features, including automatic checks for internal consistency and unlikely responses, and verification of answers. With these built-in editing features, errors can be caught and corrected during the interview itself. It has been more than 30 years since the last major redesign of the income questions of this questionnaire (1980), and the need to modernize this survey to take advantage of CAI technologies has become more and more apparent.

Regarding health insurance, the CPS ASEC health insurance questions have measurement error due to both the reference period and timing of data collection. Qualitative research has

shown that some respondents do not focus on the calendar year reference period, but rather report on their current insurance status. Quantitative studies have shown that those with more recent coverage are more likely to report accurately than those with coverage in the more past. A new set of integrated questions on both current and past calendar year status should produce more accurate estimates of past year coverage. This is because the current coverage status questions may serve as an anchor to elicit more accurate reports of past year coverage than the standard methodology.

In addition to making improvements to the core set of questions on health insurance, in 2014 the Affordable Care Act is set to go into effect. One of the main features of the ACA is the ''Health Insurance Exchange.'' These are joint federal-state partnerships designed to create a marketplace of private health insurance options for individuals and small businesses. While these Exchanges are still in development and states have broad flexibility in designing the programs, it is essential for the federal government to have a viable methodology in place when the Affordable Care Act goes into effect to measure Exchange participation, and to measure types of health coverage (in general) in the post-reform era.

Lastly, the current health insurance status questions lend themselves to questions about whether an employer offers the employee health insurance. Although this set of questions is new to the CPS ASEC, it has been in CPS production in the Contingent Worker Supplement (CWS). The CWS was fielded in February of 1995, 1997, 1999, 2001 and 2005.

The CPS ASEC field test will be conducted by telephone from one or more of the Census Bureau's telephone data collection centers in March 2013 with retired CPS sample.

The primary purpose of the field study is to evaluate the redesigned questions and assess any improvements over the CPS ASEC status quo design. Based on the results of the content test, if results are favorable for the new instrument, changes may be implemented in the production CPS ASEC in 2014.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

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

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: November 27, 2012.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2012–29055 Filed 11–30–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

DATES: *Effective Date:* December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b), for administrative reviews of various antidumping and countervailing duty orders and findings with October anniversary dates.

All deadlines for the submission of various types of information, certifications, or comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting time.

Notice of No Sales

If a producer or exporter named in this notice of initiation had no exports, sales, or entries during the period of review (''POR''), it must notify the Department within 60 days of publication of this notice in the **Federal Register**. All submissions must be filed electronically at *http://iaaccess.trade.gov* in accordance with 19 CFR 351.303. *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Such submissions are subject to verification in accordance with section 782(i) of the Tariff Act of 1930, as amended (''Act''). Further, in accordance with 19 CFR 351.303(f)(3)(ii), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the POR. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within seven days of publication of this initiation notice and to make our decision regarding respondent selection within 21 days of publication of this **Federal Register** notice. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the applicable review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping

proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after August 2011, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

Separate Rates

In proceedings involving non-market economy (''NME'') countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994). In accordance with the separate rates criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below. For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires entities for whom a review was requested, that were assigned a separate rate in the most recent segment of this proceeding in which they participated, to certify that they continue to meet the criteria for obtaining a separate rate. The Separate Rate Certification form will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this Federal Register notice. In responding to the certification, please follow the ''Instructions for Filing the Certification'' in the Separate Rate Certification. Separate Rate Certifications are due to the Department no later than 60 calendar days after publication of this Federal Register notice. The deadline and requirement for submitting a Certification applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers who purchase and export subject merchandise to the United States.

Entities that currently do not have a separate rate from a completed segment of the proceeding [1] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. In addition, companies that received a separate rate in a completed segment of the proceeding that have subsequently made changes, including, but not limited to, changes to corporate structure, acquisitions of new companies or facilities, or changes to their official company name,[2] should timely file a Separate Rate Application to demonstrate eligibility for a separate rate in this proceeding. The Separate Rate Status Application will be available on the Department's Web site at *http://www.trade.gov/ia* on the date of publication of this Federal Register notice. In responding to the Separate Rate Status Application, refer to the instructions contained in the application. Separate Rate Status Applications are due to the Department no later than 60 calendar days of publication of this Federal Register notice. The deadline and requirement for submitting a Separate Rate Status Application applies equally to NME-owned firms, wholly foreign-owned firms, and foreign sellers that purchase and export subject merchandise to the United States.

For exporters and producers who submit a separate-rate status application or certification and subsequently are selected as mandatory respondents, these exporters and producers will no longer be eligible for separate rate status unless they respond to all parts of the questionnaire as mandatory respondents.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than October 31, 2013.

[1] Such entities include entities that have not participated in the proceeding, entities that were preliminarily granted a separate rate in any currently incomplete segment of the proceeding (*e.g.,* an ongoing administrative review, new shipper review, *etc.*) and entities that lost their separate rate in the most recently complete segment of the proceeding in which they participated.

[2] Only changes to the official company name, rather than trade names, need to be addressed via a Separate Rate Application. Information regarding new trade names may be submitted via a Separate Rate Certification.

	Period to be reviewed
Antidumping Duty Proceedings	
MEXICO: Carbon and Certain Alloy Steel Wire Rod A–201–830	10/1/11–9/30/12
ArcelorMittal International America LLC	
ArcelorMittal Las Truchas, S.A. de C.V.	
DeAcero S.A. de C.V.	
Hylas S.A. de C.C.	
Ternium S.A.	
Ternium Mexico S.A. de C.V.	
THE PEOPLE'S REPUBLIC OF CHINA: Steel Wire Garment Hangers[3] A–570–918	10/1/11–9/30/12
Hangzhou Qingqing Mechanical Co. Ltd.	
Hangzhou Yingqing Material Co. Ltd.	
Hong Kong Wells Ltd.	
Liaoning Metals & Mineral Imp/Exp Corp.	
Ningbo Dasheng Hanger Ind. Co., Ltd.	
Shanghai Guoxing Metal Products Co. Ltd.	
Shanghai Jianhai International Trade Co. Ltd.	
Shanghai Lian Development Co. Ltd.	
Shanghai Shuang Qiang Embroidery Factory	
Shanghai Wells Hanger Co., Ltd.	
Shangyu Baoxiang Metal Manufactured Co. Ltd.	
Shang Zhou Leather Shoes Plant	
Shaoxing Andrew Metal Manufactured	
Shaoxing Dingli Metal Clotheshorse Co., Ltd.	
Shaoxing Gangyuan Metal Manufacture	
Shaoxing Guochao Metallic Products Co., Ltd.	
Shaoxing Shunji Metal Clotheshorse Co., Ltd.	
Shaoxing Shuren Tie Co., Ltd.	
Shaoxing Tongzhou Metal Manufactured Co., Ltd.	
Shaoxing Zhongbao Metal Manufactured Co., Ltd.	
Shaoxing Zhongdi Foreign Trade Co., Ltd.	
Zhejiang Lucky Cloud Hanger Co., Ltd.	

Countervailing Duty Proceedings

None.

Suspension Agreements

None.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under 19 CFR 351.211 or a determination under 19 CFR 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine, consistent with *FAG Italia* v. *United States,* 291 F.3d 806 (Fed Cir. 2002), as appropriate, whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. On January 22, 2008, the Department published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Those procedures apply to administrative reviews included in this notice of initiation. Parties wishing to participate in any of these administrative reviews should ensure that they meet the requirements of these procedures (*e.g.,* the filing of separate letters of appearance as discussed at 19 CFR 351.103(d)).

Any party submitting factual information in an antidumping duty or countervailing duty proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all segments of any antidumping duty or countervailing duty proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule''*), amending 19 CFR 351.303(g)(1) and (2). The formats for the revised certifications are provided at the end of the *Interim Final Rule*. The Department intends to reject factual submissions in any proceeding segments initiated on or after March 14, 2011 if the submitting party does not comply with the revised certification requirements.

These initiations and this notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: November 21, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–29130 Filed 11–30–12; 8:45 am]

BILLING CODE 3510–DS–P

[3] If the above-named company does not qualify for a separate rate, all other exporters of Steel Wire Garment Hangers from the PRC who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–864]

Pure Magnesium in Granular Form From the People's Republic of China; Final Results of Antidumping Duty Administrative Review; 2010–2011

AGENCY: Import Administration, International Trade Administration, Commerce.

SUMMARY: On August 2, 2012, the Department of Commerce (''Department'') published the preliminary results of the administrative review of the antidumping duty order on pure magnesium in granular form from the People's Republic of China. The period of review (''POR'') is November 1, 2010, through October 31, 2011. We gave interested parties an opportunity to comment on the preliminary results, but none were received. The final dumping margin applicable to China Minmetals Non-Ferrous Metals Co., Ltd. (''CMN'') is listed below in the ''Final Results of the Review'' section of this notice.

DATES: Effective December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6231.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2012, the Department published the preliminary results of the administrative review of the antidumping duty order on pure magnesium in granular form.[1]

We invited interested parties to comment on the *Preliminary Results,* but none were received.

The Department has conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (''the Act''). As explained in the memorandum from the Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from October 29, through October 30, 2012. Thus, all deadlines in this segment of the proceeding have been extended by two days.[2] The revised deadline for the final results of this review is now December 2, 2012.[3]

Scope of the Order

The merchandise covered by the order includes imports of pure magnesium products, subject to certain exemptions. The merchandise is currently classifiable under item 8104.30.00 of the Harmonized Tariff Schedule of the United State (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.[4]

Final Results of the Review

We have made no changes to our findings announced in the *Preliminary Results.* As a result of our review, we determine that CMN has not demonstrated entitlement to a separate rate and so it remains part of the People's Republic of China (PRC)-wide entity. A dumping margin of 305.56 percent exists for the PRC-wide entity (which includes CMN) for the period November 1, 2010, through October 31, 2011.

The weighted-average dumping margins for the POR are as follows:

Exporter	Weighted-average margin (percent)
PRC-wide Entity	305.56

Assessment Rates

Consistent with these final results, and pursuant to section 751(a)(2)(B) of the Act, and 19 CFR 351.212(b)(1), the Department will direct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries covered by this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department recently announced a refinement to its assessment practice in NME cases. Pursuant to this refinement in practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate. In addition, if the Department determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the NME-wide rate.[5]

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided for by section 751(a)(2)(C) of the Act: (1) For previously investigated or reviewed PRC and non-PRC exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (2) for all PRC exporters of subject merchandise, including CMN, which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide entity rate of 305.56 percent; and (3) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial

[1] *See Pure Magnesium in Granular Form From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 77 FR 46030 (August 2, 2012) (''*Preliminary Results*'').

[2] *See* Memorandum to the Record from Paul Piquado, AS for Import Administration, regarding ''Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Hurricane,'' dated October 31, 2012, and placed on the record of this review on November 6, 2012.

[3] As December 2, 2012, is a Sunday, the signature day will be the next business day, December 3, 2012, in accordance with our practice. *See* Notice of Clarification: Application of ''Next Business Day''' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended, 70 FR 24533 (May 10, 2005).

[4] *See Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[5] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (Oct. 24, 2011).

protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213.

Dated: November 21, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–29040 Filed 11–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Polyester Staple Fiber From Taiwan: Notice of Court Decision Not in Harmony With Final Results of Administrative Review and Amended Final Results of Antidumping Duty Order Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 14, 2012,[1] the United States Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'') results of redetermination [2] pursuant to the CIT's *FENC Remand Order.*[3]

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (CAFC) in *Timken,*[4] as clarified by *Diamond Sawblades,*[5] the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *Final Results* [6] and is amending the final results of the administrative review of the antidumping duty order on polyester staple fiber from Taiwan covering the period of review (''POR'') May 1, 2009, through April 30, 2010, with respect to the margin assigned to Far Eastern New Century Corporation (''FENC'').

DATES: *Effective Date:* November 26, 2012.[7]

FOR FURTHER INFORMATION CONTACT: Michael A. Romani or Minoo Hatten, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0198 or (202) 482–1690.

SUPPLEMENTARY INFORMATION:

Background

Subsequent to completion of its administrative review under the antidumping duty order on polyester staple fiber from Taiwan, FENC challenged certain aspects of the Department's *Final Results* at the CIT. On August 29, 2012, the CIT remanded to the Department its calculation of FENC's dumping margin to correct certain ministerial errors.[8] The Department filed its *Remand Results* on October 15, 2012. On November 14, 2012, the CIT upheld the Department's *Remand Results* wherein we recalculated FENC's dumping margin employing the results of the *Final Results'* comparison market calculations rather than those calculated for the *Preliminary Results.*[9]

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC has held that, pursuant to section 516(e) of the Tariff Act of 1930, as amended (''the Act''), the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision.[10] The CIT's November 14, 2012, judgment sustaining the *Remand Results* constitutes a final decision of that court that is not in harmony with the *Final Results.* This notice is published in fulfillment of the publication requirements of *Timken.* Accordingly, the Department will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal or, if appealed, pending a final and conclusive court decision. The cash deposit rate will remain the company-specific rate established for the subsequent and most recent period during which the respondent was reviewed.

Amended Final Results

Because there is now a final court decision with respect to FENC, we are amending the *Final Results* with respect to the margin for FENC. The revised dumping margin is as follows:

Producer and exporter	Weighted-average margin (percent)
Far Eastern New Century Corporation	0.75

If the CIT's ruling is not appealed or, if appealed, upheld by the CAFC, the Department will instruct U.S. Customs and Border Protection to assess antidumping duties on entries of the subject merchandise produced and exported by FENC during the POR at 0.75 percent.

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: November 23, 2012.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2012–29041 Filed 11–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Brenda E. Waters, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (''the Act''), may request, in accordance with 19 CFR

[1] *See Far Eastern New Century Corporation* v. *United States,* Slip-Op. 12–136 (CIT 2012).

[2] *See Results of Redetermination Pursuant to Remand Order,* CIT Court No. 11–00415, Slip Op. 12–110 (August 29, 2012) (*Remand Results*).

[3] *See Far Eastern New Century Corporation* v. *United States,* Slip-Op. 12–110 (CIT 2012) (*FENC Remand Order*).

[4] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[5] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[6] *See Certain Polyester Staple Fiber From Taiwan: Final Results of Antidumping Duty Administrative Review,* 76 FR 57955 (September 19, 2011).

[7] Because the deadline, November 24, 2012, falls on a Saturday, the deadline is postponed until the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005).

[8] *See FENC Remand Order.*

[9] *See Certain Polyester Staple Fiber From Taiwan: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 22366 (April 21, 2011).

[10] *See Timken,* 893 F.2d at 341.

351.213, that the Department of Commerce (''the Department'') conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by the Department discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (''CBP'') data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (''APO'') to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 21 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event the Department decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, the Department has found that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, the Department will not conduct collapsing analyses at the respondent selection phase of this review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to this review, if the Department determined, or continued to treat, that company as collapsed with others, the Department will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, the Department will not collapse companies for purposes of respondent selection. Parties are requested to (a) identify which companies subject to review previously were collapsed, and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete the Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of this proceeding where the Department considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that has requested a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that the Department may extend this time if it is reasonable to do so. In order to provide parties additional certainty with respect to when the Department will exercise its discretion to extend this 90-day deadline, interested parties are advised that, with regard to reviews requested on the basis of anniversary months on or after December 2012, the Department does not intend to extend the 90-day deadline unless the requestor demonstrates that an extraordinary circumstance has prevented it from submitting a timely withdrawal request. Determinations by the Department to extend the 90-day deadline will be made on a case-by-case basis.

The Department is providing this notice on its Web site, as well as in its ''Opportunity to Request Administrative Review'' notices, so that interested parties will be aware of the manner in which the Department intends to exercise its discretion in the future.

Opportunity to Request a Review: Not later than the last day of December 2012,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

	Period of review
Antidumping Duty Proceedings	
ARGENTINA: Honey	
A–357–812	12/1/11–8/1/12
BRAZIL: Certain Carbon Steel Butt-Weld Pipe Fittings	
A–351–602	12/1/11–11/30/12
CHILE: Certain Preserved Mushrooms	
A–337–804	12/1/11–11/30/12
INDIA: Carbazole Violet Pigment 23	
A–533–838	12/1/11–11/30/12
INDIA:	
Certain Hot-Rolled Carbon Steel Flat Products	
A–533–820	12/1/11–11/30/12
Commodity Matchbooks	
A–533–848	12/1/11–11/30/12
Stainless Steel Wire Rod	
A–533–808	12/1/11–11/30/12
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products	
A–560–812	12/1/11–11/30/12

[1] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

	Period of review
JAPAN:	
P.C. Steel Wire Strand	
A–588–068	12/1/11–11/30/12
Welded Large Diameter Line Pipe	
A–588–857	12/1/11–11/30/12
REPUBLIC OF KOREA: Welded ASTM A–312 Stainless Steel Pipe	
A–580–810	12/1/11–11/30/12
SOCIALIST REPUBLIC OF VIETNAM: Uncovered Innerspring Units	
A–552–803	12/1/11–11/30/12
SOUTH AFRICA: Uncovered Innerspring Units	
A–791–821	12/1/11–11/30/12
TAIWAN:	
Carbon Steel Butt-Weld Pipe Fittings	
A–583–605	12/1/11–11/30/12
Welded ASTM A–312 Stainless Steel Pipe	
A–583–815	12/1/11–11/30/12
THE PEOPLE'S REPUBLIC OF CHINA:	
Cabazole Violet Pigments 23	
A–570–892	12/1/11–11/30/12
Cased Pencils	
A–570–827	12/1/11–11/30/12
Hand Trucks and Parts Thereof	
A–570–891	12/1/11–11/30/12
Honey	
A–570–863	12/1/11–11/30/12
Malleable Cast Iron Pipe Fittings	
A–570–881	12/1/11–11/30/12
Multilayered Wood Flooring	
A–570–970	12/1/11–11/30/12
Porcelain-On-Steel Cooking Ware	
A–570–506	12/1/11–11/30/12
Silicomanganese	
A–570–828	12/1/11–11/30/12
Countervailing Duty Proceedings	
ARGENTINA: Honey	
C–357–813	12/1/11–8/1/12
INDIA: Carbazole Violet Pigment 23	
C–533–839	1/1/11–12/31/11
INDIA:	
Certain Hot-Rolled Carbon Steel Flat Products	
C–533–821	1/1/12–12/31/12
Commodity Matchbooks	
C–533–849	1/1/11–12/31/11
INDONESIA: Certain Hot-Rolled Carbon Steel Flat Products	
C–560–813	1/1/12–12/31/12
THAILAND: Certain Hot-Rolled Carbon Steel Flat Products	
C–549–818	1/1/11–12/31/11
THE PEOPLE'S REPUBLIC OF CHINA: Multilayered Wood Flooring	
C–570–971	4/6/11–12/31/11

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters.[2] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were

[2] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov.*

All requests must be filed electronically in Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS'') on the IA ACCESS Web site at *http://iaaccess.trade.gov. See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011). Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of December 2012. If the Department does not receive, by the last day of December 2012, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period, of the order, if such a gap period is applicable to the period of review.

This notice is not required by statute but is published as a service to the international trading community.

Dated: November 14, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–29126 Filed 11–30–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of Department of Defense Federal Advisory Committees

AGENCY: DoD.

ACTION: Renewal of United States Military Academy Board of Visitors.

SUMMARY: Under the provisions of 10 U.S.C. 2166(e), the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense gives notice that it is renewing the charter for the United States Military Academy Board of Visitors (hereinafter referred to as ''the Board'').

The Board shall provide independent advice and recommendations to the President of the United States on matters relating to the United States Military Academy (hereinafter referred to as the ''Academy''), including morale and discipline, curriculum, instruction, physical equipment, fiscal affairs, academic methods, and any other matters relating to the Academy that the Board decides to consider.

The Board shall report to the President of the United States. The Secretary of the Army, in accordance with DoD policies/procedures may act upon the Board's advice and recommendations. The Board shall be constituted annually of 15 members. Under the provisions of 10 U.S.C. 4355, the Board members shall be comprised of the following individuals: The Chairperson of the Senate Committee on Armed Services, or designee; three other members of the Senate designated by the Vice President or President pro tempore of the Senate, two of whom are members of the Senate Committee on Appropriations; the Chairperson of the House Committee on Armed Services, or designee; four other members of the House of Representatives designated by the Speaker of the House of Representatives, two of whom are members of the House Committee on Appropriations; and six persons designated by the President. Board members designated by the President shall serve for three years except that any member whose term of office has expired shall continue to serve until a successor is appointed. In addition, the President shall designate two persons each year to succeed the members whose terms expire that year. If a member of the Board dies or resigns, a successor shall be designated for the unexpired portion of the term by the official who designated the member. The Board members shall select the Board Chairperson from the total membership. Board members who are full-time or permanent part-time Federal officers and employees shall be appointed as regular government employees or ex officios as appropriate. Board members designated by the President, who are not full-time or permanent part-time federal officers or employees, shall be appointed to serve as special government employees under the authority of 5 U.S.C. 3109, and these appointments shall be renewed on an annual basis. Board members shall, with the exception of travel and per diem for official travel, serve without compensation.

The Board, pursuant to 10 U.S.C. 4355(g), may, upon approval by the Secretary of the Army, call in advisers for consultation, and these advisers shall, with the exception of travel and per diem for official travel, serve without compensation.

The Department, when necessary and consistent with the Board's mission and DoD policies/procedures, may establish subcommittees, task forces, or working groups to support the Board. Establishment of Subcommittees will be based upon written determination, to include terms of reference, by the Secretary of Defense, the Deputy Secretary of Defense, or the Board's sponsor.

Such Subcommittees or working groups shall not work independently of the chartered Board, and shall report all of their recommendations and advice solely to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions and recommendations, verbally or in writing, on behalf of the chartered Board; nor can any Subcommittee or its members update or report directly, verbally or in writing, to the DoD or any Federal officers or employees.

All Subcommittee members shall be appointed by the Secretary of Defense according to governing DoD policies and procedures even if the member in question is already a Board member. Such individuals shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and shall serve as special government employees. Subcommittee members, with the approval of the Secretary of Defense,

may serve a term of service on the subcommittee of one to four years; however, no member shall serve more than two consecutive terms of service on the Subcommittee, unless authorized by the Secretary of Defense. Subcommittee member appointments must be renewed on an annual basis. With the exception of travel and per diem, Subcommittee members shall serve without compensation. All Subcommittees shall operate under the provisions of the FACA, the Government in the Sunshine Act, governing Federal statutes and regulations, and governing DoD policies/procedures.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Advisory Committee Management Officer for the Department of Defense, 703–692–5952.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Designated Federal Officer, in consultation with the Board's Chairperson. The estimated number of Board meetings is three per year.

In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Board membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the Board.

All written statements shall be submitted to the Designated Federal Officer, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Board's Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: November 28, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–29087 Filed 11–30–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0066]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Education Jobs Annual Performance Report

AGENCY: Office of the Deputy Secretary, Department of Education.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before January 2, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0066 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Education Jobs Annual Performance Report.

OMB Control Number: Pending.

Type of Review: New collection; request for a new OMB Control Number.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 840.

Abstract: Under the Education Jobs Fund (Ed Jobs) statute (Pub. L. 111–226 Sec. 101 (10)(A)), each State is required to submit to the U.S. Department of Education (Department) a report that describes the uses of the funds provided under the program and the impact of those funds on education and other areas. The statute requires States to submit these reports for each year of the program at such time and in such manner as the Department may require. The Department will evaluate the information in each report and use the data to prepare for the Congress the Secretary's Report required under Section 14010 of the American Recovery and Reinvestment Act. The data will inform the Department's administration and oversight of the program. In particular, it will provide useful information on the uses and impact of Ed Jobs funds.

Dated: November 27, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–29108 Filed 11–30–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2012–ICCD–0065]

Agency Information Collection Activities; Comment Request; Loan Cancellation in the Federal Perkins Loan Program

AGENCY: Department of Education (ED), Office of Postsecondary Education (OPE).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before February 1, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2012–ICCD–0065 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E117, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Loan Cancellation in the Federal Perkins Loan Program.

OMB Control Number: 1845–0100.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals or households; private Sector (not-for-profit institutions); State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 123,022.

Total Estimated Number of Annual Burden Hours: 46,135.

Abstract: This is a request for the renewal of the OMB approval for the recordkeeping requirements contained in 34 CFR 674.53, 674.56, 674.57, 674.58 and 674.59. The information collections in these regulations are necessary to determine Federal Perkins Loan borrower's eligibility to receive certain cancellation benefits and to prevent fraud and abuse of program funds. The requests for cancellation of Perkins Loans are received by the institution to determine the eligibility of the borrower and their loans for the cancellation being requested. The recordkeeping requirements are imposed to ensure accountability or program participants for proper program administration and to justify the payment of funds by the federal government. Not collecting the information described would likely result in a loss of Federal money due to waste, fraud and abuse.

Dated: November 27, 2012.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2012–29109 Filed 11–30–12; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission hereby gives notice that members of the Commission's staff may attend the following meetings related to the interregional transmission planning activities of the Southwest Power Pool (SPP):

SPP Seams FERC Order 1000 Task Force Meeting—December 6, 2012.

The above-referenced meeting will be a teleconference: The above-referenced meeting is open to the public. Further information may be found at *www.spp.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER09–35–001, Tallgrass Transmission, LLC.

Docket No. ER09–36–001, Prairie Wind Transmission, LLC.

Docket No. ER09–548–001, ITC Great Plains, LLC.

Docket No. ER09–659–002, Southwest Power Pool, Inc..

Docket No. ER11–4105–000, Southwest Power Pool, Inc

Docket No. EL11–34–001, Midwest Independent Transmission System Operator, Inc.

Docket No. ER12–1401–000, Southwest Power Pool, Inc.

Docket No. ER12–1402–000, Southwest Power Pool, Inc.

Docket No. ER12–1415–000, Southwest Power Pool, Inc.

Docket No. ER12–1460–000, Southwest Power Pool, Inc.

Docket No. ER12–1586–000 et al., Southwest Power Pool, Inc.

Docket No. ER12–1610–000, Southwest Power Pool, Inc.

Docket No. ER12–1772–000, Southwest Power Pool, Inc.

Docket No. ER12–2366–000, Southwest Power Pool, Inc.

Docket No. EL12–2–000, Southwest Power Pool, Inc.

Docket No. EL12–60–000, Southwest Power Pool, Inc., et al.

Docket No. ER12–2387–000 et al., Southwest Power Pool, Inc..

Docket No. ER13–366–000, Southwest Power Pool, Inc.

Docket No. ER13–367–000, Southwest Power Pool, Inc.

For more information, contact Luciano Lima, Office of Energy Markets Regulation, Federal Energy Regulatory Commission at (202) 288–6738 or *Luciano.Lima@ferc.gov.*

Dated: November 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29080 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL13–23–000]

Brookfield Energy Marketing LP v. ISO New England Inc.; Notice of Complaint

Take notice that on November 21, 2012, pursuant to section 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Brookfield Energy Marketing LP (Complainant) filed a formal complaint against ISO New England Inc. (Respondent) alleging that the qualification determinations by the Respondent for New Import Capacity Resources backed by the Erie Boulevard Hydropower facility and Carr Street Generating Station facility are unjust, unreasonable, and unduly discriminatory and in violation of the Respondent's Transmission, Markets & Services Tariff (tariff). The Complainant further alleges that, with regard to the qualification process for New Import Capacity Resources, the tariff is unjust, unreasonable, and unduly discriminatory.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 21, 2012.

Dated: November 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29114 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–6–000]

Eastern Shore Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Daleville Compressor Station Upgrade Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Daleville Compressor Station Upgrade Project (Project) involving construction and operation of facilities by Eastern Shore Natural Gas Company (Eastern Shore) in Chester County, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the Project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the Project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on December 26, 2012.

This notice is being sent to the Commission's current environmental mailing list for this Project. State and local government representatives should notify their constituents of this proposed Project and encourage them to comment on their areas of concern.

Eastern Shore provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?''. This fact sheet addresses a number of typically-asked questions, including how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Eastern Shore proposes to construct and operate two new 1,775 nominal horsepower (hp) natural gas-fired reciprocating compressor engines at its existing Daleville Compressor Station in Chester County, Pennsylvania. One compressor would replace three existing compressor units that currently serve as back-up to the existing primary compressor units. According to Eastern Shore, the new compressor units would reduce air emissions from the back-up compressor units and improve Eastern Shore's system reliability and flexibility, and the second compressor would provide 17,500 dekatherms per day (dth/d) of additional firm transportation service to two of Eastern Shore's existing customers (Delaware City Refining Company LLC and Elkton Gas Company).

The Project would consist of the following activities:

- Retiring three existing Caterpillar model 398 natural gas-fired reciprocating compressor engines currently serving as back-up to the primary compressor units;
- Constructing two new Caterpillar model 3606 TALE 1,775 hp natural gas-fired reciprocating compressor engines, one of which would replace the three existing back up compressor engines and the second of which would increase the station's firm transportation service by 17,500 dth/d; and
- Making necessary modifications to the existing Daleville Compressor Station and buildings to accommodate the new compressor units.

The general location of the Project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed Project would occur entirely within Eastern Shore's property, either within the existing fenced station site or in adjacent mowed areas. Construction would temporarily disturb the entire 1.88-acre existing fenced Daleville Compressor Station site. Approximately

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

4.25 additional acres of previously disturbed land would be used for temporary laydown and parking. The Daleville Compressor Station fence line would also be expanded by 0.28 acre to accommodate the building housing the two new proposed compressor units. Following construction, all temporary work areas would be seeded and maintained as lawn areas.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed Project under these general headings:

- Geology and soils;
- Land use;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Air quality and noise;
- Endangered and threatened species;
- Public safety; and
- Cumulative impacts.

We will also evaluate reasonable alternatives to the proposed Project or portions of the Project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section below.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this Project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the Project's potential effects on historic properties.[4] We will define the Project-specific Area of Potential Effects (APE) in consultation with the SHPO as the Project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this Project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before December 26, 2012.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the Project docket number (CP13–6–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov*.

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who own homes within certain distances of the Daleville Compressor Station, and anyone who submits comments on the Project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed Project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, § 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP13–6). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: November 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29083 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–445–000]

Badger Creek Limited; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding, of Badger Creek Limited's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is December 17, 2012.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29085 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1940–027 and 1966–053]

Wisconsin Public Service Corporation; Notices of Intent To File License Applications, Filing of Pre-Application Documents (PAD), Commencement of Pre-Filing Processes and Scoping, Request for Comments on the PADS and Scoping Document, and Identification of Issues and Associated Study Requests

a. *Type of Filing:* Notices of Intent to File License Applications for Two New Licenses and Commencing the Pre-filing Process.

b. *Project Nos.:* 1940–027 and 1966–053.

c. *Date Filed:* September 28, 2012.

d. *Submitted By:* Wisconsin Public Service Corporation.

e. *Name of Projects:* Tomahawk Hydroelectric Project and Grandfather Falls Hydroelectric Project.

f. *Location:* On the Wisconsin River in Lincoln County, Wisconsin. The Tomahawk Hydroelectric Project occupies 4.6 acres of United States lands under the jurisdiction of the U.S. Bureau of Land Management. The Grandfather Falls Hydroelectric Project occupies 3.5 acres of United States lands under the jurisdiction of the U.S. Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. Potential *Applicant Contact:* Terry P. Jensky, Vice President, Energy Supply Operations, Wisconsin Public Service Corporation, P.O. Box 19001, 700 North Adams Street, Green Bay, Wisconsin 54307–9001.

i. *FERC Contact:* Lee Emery at (202) 502–8379 or email at *lee.emery@ferc.gov.*

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating

agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See* 94 FERC ¶ 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Wisconsin Public Service Corporation as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Wisconsin Public Service Corporation filed with the Commission two Pre-Application Documents (PADs) and a proposed process plan and schedule for each project, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. Copies of the PADs are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number for each project, excluding the last three digits in the docket number field, to access the documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy of each PAD is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PADs and the Commission staff's Scoping Document 1 (SD1) for the projects, as well as for study requests for each project. All comments on the PADs and SD1, and study requests for each project should be sent to the address above in paragraph h. In addition, all comments on the PADs and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential applications must be filed with the Commission. Documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

All filings with the Commission must include on the first page the project names (Tomahawk Hydroelectric Project and/or Grandfather Falls Hydroelectric Project) and project numbers (P–1940–027 and/or P–1966–053), and bear the appropriate heading: ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests or commenting on the PADs or SD1, and any agency requesting cooperating status must do so by January 12, 2013.

p. Although our current intent is to prepare a single environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, the scoping meeting noted below will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings to discuss both projects at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, December 13, 2012.
Time: 1:00 p.m. (CST).
Location: Tomahawk City Hall, 23 North 2nd Street, Tomahawk, Wisconsin 54487, Phone: (920) 433–5713.

Evening Scoping Meeting

Date: Thursday, December 13, 2012.
Time: 7:00 p.m. (CST).
Location: Tomahawk City Hall, 23 North 2nd Street, Tomahawk, Wisconsin 54487, Phone: (920) 433–5713.

SD1, which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list for each project. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PADs for both projects in preparation for the scoping meetings. Directions on how to obtain a copy of the PADs and SD1 are included in item n of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will be placed in the public records of the project.

Kimberly D. Bose,
Secretary.

[FR Doc. 2012–29081 Filed 11–30–12; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL13–24–000, et al.]

Alaska Electric Light and Power Company, et al.; Notice of Petition for Declaratory Order

Alaska Electric Light and Power Company	Docket Nos. EL13–24–000; Project No. 2307–063
Alaska Energy Authority	Project No. 14241–003
City and Borough of Sitka, Alaska	Project No. 2818–024
Public Utility District No. 1 of Chelan County, Washington	Project No. 2145–115
Public Utility District No. 1 of Snohomish County, Washington	Project No. 2157–209
Public Utility District No. 2 of Grant County, Washington	Project No. 2114–256
Sabine River Authority of Texas and Sabine River Authority, State of Louisiana	Project No. 2305–040
Southeast Alaska Power Agency	Project Nos. 2911–036, 3015–013

Take notice that on November 21, 2012, pursuant to section 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure 18 CFR 385.207(a)(2), Alaska Electric Light and Power Company, Project No. 2307; Alaska Energy Authority, Project No. 14241; City and Borough of Sitka, Alaska, Project No. 2818; Public Utility District No. 1 of Chelan County, Washington, Project No. 2145; Public Utility District No. 1 of Snohomish County, Washington, Project No. 2157; Public Utility District No. 2 of Grant County, Washington, Project No. 2114; Sabine River Authority of Texas and Sabine River Authority, State of Louisiana, Project No. 2305; and Southeast Alaska Power Agency, Project Nos. 2911 and 3015 (collectively, Power Site Reservation Fees Group or Petitioners) filed a petition for declaratory order requesting the Commission find that collection of annual charges under section 10(e)(1) of the Federal Power Act (FPA), 16 U.S.C. 803(e)(1), for hydropower licensees' use and occupancy of lands that they own but that are subject to a power site reservation under FPA section 24, 16 U.S.C. 818, is inconsistent with the language, structure, and purpose of FPA Part I, including section 10(e)(1).

Any person desiring to intervene in or to file a protest or comments regarding this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests and comments will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make filers parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, protests or comments must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene, protests, or comments on persons other than the Applicant.

The Commission encourages electronic submission of comments, protests, and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the comment, protest, or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on December 21, 2012.

Dated: November 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29084 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR13–12–000]

Southern California Gas Company; Notice of Petition for Rate Approval

Take notice that on November 21, 2012, Southern California Gas Company (SoCalGas) filed pursuant to 284.123(b)(1) of the Commission's regulations to revise its Statement of Operating Conditions stating new rates and reflecting SoCalGas' election to base its rates for Off-System Delivery service and Offshore Delivery service on rates approved by the California Public Utilities Commission for comparable intrastate transportation services, as more fully detailed in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on Friday, December 7, 2012.

Dated: November 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29113 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14467–000]

New England Hydropower Company, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 9, 2012, the New England Hydropower Company, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Cochrane Dam Hydroelectric Project (Cochrane Dam Project or project) to be located on the Charles River, near Needham and Dover, Norfolk County, Massachusetts. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following: (1) An existing 15-foot-high, 200-foot-long stone masonry spillway dam with concrete retaining walls; (2) an existing impoundment with a 5.1-acre surface area and a normal storage capacity of 640 acre-feet at an operating elevation of about 102.3 feet above mean sea level (msl); (3) an existing 30-foot-long, 18-foot-wide, and 10-foot-deep head box and intake channel; (4) a new 6-foot-high, 14-foot-wide sluice gate equipped with a 14-foot-high, 21-foot-wide trashrack with 6-inch bar spacing; (5) a new 50-foot-long, 13-foot wide Archimedes screw generator unit with an installed capacity of 170 kilowatts; (6) a new 10-foot-high, 18-foot-long, 18-foot-wide powerhouse containing a new gearbox and electrical controls; (7) an existing 375-foot-long, 20-foot-wide, and 4-foot-deep tailrace; (8) a new above ground 300-foot-long, 35-kilovolt transmission line connecting the powerhouse to the NSTAR regional grid; and (9) appurtenant facilities. The estimated annual generation of the proposed Cochrane Dam Project would be about 811 megawatt-hours. The existing Cochrane Dam and appurtenant works, including a former powerhouse foundation and intake structures, are owned by the Commonwealth of Massachusetts and operated by the Massachusetts Department of Conservation and Recreation.

Applicant Contact: Mr. Michael C. Kerr, New England Hydropower Company, LLC, P.O. Box 5524, Beverly Farms, Massachusetts 01915; phone: (978) 360–2547.

FERC Contact: John Ramer; phone: (202) 502–8969 or email: *john.ramer@ferc.gov.*

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14467) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29079 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13500–002]

Lock+™ Hydro Friends Fund XI, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On October 1, 2012, Lock+™ Hydro Friends Fund XI, LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Lock and Dam No. 12 Project (project) to be located at the U.S. Army Corps of Engineers (Corps) Mississippi River Lock and Dam No. 12 on the Mississippi River, near Bellevue, Iowa. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be integrated into the Corps' existing dam spillway and consist of the following: (1) A yet undetermined size concrete pad to be built just upstream of the spillway, supporting a frame module containing 10 turbines; (2) a 120-foot-long, 50-foot-deep frame module fitted with a trash rack and containing 10 low-head bulb turbines each having a capacity of 500 kilowatts (kW) for a total installed capacity of 5,000 kW; (3) a 200-foot-long, 120-foot-wide tailrace; (4) a yet undetermined number of draft tubes that would be incorporated into the spillway; (5) a switchyard constructed adjacent to the modular system; (6) a 1.3-mile-long, 36.7-kilovolt transmission line conveying the generated power to the local power grid; and (7) appurtenant facilities. The estimated annual generation of the Lock and Dam No. 12 Project would be 28,470 megawatt hours.

Applicant Contact: Mark R. Stover, Vice President of Corporate Affairs, Hydro Green Energy, LLC, 900 Oakmont Lane, Suite 301, Westmont, IL 60559; phone: (877) 556–6566 x 711.

FERC Contact: Sergiu Serban; phone: (202) 502–6211.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18

CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13500–002) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 26, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29082 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR13–4–000]

Pelican Gathering Systems, LLC; Notice for Temporary Waiver of Filing and Reporting Requirements

On October 19, 2012, Pelican Gathering Systems, LLC (Pelican) filed a Request for a Temporary Waiver of Tariff Filing and Reporting Requirements. Pelican requests that the Commission grant a petition for temporary waiver of ICA section 6 and section 20, and FERC oil pipeline tariff and reporting requirements, with respect to anticipated construction of Pelican's small-diameter oil pipeline gathering facilities, which will be used to transport the Bakken crude oil supplies of its affiliate, Slawson Exploration Company, Inc.

Any person desiring to intervene or to protest in this proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern time on Friday, December 7, 2012.

Dated: November 27, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–29115 Filed 11–30–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Meetings of the Local Government Advisory Committee and the Small Communities Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Small Communities Advisory Subcommittee (SCAS) will meet meet in Washington, DC, on Wednesday, December 12, 2012, 11:00 a.m.–3:00 p.m. (EST). The Subcommittee will discuss training related to land use and economic development; decentralized wastewater treatment; and other issues and recommendations to the Administrator regarding environmental issues affecting small communities. The Local Government Advisory Committee (LGAC) will meet in Washington, DC, on Thursday, December 13, 2012, 9:00 a.m.–5:30 p.m. (EST), and Friday, December 14, 2012, 9:00 a.m.–1:00 p.m. (MT).

These are open meetings, and all interested persons are invited to participate. The Subcommittee will hear comments from the public between 2:50 p.m. and 3:00 p.m. on Wednesday, December 12, 2012, and the Committee will hear comments from the public between 3:50 p.m. and 4:00 p.m. on Thursday, December 13, 2012. Individuals or organizations wishing to address the Subcommittee or the Committee will be allowed a maximum of five minutes to present their point of view. Also, written comments should be submitted electronically to *davis.catherinem@epa.gov.* Please contact the Designated Federal Officer (DFO) at the number listed below to schedule a time on the agenda. Time will be allotted on a first-come first-serve basis, and the total period for comments may be extended if the number of requests for appearances requires it.

ADDRESSES: The Small Communities Advisory Subcommittee and Local Government Advisory Committee meetings will be held at The Old Post Office Pavillion, 1100 Pennsylvania Ave. NW., Washington, DC 20004. Meeting summaries will be available after the meeting online at *www.epa.gov/ocir/scas_lgac/lgac_index.htm* and can be obtained by written request to the DFO.

FOR FURTHER INFORMATION CONTACT: Local Government Advisory Committee (LGAC) and Small Communities Advisory Subcommittee (SCAS), contact Cathy Davis, Designated Federal Officer,

at (202) 564–2703 or email at *davis.catherinem@epa.gov.*

Information on Services for Those with Disabilities: For information on access or services for individuals with disabilities, please contact Cathy Davis at (202) 564–2703 or email at *davis.catherinem@epa.gov.* To request accommodation of a disability, please request it 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 16, 2012.

Catherine M. Davis,

Designated Federal Officer. Local Government Advisory Committee.

[FR Doc. 2012–29111 Filed 11–30–12; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW.,Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision of the following report:

1. Report title: Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies, and the Annual Report of Merchant Banking Investments Held for an Extended Period.

Agency form number: FR Y–12, FR Y12A, respectively.

OMB control number: 7100–0300.

Frequency: FR Y–12: quarterly or semi-annually, FR Y–12A: annually.

Reporters: Bank holding companies (BHCs), financial holding companies (FHCs) and savings and loan holding companies (SLHCs).

Estimated annual reporting hours: FR Y–12: 2,112 hours, FR Y–12A: 126 hours.

Estimated average hours per response: FR Y–12: 16.5 hours, FR Y–12A: 7 hours.

Number of respondents: FR Y–12: 34, FR Y–12A: 18.

General description of report: This collection of information is mandatory pursuant to Section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and Section 10 of the Home Owners Loan Act (12 U.S.C. 1467a(b)). The FR Y–12 data are not considered confidential, however, a BHC or SLHC may request confidential treatment pursuant to Sections (b)(4) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)). The FR Y–12A data are considered confidential pursuant to sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y–12 collects information from certain domestic BHCs and SLHCs on their equity investments in nonfinancial companies on four schedules: Type of Investments, Type of Security, Type of Entity within the Banking Organization, and Nonfinancial Investment Transactions during Reporting Period. The FR Y–12A collects data from FHCs which hold merchant banking investments that are approaching the end of the holding period permissible under Regulation Y. These data serve as an important risk-monitoring device for FHCs active in this business line by allowing the Federal Reserve to monitor an FHC's activity between review dates. These data also serve as an early warning mechanism to identify FHCs whose activities in this area are growing rapidly and therefore warrant special supervisory attention.

Current Actions: On September 21, 2012, the Federal Reserve published a notice in the **Federal Register** (77 FR 58556) requesting public comment for 60 days on the extension, without revision, of the FR Y–12 and FR Y–12A. The comment period for this notice expired on November 20, 2012. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, November 28, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–29102 Filed 11–30–12; 8:45 am]

BILLING CODE 6210–01–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 18, 2012.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ann Kennedy Irish, as trustee of the Ann Kennedy Irish Trust; the Ann Kennedy Irish Trust; David H. Irish; as trustee of the David H. Irish Trust; the David H. Irish Trust, all of Harbor Springs, Michigan; Tracy Irish Texter, John F. Texter, as trustees of the John F. Texter and Tracy I. Texter Trust; the John F. Texter and Tracy I. Texter Trust, all of Middleville, Michigan; Susan Irish Stewart, as trustee of the Susan Irish Stewart Revocable Intervivos Trust; the Susan Irish Stewart Revocable Intervivos Trust, all of Harbor Springs, Michigan; Colin David Irish, Marquette, Michigan; Perry Irish Hodgson; Alexander Irish Hodgson; Raymond Earhart Hodgson, all of Charlevoix, Michigan; Liam Foster Hodgson, Beaver Island, Michigan; all as members of the Irish and Hodgson Family Control

Group to retain voting shares of Charlevoix First Corporation, and thereby indirectly retain voting shares of Charlevoix State Bank, both in Charlevoix, Michigan.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. Thomas H. Brouster, Sr., St. Louis, Missouri, acting individually, and in concert with a control group which consists of Thomas H. Brouster Trust TTE; Thomas H. Brouster Family Trust and Meredith E. Brouster Trust, Brouster & Associates, LLC; Thomas H. Brouster Consulting Pension Trust; and Thomas H. Brouster Consulting Pension Trust II; Lawrence P. Keeley, Jr.; Allan D. Ivie, IV; Allan D. Ivie, IV Self Directed IRA; David Sindelar, all of St. Louis, Missouri; Gaines S. Dittrich Self Directed IRA; Gaines S. Dittrich, Trustee of The Gaines S. Dittrich Revocable Trust dated May 6, 1997, as amended; and Dittrich & Associates, all of Rogers, Arkansas; Robert M. Cox, Jr., Frontenac, Missouri; Dr. Richard M. Demko, Chesterfield, Missouri; Scott A. Sachtleben, Belleville, Illinois; Robert K. Jakel Living Trust; Robert Jakel Trustee; Eric K. Jakel as trustee of the Eric K. Jakel Living Trust u/a dated 6/6/85, all of Highland, Illinois; Sterling K. Jakel Living Trust dated 5/3/85, Sterling Jakel Trustee, Naples, Florida; Otto K. Jakel Living Trust dated 11/26/91; Otto K. Jakel Trustee, all of Clarmont, Georgia; Gordon Jakel, Scottsdale, Arizona; John W. Bradley Revocable Living Trust dated 2/19/92; John B. Bradley Revocable Living Trust dated 12/12/07, John Bradley, Trustee, all of Kirkwood, Missouri; and Ned Stanley, Ladue, Missouri; to acquire voting shares of Reliance Bancshares, Inc., Des Peres, Missouri, and thereby indirectly acquire voting shares of Reliance Bank, St. Louis, Missouri.

Board of Governors of the Federal Reserve System, November 28, 2012.

Michael J. Lewandowski,

Assistant Secretary of the Board.

[FR Doc. 2012–29110 Filed 11–30–12; 8:45 am]

BILLING CODE 6210–01–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 17, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Stephen Wellington, Jr.,* Saint Paul, Minnesota; to acquire voting shares of Plato Holdings, Inc., and thereby indirectly acquire voting shares of Drake Bank, both in Saint Paul, Minnesota.

Board of Governors of the Federal Reserve System, November 27, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–29049 Filed 11–30–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 27, 2012.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Scottrade Financial Services, Inc.,* Town and Country, Missouri; to acquire 100 percent of the voting shares of Bunker Hill Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire voting shares of Boulevard Bank, Neosho, Missouri.

Board of Governors of the Federal Reserve System, November 27, 2012.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2012–29050 Filed 11–30–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 121 0081]

Robert Bosch GmbH; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 26, 2012.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/boschspxconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Bosch, File No. 121 0081'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/boschspxconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade

Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jacqueline K. Mendel (202–326–2603), FTC, Bureau of Competition, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 26, 2012), on the World Wide Web, at *http://www.ftc.gov/os/actions.shtm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 26, 2012. Write ''Bosch, File No. 121 0081'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which * * * is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/boschspxconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Bosch, File No. 121 0081'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex D), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 26, 2012. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted from Robert Bosch GmbH (''Bosch''), subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement''), which is designed to remedy the anticompetitive effects resulting from Bosch's acquisition of SPX Service Solutions U.S. LLC (''SPX Service Solutions'') from SPX Corporation (''SPX'') and to remedy anticompetitive conduct by SPX in violation of Section 5 of the FTC Act.

Under the terms of the Consent Agreement, Bosch is required to (1) divest its air conditioning recycling, recovery, and recharge (''ACRRR'') business, including RTI Technologies, Inc. (''RTI''), to Mahle Clevite, Inc. (''Mahle'') by December 31, 2012; (2) terminate agreements with any persons that limit the ability of SPX's competitors, including Bosch, from advertising, servicing, distributing, or selling any ACRRR product in the U.S. market; and (3) make available for licensing certain patents which may be used in the implementation of two industry standards established by SAE International, an industry association responsible for setting standards for products so that they comply with regulations of the U.S. Environmental Agency (''EPA''). The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement, modify it, or make it final.

On January 23, 2012, Bosch entered into an agreement to acquire the SPX Service Solutions business from SPX. The Commission's complaint alleges the facts described below and that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by lessening competition in the market for ACRRR devices.

II. The Parties

Bosch, headquartered in Stuttgart, Germany and with U.S. operations based in Broadview, Illinois, is a global supplier of automotive and industrial technology, consumer goods, and building technology. North American sales represent 18% of Bosch's

revenues, and Automotive Technology is Bosch's largest business sector in North America. Bosch is the second leading U.S. supplier of ACRRR equipment. It acquired RTI in 2010, and sells ACRRR equipment under both the Bosch and RTI brand, which account for approximately 10% of the U.S. ACRRR market.

Headquartered in Warren, Michigan, SPX is a diversified global supplier of highly engineered products for the following industries: power and energy, food and beverage, vehicle and transit, infrastructure and industrial processes. SPX's Service Solutions business is a global supplier of automotive tools, equipment and services, for both original equipment manufacturers (''OEMs'') and aftermarket repair shops and technicians. SPX's Robinair brand is the leading supplier of ACRRR equipment in the United States, accounting for over 80% of sales in that market.

III. The Product and Structure of the Market

Bosch's proposed acquisition of SPX Service Solutions would create a virtual monopoly in the ACRRR market. ACRRR devices are stand-alone pieces of equipment used by automotive technicians to remove refrigerant from a vehicle's on-board air conditioning system, store the refrigerant while the air conditioning system is being serviced, and recycle the refrigerant back into the system, adding more as necessary. These tools are required to repair or service motor vehicle air conditioning systems because no other equipment performs the removal, recycling, and recharging functions while staying compliant with EPA regulations prohibiting refrigerant from escaping into the atmosphere. Devices that only extract refrigerant from air conditioning systems but do not recycle or recharge them are not cost-effective alternatives because they do not store or dispose of extracted refrigerant as required. As a result, if the price of ACRRR equipment were to increase 5–10%, customers would not switch to extraction-only equipment or to equipment that flushes other fluids from vehicles, which cannot be used in its place.

The relevant geographic area in which to evaluate the market for ACRRR equipment is the United States. Environmental regulations vary by country, so ACRRR machines designed to adhere to the regulations of one country are not necessarily compatible with those of other countries. In addition, differing electrical power specifications across the world necessitate that the internal pumps and motors vary to meet differing specification. As a result, purchasers in the United States could not turn to suppliers in other countries for ACRRR equipment.

SPX's Robinair brand holds a dominant position in the ACRRR market, with a share of over 80%. Bosch's RTI and Bosch brands comprise approximately 10% of the market and are Robinair's most significant competition. Four other firms selling ACRRR equipment in the U.S. together account for the balance of ACRRR sales. Thus, the combination of Bosch and SPX would confer a virtual monopoly position on Bosch. The elimination of the direct competition between Robinair and Bosch would allow the combined entity to exercise market power by unilaterally increasing price, slowing innovation, or lowering its levels of service.

IV. Entry

Entry into the ACRRR market sufficient to deter the anticompetitive effects of this transaction is unlikely to occur in the next two years. While designing and engineering a system to work effectively and meet industry standards may be possible within a relatively short time frame, other barriers, including the challenges of obtaining effective distribution and developing a service network, make successful entry very difficult. Advertising through leading automotive wholesale distributors is the most effective means of promoting ACRRR to independent auto repair shops and rapid-turnaround repair of ACRRR equipment is critical because repair shops cannot provide air conditioning service without this equipment. Obtaining effective distribution and service networks has been especially challenging for competitors of SPX because of limitations SPX puts on distributors and service centers that sell and service Robinair-brand ACRRR. Another factor affecting the likelihood of significant new entry or expansion is the costs associated with meeting industry standards, which are established by SAE International, formerly the Society of Automotive Engineers.

IV. Effects of the Acquisition

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. ACRRR device market. The transaction would combine SPX's Robinair brand ACRRR, that already commands over 80% of the market with its leading competitor, Bosch, with its Bosch- and RTI ACRRR brands, with approximately 10% of the market, creating a near-monopolist with a share of over 90%. The impact of eliminating the competition between Bosch and SPX in the ACRRR market is highly likely to result in consumers, who are automotive repair shops and technicians, paying higher prices for ACRRR devices.

V. The Consent Agreement

A. The Merger Remedy

The proposed Consent Agreement eliminates the competitive concerns raised by Bosch's proposed acquisition of SPX Service Solutions by requiring the divestiture of Bosch's assets relating to the manufacture and sale of ACRRR devices in the United States, including the RTI business. Bosch and SPX have agreed to sell the U.S. ACRRR assets to Mahle Clevite, Inc. (''Mahle'') before December 31, 2012.

Mahle possesses the resources, industry experience, and financial viability to successfully purchase and manage the divestiture assets and continue as an effective competitor in the ACRRR market. Mahle, headquartered in Stuttgart, Germany with U.S. operations based in Farmington, Michigan, is a supplier and development partner to the automotive and engine industry. Mahle's diverse product lines include aftermarket parts and automotive equipment sold a similar customer base as RTI. Mahle's significant size and global presence will allow it to quickly support additional expansion in the ACRRR market and replace the loss of competition presented by Bosch's acquisition of SPX SS.

Pursuant to the Consent Agreement, Mahle would receive all the assets necessary to operate Bosch's current U.S. ACRRR business, including RTI's operations in York, Pennsylvania which include the RTI manufacturing plant, current inventory, and relevant intellectual property. In addition to ensuring that current RTI employees will continue their employment with Mahle, the Consent Agreement requires Bosch to provide access to certain key employees who may be necessary to help facilitate the transition and fully establish the Bosch ACRRR business within Mahle. The Consent Agreement also requires Bosch to transfer all relevant intellectual property and all contracts and confidential business information associated with the ACRRR business. In addition, the Consent Agreement requires Bosch to license, royalty-free, certain SPX patents that may be essential to the practice of two industry standards to Mahle.

B. The Conduct Remedy

In addition, the Consent Agreement includes a provision that requires Bosch to make certain patents available to its competitors in the ACRRR market. During its merger investigation, the Commission uncovered evidence that SPX holds certain potentially standard-essential patents necessary for implementing two SAE International ACRRR industry standards, J–2788 and J–2843, which govern the operation of ACRRR machines that handle the two most common types of air conditioning refrigerant in vehicles today. SAE International adopted J–2788 and J–2843 while SPX was a member of the SAE Interior Climate Control Committee, the committee responsible for developing the standards. SAE International's rules include an obligation by working group members to disclose any patents or patent applications that would be essential to the practice of a standard being developed, and to offer a license to such patents on either royalty-free or fair, reasonable, and non-discriminatory (''FRAND'') terms. After the standards were adopted, SPX issued a letter of assurance to SAE International acknowledging that it held patents that were potentially essential to both standards and committing to license them under FRAND terms. Following this letter of assurance, however, SPX continued to seek previously initiated injunction actions against competitors using those patents to implement the SAE International standards.

SPX's suit for injunctive relief against implementers of its standard essential patents constitutes a failure to license its standard-essential patents under the FRAND terms it agreed to while participating in the standard setting process, and is an unfair method of competition actionable under Section 5 of the FTC Act. Standard setting is ''widely acknowledged to be one of the engines driving the modern economy.'' Participants in the standard setting process rely on the licensing commitments made by patent holders during the standard setting process to protect them against patent hold-up. Patent hold-up can occur when, after an entire industry has become ''locked in'' to practicing a standard, a patent holder reneges on a licensing obligation and seeks to exercise the market power that accrues to a patent by virtue of being incorporated in the standard. FRAND commitments and licensing obligations, such as those at issue here, are an important way to mitigate the risk of patent hold-up, and are common in the standard setting process. Seeking injunctions against willing licensees of FRAND-encumbered standard essential patents, as SPX is alleged to have done here, is a form of FRAND evasion and can reinstate the risk of patent hold-up that FRAND commitments are intended to ameliorate. As the Commission has previously explained, ''negotiation that occurs under threat of an [injunction] may be weighted heavily in favor of the patentee in a way that is in tension with the [F]RAND commitment. High switching costs combined with the threat of an [injunction] could allow a patentee to obtain unreasonable licensing terms despite its [F]RAND commitment, not because its invention is valuable, but because implementers are locked in to practicing the standard.''

Bosch has agreed in the Consent Order to resolve the violations committed by SPX. The Consent Order requires Bosch to offer a royalty-free license to all potential implementers for certain enumerated patents for the purpose of manufacturing ACRRR devices in the United States. While a royalty-free license may not be an appropriate remedy in every case involving evasion of a FRAND commitment, in this matter Bosch has chosen to license these patents to the buyer of its ACRRR business, Mahle, royalty-free, and a license to other market place participants on the same terms is necessary to ensure that the merger remedy is not inequitable in application. The Consent Order further requires Bosch to deliver to the SAE a letter of assurance that makes a binding, irrevocable commitment to license any additional patents that Bosch may acquire in the future that are essential to practicing the J–2788 or J–2843 standards on FRAND terms to any third party that wishes to use such patents to produce an ACRRR device for sale in the United States. Pursuant to its FRAND obligations, Bosch has agreed not seek injunctive relief against such third parties, unless the third party refuses in writing to license the patent consistent with the letter of assurance, or otherwise refuses to license the patent on terms that comply with the letter of assurance as determined by a process agreed upon by both parties (*e.g.,* arbitration) or a court.

The Consent Agreement also requires that Bosch discontinue its restrictive arrangements with wholesale distributors and independent service technicians. Bosch will be prevented from enforcing any agreement that restricts a distributor or repair service provider from advertising, servicing, distributing, or selling any ACRRR product from any third party in the United States. Bosch will be prevented from entering into such agreements for ten years after the date of the Order. This provision allows entry by other competitors, and will allow the existing competitors in the ACRRR market, including Mahle, to more easily have access to leading wholesale distributors and service providers to assemble repair networks to which customers can turn after they have purchased ACRRRs.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or to modify its terms in any way.

Statement of the Federal Trade Commission

The Federal Trade Commission (''Commission'') has voted to issue for public comment a Complaint and Order against Robert Bosch GmbH (''Bosch'') designed to remedy the allegedly anticompetitive effects of Bosch's acquisition of SPX Services (''SPX''), a division of SPX Corporation. The Commission has reason to believe that the proposed acquisition would cause significant anticompetitive harm to consumers by creating a virtual monopoly in the market for automobile air conditioning servicing equipment known as ''air conditioning recycling, recovery, and recharge devices'' or ''ACRRRs.'' The proposed Order eliminates the anticompetitive concerns raised by the proposed acquisition by requiring the divestiture of Bosch's assets relating to the manufacture and sale of ACRRRs to Mahle Clevite, Inc. The proposed Order further requires Bosch to discontinue restrictive arrangements SPX maintained with wholesale distributors and independent service technicians.

The Complaint also alleges that, before its acquisition by Bosch, SPX reneged on a licensing commitment made to two standard-setting bodies to license its standards-essential patents (''SEPs'') relating to ACRRRs on fair, reasonable and non-discriminatory terms (''FRAND'') by seeking injunctions against willing licensees of those SEPs.[2] We have reason to believe this conduct tended to impair competition in the market for these important automobile air conditioning servicing devices. To its credit, Bosch has abandoned these claims for

[2] The licensing obligation in this matter was a FRAND obligation, although RAND (reasonable and non-discriminatory) licensing obligations raise similar issues.

injunctive relief and agreed to license the SEPs at issue.

This case is another chapter in the Commission's longstanding commitment to safeguard the integrity of the standard-setting process.[3] Standard setting can deliver substantial benefits to American consumers, promoting innovation, competition, and consumer choice. But standard setting also risks harm to consumers. Because standard setting often displaces the normal competitive process with the collective decision-making of competitors, preserving the integrity of the standard-setting process is central to ensuring standard setting works to the benefit of, rather than against, consumers.[4] The Commission's action today does just that.

As explained in the Commission's unanimous filings before the United States International Trade Commission in June 2012, the threat of injunctive relief ''in matters involving RAND-encumbered SEPs, where infringement is based on implementation of standardized technology, has the potential to cause substantial harm to U.S. competition, consumers and innovation.'' [5] By threatening to exclude standard-compliant products from the marketplace, a SEP holder can demand and realize royalty payments that reflect the investments firms make to develop and implement the standard, rather than the economic value of the technology itself.[6] This can harm incentives to develop standard-compliant products. The threat of an injunction can also lead to excessive royalties that can be passed along to consumers in the form of higher prices.

There is increasing judicial recognition, coinciding with the view of the Commission, of the tension between offering a FRAND commitment and seeking injunctive relief.[7] Patent holders that seek injunctive relief against willing licensees of their FRAND-encumbered SEPs should understand that in appropriate cases the Commission can and will challenge this conduct as an unfair method of competition under Section 5 of the FTC Act.[8] Importantly, stopping this conduct using a stand-alone Section 5 unfair methods of competition claim, rather than one based on the Sherman Act, minimizes the possibility of follow-on treble damages claims. Violations of Section 5 that are not also violations of the antitrust laws do not support valid federal antitrust claims for treble damages. There is also no private right of action under Section 5, and a Section 5 action has no preclusive effect in subsequent federal court cases.

In her dissent, Commissioner Ohlhausen claims that today's decision imposes liability on protected petitioning activity and effectively undermines the role of federal courts and the ITC in the adjudication of SEP-related disputes. We respectfully disagree. As alleged in the Complaint, SPX committed to license its SEPs on FRAND terms. In doing so, we have reason to believe SPX voluntarily gave up the right to seek an injunction against a willing licensee. Moreover, the fact that both the federal courts and the ITC have the authority to deny injunctive relief where the SEP holder has broken its FRAND commitment does not mean that this conduct is not itself a violation of Section 5 or within our reach.

We also take issue with Commissioner Ohlhausen's suggestion that the Commission's action ''appears to lack regulatory humility.'' The Commission is first and foremost a law enforcement agency, and this consent decree, like all of our unfair methods of competition enforcement actions, is a fact-specific response to a very real problem that threatens competition and consumer welfare.

Indeed, we view this action as well within our Section 5 authority. The plain language of Section 5, the relevant legislative history, and a long line of Supreme Court cases all affirm that Section 5 extends beyond the Sherman Act.[9] Moreover, this is not a circumstance where, as Commissioner Ohlhausen contends, there are no discernible limiting principles. SPX's failure to abide by its commitment took place in the standard-setting context. In that setting, long an arena of concern to the Commission, a breach of contract risks substantial consumer injury. The standard setting context, together with the acknowledgment that a FRAND commitment also depends on the presence of a willing licensee, appropriately limit the Commission's enforcement policy and provide guidance to standard-setting participants.

For these reasons, we find Commissioner Ohlhausen's analogy of SPX's conduct to a ''garden variety breach-of-contract'' to be unpersuasive. While not every breach of a FRAND licensing obligation will give rise to Section 5 concerns, when such a breach tends to undermine the standard-setting process and risks harming American consumers, the public interest demands action rather than inaction from the Commission.

[3] *See In re Dell Computer Corp.,* 121 F.T.C. 616 (1996); *In re Union Oil Company of California,* 2004 FTC LEXIS 115 (July 7, 2004); *In re Rambus, Inc.,* Dkt. No. 9302, 2006 FTC LEXIS 101 (Aug. 20, 2006), *rev'd, Rambus Inc.* v. *F.T.C.,* 522 F.3d 456 (D.C. Cir. 2008); *In re Negotiated Data Solutions LLC,* FTC File No. 051–0094, Decision and Order (Jan. 23, 2008), *available at http://www.ftc.gov/os/caselist/0510094/080122do.pdf.*

[4] *See, e.g., Allied Tube & Conduit Corp.* v. *Indian Head, Inc.,* 486 U.S. 492, 500–01 (1988) (noting that ''private standard-setting associations have traditionally been objects of antitrust scrutiny'' because of their potential use as a means for anticompetitive agreements among competitors).

[5] Third Party United States Federal Trade Commission's Statement on the Public Interest filed on June 6, 2012 in *In re Certain Wireless Communication Devices, Portable Music & Data Processing Devices, Computers and Components Thereof,* Inv. No. 337–TA–745, *available at www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf* and in *In re Certain Gaming and Entertainment\Consoles, Related Software, and Components Thereof,* Inv. No. 337–TA–752, *available at http://www.ftc.gov/os/2012/06/1206ftcgamingconsole.pdf.*

[6] *Id.* at 3–4 (''[A] royalty negotiation that occurs under threat of an exclusion order may be weighted heavily in favor of the patentee in a way that is in tension with the RAND commitment. High switching costs combined with the threat of an exclusion order could allow a patentee to obtain unreasonable licensing terms despite its RAND commitment, not because its invention is valuable, but because implementers are locked in to practicing the standard. The resulting imbalance between the value of patented technology and the rewards for innovation may be especially acute where the exclusion order is based on a patent covering a small component of a complex multicomponent product. In these ways, the threat of an exclusion order may allow the holder of a RAND-encumbered SEP to realize royalty rates that reflect patent hold-up, rather than the value of the patent relative to alternatives, which could raise prices to consumers while undermining the standard setting process.'').

[7] *See, e.g., Microsoft Corp.* v. *Motorola, Inc.,* 696 F.3d 872, 885 (9th Cir. 2012) (''Implicit in such a sweeping promise is, at least arguably, a guarantee that the patent-holder will not take steps to keep would-be users from using the patented material, such as seeking an injunction, but will instead proffer licenses consistent with the commitment made.''); *Apple, Inc.* v. *Motorola, Inc.,* No. 1:11–cv–08540, 2012 U.S. Dist. LEXIS 89960, at *45 (N.D. Ill. June 22, 2012) (Posner, J., sitting by designation) (''I don't see how, given FRAND, I would be justified in enjoining Apple from infringing the '898 [patent] unless Apple refuses to pay a royalty that meets the FRAND requirement. By committing to license its patents on FRAND terms, Motorola committed to license the '898 to anyone willing to pay a FRAND royalty and thus implicitly acknowledged that a royalty is adequate compensation for a license to use that patent. How could it do otherwise?'').

[8] We have no reason to believe that, in this case, a monopolization count under the Sherman Act was appropriate. However, the Commission has reserved for another day the question whether, and under what circumstances, similar conduct might also be challenged as an unfair act or practice, or as monopolization.

[9] *See, e.g., F.T.C.* v. *R.F. Keppel & Bros., Inc.,* 291 U.S. 304, 310–313 (1934); *F.T.C.* v. *Cement Inst.,* 333 U.S. 683, 693 & n.6 (1948); *F.T.C.* v. *Sperry & Hutchinson Co.,* 405 U.S. 233, 241–244 (1972).

By direction of the Commission, Commissioner Rosch and Commissioner Ohlhausen dissenting.

Donald S. Clark,

Secretary.

Statement of Commissioner Maureen K. Ohlhausen

I voted against accepting the proposed consent agreement in this matter because I strongly dissent from those portions of the consent that relate to alleged conduct by the respondent involving standard-essential patents, or SEPs.[10] Even if all of the SEP-related allegations in the complaint were proved—including the allegation that the patents at issue are standard-essential—I would not view such conduct as violating Section 5 of the FTC Act.[11] Simply seeking injunctive relief on a patent subject to a fair, reasonable, and non-discriminatory (''FRAND'') license, without more,[12] even if seeking such relief could be construed as a breach of a licensing commitment, should not be deemed either an unfair method of competition or an unfair act or practice under Section 5. The enforcement policy on the seeking of injunctive relief on FRAND-encumbered SEPs that the Commission has announced today suffers from several critical defects.

First, this enforcement policy raises significant issues of jurisdictional and institutional conflict. It is simply not in the public interest to effectively oust other institutions, including the federal courts and the International Trade Commission (''ITC'') from the important and complex area of SEPs through the use of our Section 5 authority. By imposing Section 5 liability on a firm that seeks injunctive relief on its SEPs, the Commission is doing exactly that. The FTC is not, nor should it be, the only institution acting in the SEPs space. Moreover, it is unclear how the seeking of injunctive relief, in either the courts or the ITC, on a patent—even a FRAND-encumbered SEP—would not be considered protected petitioning of the government under the *Noerr-Pennington* doctrine.[13] In fact, a court recently dismissed Sherman Act and state unfair competition claims grounded on the seeking of injunctive relief in the courts and the ITC on FRAND-encumbered SEPs, holding that such conduct was protected by *Noerr.*[14]

Second, this enforcement policy appears to lack regulatory humility. The policy implies that our judgment on the availability of injunctive relief on FRAND-encumbered SEPs is superior to that of these other institutions. I agree that the FTC is well positioned to offer its views and to advocate on the important issue of patent hold-up using its policy tools. For that reason, I supported the Commission's June 2012 filing with the ITC.[15] However, as the Commission testified to Congress shortly after filing its statement with the ITC, ''Federal district courts have the tools to address this issue [hold-up], by balancing equitable factors or awarding money damages, and the FTC believes that the ITC likewise has the authority under its public interest obligations to address this concern and limit the potential for hold-up.'' [16] I see no reason why this unanimous statement no longer holds.[17]

Third, to the extent that the SEP allegations in the complaint aspire to the consent agreement reached in the Commission's *N-Data* [18] matter, I would submit that that consent is an ill-advised guidepost for this agency to use in its enforcement of Section 5 for several reasons. Most importantly, the *N-Data* consent fails to identify meaningful limiting principles that would govern the Commission's use of its Section 5 authority.[19] As former Chairman Majoras explained in her dissent, the *N-Data* consent was a material departure from the prior line of standard-setting organization (''SSO'') cases brought by the Commission, which were grounded in deceptive conduct in the standard-setting context that led to, or was likely to lead to, anticompetitive effects.[20] Then-Commissioner Kovacic also dissented, objecting to, among other things, the majority's assumption that a Section 5 action would have no spillover effects in terms of follow-on private litigation.[21]

The SEP allegations and consent in the instant matter suffer from many of the same deficiencies as the *N-Data* consent. I simply do not see any meaningful limiting principles in the enforcement policy laid out in these cases. The Commission statement

[10] I concur with the consent agreement reached in this matter insofar as it requires the divestiture of certain assets to remedy the Clayton Act Section 7 violation that likely would have resulted from the proposed transaction. I do have strong reservations, however, about the relatively broad fencing-in relief included in the proposed Decision and Order that requires the respondent to cancel the exclusivity provisions in its contracts with various distributors and equipment servicers. *See* Decision and Order ¶ III. Fencing-in relief that modifies contracts entered into by participants across an industry raises concerns for me about whether such relief goes beyond that which is necessary to protect the viability of the divestiture buyer and thus effectuate the legitimately pursued remedy in this matter.

[11] *See* Complaint ¶¶ 11–20, 23. *See also* Decision and Order ¶ IV; Analysis of Agreement Containing Consent Order to Aid Public Comment § V.B.

[12] *See, e.g., In re Rambus, Inc.,* Dkt. No. 9302 (FTC Aug. 2, 2006) (Commission opinion) (finding deception that undermined the standard-setting process), *rev'd, Rambus Inc.* v. *FTC,* 522 F.3d 456 (DC Cir. 2008); *In re Union Oil Co. of Cal.,* 138 F.T.C. 1 (2003) (Commission opinion) (same); *In re Dell Computer Corp.,* 121 F.T.C. 616 (1996) (consent order) (alleging same).

[13] *See Eastern R.R. Presidents Conference* v. *Noerr Motor Freight,* 365 U.S. 127 (1961); *United Mine Workers of Am.* v. *Pennington,* 381 U.S. 657 (1965); *California Motor Transp. Co.* v. *Trucking Unlimited,* 404 U.S. 508 (1972) (applying *Noerr-Pennington* doctrine to petitioning of judicial branch).

[14] *See Apple, Inc.* v. *Motorola Mobility, Inc.,* No. 3:11–cv–00178–BBC, 2012 WL 3289835, at *12–14 (W.D. Wis. Aug. 10, 2012) (dismissing Apple's Sherman Act and state unfair competition claims and holding that Motorola's filing of litigation in the federal courts and ITC on its FRAND-encumbered SEPs was immune under *Noerr*).

[15] Third Party United States Federal Trade Commission's Statement on the Public Interest, *In re Certain Wireless Communications Devices, Portable Music and Data Processing Devices, Computers and Components Thereof,* Inv. No. 337–TA–745 (Int'l Trade Comm'n June 6, 2012), *available at http://www.ftc.gov/os/2012/06/1206ftcwirelesscom.pdf.*

[16] *Oversight of the Impact on Competition of Exclusion Orders to Enforce Standard-Essential Patents: Hearing Before the S. Comm. on the Judiciary,* 112th Cong. 1–2 (2012) (statement of the Federal Trade Commission), *available at http://www.ftc.gov/os/testimony/120711standardpatents.pdf.*

[17] The cases cited in the Commission's statement for the proposition that there is an ''increasing judicial recognition'' on the tension between FRAND commitments and injunctive relief, to the extent that they reveal anything, show that the courts are not freely issuing injunctions against willing licensees of FRAND-encumbered SEPs. *See* Statement of the Commission, at 2 n.6. Thus, far from supporting the position that the FTC should block access to other institutions, these cases clearly demonstrate that the courts are well equipped to address issues involving injunctions on FRAND-encumbered SEPs.

[18] *In re Negotiated Data Solutions LLC,* FTC File No. 051–0094, Decision and Order (Jan. 23, 2008), *available at http://www.ftc.gov/os/caselist/0510094/080923ndsdo.pdf.*

[19] *See, e.g., E.I. du Pont de Nemours & Co.* v. *FTC,* 729 F.2d 128, 139 (2d Cir. 1984) (''*Ethyl*''); (''[T]he Commission owes a duty to define the conditions under which conduct * * * would be unfair so that business will have an inkling as to what they can lawfully do rather than be left in a state of complete unpredictability.''); *FTC* v. *Abbott Labs.,* 853 F. Supp. 526, 535–36 (D.D.C. 1994) (''The Second Circuit stated emphatically that some workable standard must exist for what is or is not to be considered an unfair method of competition under § 5. Otherwise, companies subject to FTC prosecution would be the victims of 'uncertain guesswork rather than workable rules of law.'''') (quoting *Ethyl,* 729 F.2d at 139); ABA Section of Antitrust Law, Antitrust Law Developments 661 (7th ed. 2012) (''FTC decisions have been overturned despite proof of anticompetitive effect where the courts have concluded that the agency's legal standard did not draw a sound distinction between conduct that should be proscribed and conduct that should not.'').

[20] *See In re Negotiated Data Solutions LLC,* FTC File No. 051–0094, Dissenting Statement of Chairman Majoras, at 1–2 (Jan. 23, 2008), *available at http://www.ftc.gov/os/caselist/0510094/080122majoras.pdf.*

[21] *See id.,* Dissenting Statement of Commissioner William E. Kovacic, at 1–2, *available at http://www.ftc.gov/os/caselist/0510094/080122kovacic.pdf.*

emphasizes the context here (*i.e.* standard setting); however, it is not clear why the type of conduct that is targeted here (*i.e.* a breach of an allegedly implied contract term with no allegation of deception) would not be targeted by the Commission in any other context where the Commission believes consumer harm may result. If the Commission continues on the path begun in *N-Data* and extended here, we will be policing garden variety breach-of-contract and other business disputes between private parties. Mere breaches of FRAND commitments, including potentially the seeking of injunctions if proscribed by SSO rules,[22] are better addressed by the relevant SSOs or by the affected parties via contract and/or patent claims resolved by the courts or through arbitration.

It is important that government strive for transparency and predictability. Before invoking Section 5 to address business conduct not already covered by the antitrust laws (other than perhaps invitations to collude), the Commission should fully articulate its views about what constitutes an unfair method of competition, including the general parameters of unfair conduct and where Section 5 overlaps and does not overlap with the antitrust laws, and how the Commission will exercise its enforcement discretion under Section 5. Otherwise, the Commission runs a serious risk of failure in the courts [23] and a possible hostile legislative reaction,[24] both of which have accompanied previous FTC attempts to use Section 5 more expansively.

This consent does nothing either to legitimize the creative, yet questionable application of Section 5 to these types of cases or to provide guidance to standard-setting participants or the business community at large as to what does and does not constitute a Section 5 violation. Rather, it raises more questions about what limits the majority of the Commission would place on its expansive use of Section 5 authority.

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[22] The instant matter also raises concerns about the Commission imposing requirements on the respondent that go beyond those it agreed to as part of the SSO at issue here, which does not appear to ban the seeking of injunctions on SEPs included in its standards. *See* SAE International, Technical Standards Board Governance Policy § 1.14 (Nov. 2008), *available at http://www.sae.org/standardsdev/tsb/tsbpolicy.pdf.* Even more troublesome, it is an open question whether the patents at issue are even standard-essential. *See, e.g.,* Complaint ¶ 16 (''After the adoption of SAE J–2788, SPX Corporation sued certain competitors, including Bosch, for infringing patents that may be essential to the practice of SAE J–2788.'').

[23] *See Ethyl,* 729 F.2d 128; *Official Airline Guides, Inc.* v. *FTC,* 630 F.2d 920 (2d Cir. 1980); *Boise Cascade Corp.* v. *FTC,* 637 F.2d 573 (9th Cir. 1980); *Abbott Labs.,* 853 F. Supp. 526.

[24] *See* William E. Kovacic & Marc Winerman, *Competition Policy and the Application of Section 5 of the Federal Trade Commission Act,* 76 Antitrust L.J. 929, 943 (2010) (''In the 1950s and the 1970s, Commission efforts to use Section 5 litigation to reach beyond prevailing interpretations of Sections 1 and 2 of the Sherman Act elicited strong political backlash from the Congress.'').

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

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Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection. *Title of Information Collection:* Monthly State File of Medicaid/Medicare Dual Eligible Enrollees. *Use:* The monthly data file is provided to CMS by states on dually eligible Medicaid and Medicare beneficiaries, listing the individuals on the Medicaid eligibility file, their Medicare status and other information needed to establish subsidy level, such as income and institutional status. The file will be used to count the exact number of individuals who should be included in the phased-down state contribution calculation that month. CMS will be able to merge the data with other data files and establish Part D enrollment for those individuals on the file. The file may be used by CMS partners to obtain accurate counts of duals on a current basis. *Form Number:* CMS–10143 (OCN 0938–0958). *Frequency:* Monthly. *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 51. *Total Annual Responses:* 612. *Total Annual Hours:* 6,120. (For policy questions regarding this collection contact Goldy Austen at 410–786–6450. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection. *Title of Information Collection:* Medicaid Statistical Information System (MSIS). *Use:* CMS requests OMB approval of the Medicaid Statistical Information System (MSIS, IBC Form R–284) and allow additional data collection of MSIS data for what CMS now refers to as the Transformed Medicaid Statistical Information System (T–MSIS) data collection. This approval would enable states to continue to fulfill their Medicaid data reporting requirements in parallel from 2013 through 2016 and reduce the burden on states by: eliminating multiple disparate requests for data, allowing states to have one consolidated reporting requirement, and to better perform its responsibilities of Medicaid and CHIP program oversight, administration, and program integrity.

Subsequent to the publication of the 60-day **Federal Register** notice (August 15, 2012; 77 FR 48987), T–MSIS has been added to the corresponding PRA package to offer CMS and state partners robust, up-to-date, and current information to be able to:

- View how each state and the district implements their programs.
- Compare the delivery of programs across authorities/states.
- Assess the impact of service options on beneficiary outcomes and expenditures.
- Examine the enrollment, service provision, and expenditure experience of providers who participate in our programs (as well as in Medicare).
- Examine beneficiary activity such as application and enrollment history, services received, appropriateness of services received based on enrollment status and applicable statutory authority.
- Use informatics to improve program oversight and inform future policy and operational decisions.
- Answer key Medicaid and CHIP program questions.

Importantly, there is no duplication of effort or information associated with this request. MSIS provides complete Medicaid and CHIP program statistics on a national scale and there is no other

similar information or report available. T–MSIS will remove current multiple reporting for similar data by the state to CMS.

Although T–MSIS will report more frequently, (monthly vs. quarterly) the amount of data collected through the expanded dataset will enable efficient processing to more efficiently satisfy data collection needs, thus eliminating additional similar duplicate current reporting processes.

Form Number: CMS–R–284 (OCN 0938–0345). *Frequency:* Quarterly (MSIS) and Monthly (T–MSIS). *Affected Public:* State, Local, or Tribal Governments. *Number of Respondents:* 51. *Total Annual Responses:* 816. *Total Annual Hours:* 8,160. (For policy questions regarding this collection contact Kay Spence. at 410–786–1617. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *January 2, 2013:* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: November 27, 2012.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2012–29052 Filed 11–30–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4169–NC]

Medicare Program; Request for Information To Aid in the Design and Development of a Survey Regarding Patient Experiences With Emergency Department Care

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Request for information.

SUMMARY: This document is a request for information regarding consumer and patient experiences with emergency department care.

DATES: The information solicited in this notice must be received at the address provided below by February 1, 2013.

ADDRESSES: In responding to this solicitation, please reply via email to CMS *ED_Survey@cms.hhs.gov* or by postal mail at Centers for Medicare and Medicaid Services, Attention: Sai Ma, Mailstop C1–14–18, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Sai Ma (410) 786–1479.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 3011 of the Affordable Care Act, the Department of Health and Human Services (HHS) developed the National Quality Strategy to create national aims and priorities to guide local, state, and national efforts to improve the quality of health care. This strategy established three aims supported by six priorities that focus on better care, healthy people/healthy communities, and affordable care.[1] The six priorities include: (1) Making care safer by reducing harm caused by the delivery of care; (2) ensuring that each person and family are engaged as partners in their care; (3) promoting effective communication and coordination of care; (4) promoting the most effective prevention and treatment practices for the leading causes of mortality, starting with cardiovascular disease; (5) working with communities to promote wide use of best practices to enable healthy living; and (6) making quality care more affordable for individuals, families, employers, and governments by developing and spreading new health care delivery models Surveys focusing on the patient and caregiver experience, including those discussed later and the Emergency Department care survey under development, support the goals of the National Quality Strategy for providing better care.

The Centers for Medicare & Medicaid Services (CMS) has already implemented patient experience surveys for health and drug plans, inpatient hospitals, and home health agencies. While CMS and the Agency for Healthcare Research and Quality (AHRQ) have developed additional Consumer Assessment of Healthcare Providers and Systems (CAHPS®) surveys for in-center hemodialysis facilities, nursing homes, and clinician and group practices, none of these surveys address consumers' and patients' experiences with emergency department services. A patient's experience in an emergency department is an essential component of their overall healthcare experience in a hospital, and we believe that a patient survey evaluating such care will further support the HHS's goals and priorities.

The target population for the emergency department patient experience of care survey is consumers/patients and caregivers of patients who received emergency department care. The emergency department is a unique environment within the health care system, bridging the world of outpatient and inpatient care. This makes existing patient experience instruments designed for either outpatient care or inpatient care only partially relevant for capturing patient experiences (for example, none of the existing surveys addresses patients' experience regarding transitions from emergency room to inpatient care). Having a rigorous, well-designed emergency department survey will allow us to understand patients' perspectives on their experiences in emergency departments and how such experiences change over time. This information will ultimately be used to help improve the quality of care patients receive in emergency departments.

We are in the process of reviewing potential topic areas, as well as publicly available instruments and measures, for the purpose of developing a consumer and patient experience survey that will enable objective comparisons of emergency department experiences across the country. The principal focus is to develop a survey for consumers and patients 18 years of age and older. However, we are also interested in how a survey could also be developed for pediatric patients.

II. Solicitation of Information

We are soliciting the submission of suggested topic areas (such as ''communication with providers,'' ''pain control'' or ''waiting time'') as well as publicly available instruments for capturing patient experiences with emergency department care. We are interested in instruments and items that can measure quality of care from the patient's and caregiver's perspective, including pediatric patients, and track changes over time.

[1] Please see U.S. Department of Health and Human Services, *Report to Congress, National Strategy for Quality Improvement in Health Care,* (March 2011), available at *http://www.healthcare.gov/law/resources/reports/nationalqualitystrategy032011.pdf.*

We are looking for suggested topic areas and publicly available instruments in which—(1) The source of information is from consumers and patients who directly received care at an emergency department or caregivers who were directly involved in the care (for example, parents of young children); and (2) patients or caregivers identified the information as important to them in evaluating emergency department care (for example, wait time, medical staff and physician communication). Existing instruments that have been tested, have a high degree of reliability and validity, and evidence of wide use is preferred.

The following information would be especially helpful in any comments responding to this request for information:

• A brief cover letter summarizing the information requested above for submitted instruments and topic areas, respectively, and how the submission will help fulfill the intent of the patient experiences survey;

• (Optional) Information about the person submitting the material for the purposes of follow up questions about the submission which includes the following:

++ Name.
++ Title.
++ Organization.
++ Mailing address.
++ Telephone number.
++ Email address.
++ Indication that the topic area or instrument is publicly available.

• When submitting topic areas, we encourage including to the extent available the following information:

++ Detailed descriptions of the suggested topic area(s) and specific purpose(s).
++ Relevant peer-reviewed journal articles or full citations.

• When submitting publicly available instruments or survey questions, we encourage including to the extent available the following information:

++ Name of the instrument.
++ Copies of the full instrument in all available languages.
++ Topic areas included in the instrument.
++ Measures derived from the instrument. Instrument reliability (internal consistency, test-retest, etc) and validity (content, construct, criterion-related).
++ Results of cognitive testing.
++ Results of field testing.
++ Current use of the instrument (who is using it, what it is being used for, what population it is being used with, how instrument findings are reported, and by whom the findings are used).
++ Relevant peer-reviewed journal articles or full citations.
++ CAHPS® trademark status.
++ Survey administration instructions.
++ Data analysis instructions.
++ Guidelines for reporting survey data.

We are developing this survey and plan to submit it to AHRQ for recognition as a Consumer Assessment of Healthcare Providers and Systems (CAHPS®) survey. The survey will be developed in accordance with CAHPS® Survey Design Principles and implementation instructions will be based on those for CAHPS® instruments (*https://www.cahps.AHRQ.gov/About-CAHPS/Principles.aspx*).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 2, 2012.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2012–29104 Filed 11–30–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0477]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Investigational Device Exemptions Reports and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by January 2, 2013.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0078. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Daniel Gittleson, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–5156, *Daniel.Gittleson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Investigational Device Exemptions Reports and Records—(OMB Control Number 0910–0078)—Extension

Section 520(g) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360j(g)) establishes the statutory authority to collect information regarding investigational devices, and establishes rules under which new medical devices may be tested using human subjects in a clinical setting. The Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) added section 520(g)(6) to the FD&C Act and permitted changes to be made to either the investigational device or to the clinical protocol without FDA approval of an investigational device exemption (IDE) supplement. An IDE allows a device, which would otherwise be subject to provisions of the FD&C Act, such as premarket notification or premarket approval, to be used in investigations involving human subjects in which the safety and effectiveness of the device is being studied. The purpose of part 812 (21 CFR part 812) is to encourage, to the extent consistent with the protection of public health and safety and with ethical standards, the discovery and development of useful devices intended for human use. The IDE regulation is designed to encourage the development of useful medical devices and allow investigators the maximum freedom possible, without jeopardizing the health and safety of the public or violating ethical standards. To do this, the regulation provides for different levels of regulatory control, depending on the level of potential risk the investigational device presents to human subjects. Investigations of significant risk devices, ones that present a potential for serious harm to the rights, safety, or welfare of human subjects, are subject to the full requirements of the IDE regulation. Nonsignificant risk device investigations, i.e., devices that do not present a potential for serious harm, are

subject to the reduced burden of the abbreviated requirements. The regulation also includes provisions for treatment IDEs. The purpose of these provisions is to facilitate the availability, as early in the device development process as possible, of promising new devices to patients with life-threatening or serious conditions for which no comparable or satisfactory alternative therapy is available. Section 812.10 permits the sponsor of the IDE to request a waiver to all of the requirements of part 812. This information is needed for FDA to determine if waiver of the requirements of part 812 will impact the public's health and safety. Sections 812.20, 812.25, and 812.27 consist of the information necessary to file an IDE application with FDA. The submission of an IDE application to FDA is required only for significant risk device investigations.

Section 812.20 lists the data requirements for the original IDE application; § 812.25 lists the contents of the investigational plan; and § 812.27 lists the data relating to previous investigations or testing. The information in the original IDE application is evaluated by the Center for Devices and Radiological Health to determine whether the proposed investigation will reasonably protect the public health and safety, and for FDA to make a determination to approve the IDE.

Upon approval of an IDE application by FDA, a sponsor must submit certain requests and reports. Under § 812.35, a sponsor who wishes to make a change in the investigation that affects the scientific soundness of the study or the rights, safety, or welfare of the subjects, is required to submit a request for the change to FDA. Section 812.150 requires a sponsor to submit reports to FDA. These requests and reports are submitted to FDA as supplemental applications. This information is needed for FDA to assure protection of human subjects and to allow review of the study's progress. Section 812.36(c) identifies the information necessary to file a treatment IDE application. FDA uses this information to determine if wider distribution of the device is in the interest of the public health. Section 812.36(f) identifies the reports required to allow FDA to monitor the size and scope of the treatment IDE, to assess the sponsor's due diligence in obtaining marketing clearance of the device, and to ensure the integrity of the controlled clinical trials.

Section 812.140 lists the recordkeeping requirements for investigators and sponsors. FDA requires this information for tracking and oversight purposes. Investigators are required to maintain records, including correspondence and reports concerning the study, records of receipt, use or disposition of devices, records of each subject's case history and exposure to the device, informed consent documentation, study protocol, and documentation of any deviation from the protocol. Sponsors are required to maintain records including correspondence and reports concerning the study, records of shipment and disposition, signed investigator agreements, adverse device effects information, and, for a nonsignificant risk device study, an explanation of the nonsignificant risk determination, records of device name and intended use, study objectives, investigator information, investigational review board information, and statement on the extent that good manufacturing practices will be followed.

For a nonsignificant risk device investigation, the investigator's and sponsor's recordkeeping and reporting burden is reduced. Pertinent records on the study must be maintained by both parties, and reports are made to sponsors and institutional review boards (IRBs). Reports are made to FDA only in certain circumstances, e.g., recall of the device, the occurrence of unanticipated adverse effects, and as a consequence of certain IRB actions.

The estimate of the burden is based on the number of IDEs received in the last 3 years. In the **Federal Register** of May 24, 2012 (77 FR 31022), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received two comments, one of which was outside the scope of the four collection of information topics on which the notice solicited comments and will not be discussed in this document. The other comment recommends streamlining the annual IDE report requirements to focus on the reporting of safety information only, rather than both safety and effectiveness. The comment notes that the effectiveness information is ''reviewed during FDA clinical site GCP compliance inspections'' and at the time of premarket application. FDA recognizes that part 812 provides limited information on the content of IDE annual reports; however, we believe that the specific content requirements for IDE annual reports are outside the scope of this PRA renewal notice. Section 812.150(b)(10) provides broad authority for FDA to request information regarding ongoing IDEs, and FDA will consider the need for additional guidance to IDE sponsors regarding the content of annual reports.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Waivers—812.10	1	1	1	1	1
IDE Application—812.20, 812.25, and 812.27	356	1	356	80	28,480
Supplements—812.35 and 812.150	356	12	4,272	6	25,632
Treatment IDE Applications—812.36(c)	1	1	1	120	120
Treatment IDE Reporting—812.36(f)	1	1	1	20	20
Total					54,253

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Original—812.140	356	1	356	10	3,560
Supplemental—812.140	356	12	4,272	1	4,272
Nonsignificant—812.140	356	1	356	6	2,136
Total					9,968

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Reports for Nonsignificant Risk Studies—812.150	1	1	1	6	6

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: November 27, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–29095 Filed 11–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0307]

Agency Information Collection Activities; Proposed Collection; Comment Request; Antiparasitic Drug and Resistance Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's ''Antiparasitic Drug and Resistance Survey.''

DATES: Submit either electronic or written comments on the collection of information by February 1, 2013.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–410B, Rockville, MD 20850, 301–796–3784, *JonnaLynn.capezzuto@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Antiparasitic Drug and Resistance Survey—21 CFR Part 514.4 (OMB Control Number 0910–NEW)

Resistance of parasites to one or more of the major classes of FDA approved antiparasitic drugs is a documented problem in cattle, horses, sheep, and goats in the United States. The results from this survey will provide FDA information that can be used to make decisions about future approaches to antiparasitic drugs. FDA will make the results of the survey publicly available.

FDA plans to survey members of veterinary professional organizations using an Internet-based survey instrument. The questions in the survey are designed to elicit professional opinions regarding the use of antiparasitic drugs and the awareness of antiparasitic drug resistance. The survey will query subjects on topics including: (1) Awareness of the issues related to antiparasitic resistance, (2) methods currently being used to detect and/or monitor for antiparasitic resistance, (3) management practices being used or recommended to manage or reduce antiparasitic resistance, and (4) labeling and marketing considerations for antiparasitic drugs.

FDA published a 60-day notice in the **Federal Register** on July 13, 2010 (75 FR 39948), requesting public comment on the proposed survey, and published a 30-day notice on May 23, 2011 (76 FR

29762), and submitted the Information Collection Request (ICR) package to OMB. FDA subsequently entered into study design and development discussions with OMB officials. OMB decided that FDA should resubmit the study with a new 60-day notice and begin a new ICR package. This document responds to that request. Substantial revisions to the scope and content of the survey were also made based on information presented at the Antiparasitic Drug Use and Resistance in Ruminants and Equines Public Meeting (77 FR 7588, February 13, 2012; Docket No. FDA–2012–N–0102).

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Portion of study	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pre-test	5	1	5	.5	2.5
Survey	650	1	650	.5	325
Total					327.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA will conduct a pre-test of the survey with five respondents, and it is estimated that it will take 30 minutes (0.5 hour) to complete the pretest, for a total of 2.5 hours. We estimate that 650 respondents will complete the survey. It is estimated that it will take a respondent 30 minutes (0.5 hour) for a total of 325 hours. Thus, the total estimated annual reporting burden is 327.5 hours. FDA's burden estimate is based on prior experience with consumer surveys that are similar.

Dated: November 28, 2012.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2012–29094 Filed 11–30–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Nanotechnology and Tissue Engineering.

Date: December 5, 2012.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph D Mosca, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892, (301) 435–2344, *moscajos@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 27, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29092 Filed 11–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: January 11, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Stanford University School of Medicine, Li Ka Shing Building, 3rd floor, 291 Campus Drive, Rm. LK3C02, Stanford, CA 94305.

Contact Person: Ken D. Nakamura, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4076, MSC 9306, Rockville, MD 20852, 301–402–0838, *nakamurk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: November 27, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29091 Filed 11–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; GEMSSTAR.
Date: January 25, 2013.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Rebecca J. Ferrell, Ph.D., Scientific Review Officer, National Institute On Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: November 27, 2012.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29090 Filed 11–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; 2013/05 Health Disparities SBIR.
Date: January 29, 2013.
Time: 10:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 951, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ruixia Zhou, Ph.D., Scientific Review Officer, 6707 Democracy Boulevard, Democracy Two Building, Suite 957, Bethesda, MD 20892, 301–496–4773, *zhour@mail.nih.gov.*

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel; MSM Program Review.
Date: February 26, 2013.
Time: 10:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Two Democracy Plaza, 951, 6707 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Manana Sukhareva, Ph.D., Scientific Review Officer, National Institute of Biomedical Imaging and Bioengineering, National Institutes of Health, 6707 Democracy Boulevard, Suite 959, Bethesda, MD 20892, 301–451–3397, *sukharem@mail.nih.gov.*

Dated: November 27, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29089 Filed 11–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel.
Date: January 15, 2013.
Time: 10:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.
Contact Person: Marilyn Moore-Hoon, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Dental and Craniofacial Research, 6701 Democracy Blvd., Rm. 676, Bethesda, MD 20892–4878, 301–594–4861, *mooremar@nidcr.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; Review of NIDCR T32 (PAR10–171) and T90/R90 (PAR10–170) Grant Applications.
Date: February 12, 2013.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institute of Dental and Craniofacial Research 602, 6701 Democracy Blvd., Bethesda, MD 20892.
Contact Person: Raj K. Krishnaraju, Ph.D., MS, Scientific Review Officer, Scientific Review Branch, National Institute of Dental & Craniofacial Research, National Institutes of Health, 45 Center Dr. Room 4AN 32J, Bethesda, MD 20892, 301–594–4864, *kkrishna@nidcr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: November 27, 2012.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–29088 Filed 11–30–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the Laboratories and Instrumented Initial Testing Facilities (IITF) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); and on April 30, 2010 (75 FR 22809).

A notice listing all currently certified Laboratories and Instrumented Initial Testing Facilities (IITF) is published in the **Federal Register** during the first week of each month. If any Laboratory/IITF's certification is suspended or revoked, the Laboratory/IITF will be omitted from subsequent lists until such

time as it is restored to full certification under the Mandatory Guidelines.

If any Laboratory/IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. The ''Mandatory Guidelines for Federal Workplace Drug Testing Programs'', as amended in the revisions listed above, requires strict standards that Laboratories and Instrumented Initial Testing Facilities (IITF) must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies.

To become certified, an applicant Laboratory/IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a Laboratory/IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and Instrumented Initial Testing Facilities (IITF) in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A Laboratory/IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with the Mandatory Guidelines dated November 25, 2008 (73 FR 71858), the following Laboratories and Instrumented Initial Testing Facilities (IITF) meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Instrumented Initial Testing Facilities (IITF)

None.

Laboratories

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory.)

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, 345 Hill Ave., Nashville, TN 37210, 615–255–2400. (Formerly: Aegis Sciences Corporation, Aegis Analytical Laboratories, Inc.)

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823. (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)

Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804–378–9130. (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)

Baptist Medical Center-Toxicology Laboratory, 11401 I–30, Little Rock, AR 72209–7056, 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center.)

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281,

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group.)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center.)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700. (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.)

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory.)

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory.)

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 1777 Montreal Circle, Tucker, GA 30084, 800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories.)

Quest Diagnostics Incorporated, 8401 Fallbrook Ave., West Hills, CA 91304, 818–737–6370, (Formerly: SmithKline Beecham Clinical Laboratories.)

Redwood Toxicology Laboratory, 3650 Westwind Blvd., Santa Rosa, CA 95403, 707–570–4434.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x1276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 30, 2010 (75 FR 22809). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Janine Denis Cook,

Chemist, Division of Workplace Programs, Center for Substance Abuse Prevention, SAMHSA.

[FR Doc. 2012–29086 Filed 11–30–12; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0839]

Mobile Offshore Drilling Unit (MODU) Electrical Equipment Certification Guidance

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard is providing guidance regarding electrical equipment installed in hazardous areas on foreign-flagged Mobile Offshore Drilling Units (MODUs) that have never operated, but intend to operate, on the U.S. Outer Continental Shelf (OCS). Chapter 6 of the 2009 version of the International Maritime Organization (IMO) Code for the Construction and Equipment of Mobile Offshore Drilling Units (2009 IMO MODU Code) sets forth standards for testing and certifying electrical equipment installations on MODUs. The Coast Guard is considering issuing a rule that will implement Chapter 6 of the 2009 IMO MODU Code and that will be applicable to foreign-flagged MODUs that have never operated, but intend to operate, on the U.S. OCS. In the interim, the Coast Guard recommends that owners and operators of foreign-flagged MODUs that have never operated, but intend to operate on the U.S. OCS, voluntarily comply with Chapter 6 of the 2009 IMO MODU Code.

DATES: The policy outlined in this document is effective December 3, 2012.

ADDRESSES: The documents referenced in this notice and published by the International Maritime Organization, International Electrotechnical Commission, or International Organization for Standardization are available for purchase from the publishers. For more information on where to obtain copies these documents, please call or email the Coast Guard point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section below.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice or the policy, call or email Mr. Rodolfo Sierra, Systems Engineering Division (CG–ENG–3), (202) 372–1381, *Rodolfo.N.Sierra@uscg.mil.* If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background

The explosion and fire on the MODU DEEPWATER HORIZON underscored the need to address electrical equipment that may present an ignition source for gases or vapors encountered during oil drilling exploration. On September 9, 2011 the Coast Guard published the final action memo (FAM) by the Commandant on the recommendations of its investigation into the explosion, fire, sinking and loss of eleven crew members on the MODU DEEPWATER HORIZON. You may view a copy of the FAM online by going to the Coast Guard's Web site at *http://uscg.mil/hq/cg5/cg545* and clicking on the Deepwater Horizon-exhibits-transcripts-video link. The FAM called for the Coast Guard to evaluate whether MODUs engaged in U.S. OCS activities should be subject to independent testing and certification of electrical equipment installations in hazardous areas. Chapter 6 of the 2009 IMO MODU Code includes this independent testing and certification standard for electrical equipment installations in hazardous areas. However, under current Coast Guard regulations for foreign MODUs (33 CFR 143.207), the Coast Guard accepts the 1979 IMO MODU Code, which provides foreign flag Administrations the flexibility to accept less stringent standards than the 2009 IMO MODU Code, relating to the testing and certification of electrical equipment installations in hazardous areas. The Coast Guard completed its evaluation and has determined that U.S. implementation of the stricter standards contained in Chapter 6 of the 2009 IMO MODU Code is warranted.

The 2009 IMO MODU Code recommends that electrical installations in hazardous areas be tested and certified in accordance with the International Electrotechnical Commission (IEC) 60079 series of standard(s). The IEC offers an international certification system called the ''Certification to Standards Relating to Equipment for use in Explosive Atmospheres'' (IECEx). The IECEx system requires full compliance with the applicable IEC 60079 series of standard(s), including the testing of equipment by an independent laboratory. Approval under the IECEx system involves an explosive atmospheres (Ex) Certification Body (ExCB) and an Ex Testing Laboratory (ExTL) that have been accepted into the IECEx system after meeting competency requirements established by the International Organization for Standardization (ISO)/IEC Standard 17025 and related IECEx Operational

Documents and Rules of Procedure. The Ex Testing Laboratory tests the covered equipment to determine compliance with the IECEx system of standards, and drafts an IECEx Test Report (ExTR) to document the test results. The ExCB reviews the manufacturing quality assurance process and issues an IECEx Quality Assessment Report (QAR). Based on the results contained in the QAR and ExTR, the ExCB may then issue an IECEx Certificate of Conformity for the equipment.

Currently, some foreign flag Administrations do not impose the IEC 60079 series of standards, and instead accept certification under the European Commission Directive (94/9/EC) on Equipment and Protective Systems Intended for use in Potentially Explosive Atmospheres (ATEX Directive). Compliance with the ATEX Directive is mandatory for European Union member nations. The ATEX Directive is intended to ensure the certification of electrical equipment to the Essential Health and Safety Requirements given in the Directive or appropriate IEC harmonized standards, but it does not specifically require testing and certification by an independent third party lab.

The Coast Guard believes that certification of electrical equipment intended for use in hazardous areas should be tested and certified by a competent independent laboratory in the manner prescribed by Chapter 6 of the 2009 IMO MODU Code. Accordingly, the Coast Guard is considering issuing a rule to address certification and testing requirements for electrical equipment installations in hazardous areas applicable to foreign-flagged MODUs that have never operated, but intend to operate, on the U.S. OCS. Until the Coast Guard finalizes its regulations, the Coast Guard recommends that owners and operators of foreign-flagged MODUs that have never operated, but intend to operate, on the U.S. OCS voluntarily comply with Chapter 6 of the 2009 IMO MODU Code. For these foreign-flagged MODUs, the Coast Guard recommends that electrical equipment installations in hazardous areas obtain independent laboratory certification under the IECEx system, which includes the appropriate IECEx Certificate of Conformities.

The guidance contained in this notice is not a substitute for applicable legal requirements, nor is it itself a regulation. It is not intended to nor does it impose legally binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and State regulators, in applying statutory and regulatory requirements. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations.

Authority

This notice is issued under the authority of 5 U.S.C. 552(a), 43 U.S.C. 1331, et seq., and 33 CFR 1.05–1.

Dated: September 14, 2012.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2012–29138 Filed 11–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2012–0748]

Notification of the Removal of Conditions of Entry on Vessels Arriving From the Republic of Indonesia

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that it is removing the conditions of entry on vessels arriving from the country of the Republic of Indonesia.

DATES: The policy announced in this notice is effective on December 3, 2012.

ADDRESSES: This notice is part of docket USCG–2012–0748 and is available online by going to *http://www.regulations.gov,* inserting USCG–2012–0748 in the ''Search'' box, and then clicking ''Search.'' This material is also available for inspection and copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. This policy is also available at *www.homeport.uscg.mil* under the Maritime Security tab; International Port Security Program (ISPS Code); Port Security Advisory link.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Mr. Michael Brown, International Port Security Evaluation Division, United States Coast Guard, telephone 202–372–1081. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826 or (toll free) 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Title 46, Section 70110, United States Code, enacted as part of section 102(a) of the Maritime Transportation Security Act of 2002 (Pub. L. 107–295, Nov. 25, 2002) authorizes the Secretary of Homeland Security to impose conditions of entry on vessels requesting entry into the United States arriving from ports that are not maintaining effective anti-terrorism measures. It also requires public notice of the ineffective anti-terrorism measures. The Secretary has delegated to the Coast Guard authority to carry out the provisions of this section. Previous notices have imposed or removed conditions of entry on vessels arriving from certain countries. All such notices are available for review online by going to *http://homeport.uscg.mil,* clicking on the ''Maritime Security'' and then ''International Port Security Program'' tabs, and then following the link.

On February 25, 2008, the Coast Guard published a Notice of Policy in the **Federal Register**, (73 FR 10042), announcing that it had determined that ports in the Republic of Indonesia, with certain exceptions, were not maintaining effective anti-terrorism measures, and imposed conditions of entry.

Based on recent information, the Coast Guard has determined that the Republic of Indonesia is now maintaining effective anti-terrorism measures. Accordingly, the Coast Guard is removing the conditions of entry announced in the previously published Notice of Policy. With this notice, the current list of countries not maintaining effective anti-terrorism measures is as follows: Cambodia, Cameroon, Comoros, Cote d'Ivoire, Cuba, Equatorial Guinea, Guinea-Bissau, Iran, Liberia, Madagascar, Sao Tome and Principe, Syria, Timor-Leste, Venezuela, and Yemen. This current list is also available in the policy notice available on the Homeport system as described in the **ADDRESSES** section above.

This notice is issued under authority of 46 U.S.C. 70110(d).

Dated: November 3, 2012.

Joseph Servidio,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Prevention Policy.

[FR Doc. 2012–29146 Filed 11–30–12; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0087]

Agency Information Collection Activities: Application for Citizenship and Issuance of Certificate Under Section 322, Form N–600K; Revision of a Currently Approved Collection

ACTION: 60-Day Notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed revision of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e. the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments. During this 60-day period, USCIS will be evaluating whether to further revise the information collection. Should USCIS decide to further revise the information collection, it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the PRA. The public will then have 30-days to comment on any further revisions to the information collection.

DATES: Comments are encouraged and will be accepted for 60 days until February 1, 2013.

ADDRESSES: During the 60-day comment period, written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time must be directed to DHS using one of the following methods: (1) Via the Federal eRulemaking Portal Web site at *www.Regulations.gov* under e-Docket ID number USCIS–2007–0019; (2) by email to *USCISFRComment@uscis.dhs.gov*; or (3) by mail to DHS, USCIS, Office of Policy and Strategy, Chief, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140. All submissions received must include the OMB Control Number 1615–0087 in the subject box, the agency name and e-Docket ID USCIS–2007–0019.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.Regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.Regulations.gov*.

Note: The address listed in this notice should only be used to submit comments concerning this information collection. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check ''My Case Status'' online at: *https://egov.uscis.gov/cris/Dashboard.do*, or call the USCIS National Customer Service Center at 1–800–375–5283.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Citizenship and Issuance of Certificate Under Section 322.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–600K; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households.* This form provides an organized framework for establishing the authenticity of an applicant's eligibility and is essential for providing prompt, consistent and correct processing of such applications for citizenship under section 322 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3,242 responses at 2 hours and 5 minutes (2.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,753 annual burden hours.

If you need a copy of the information collection instrument with instructions, or additional information, please visit the Federal eRulemaking Portal site at: *http://www.Regulations.gov*. We may also be contacted at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number 202–272–8377.

Dated: November 25, 2012.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2012–29127 Filed 11–30–12; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–89]

Self-Help Homeownership Opportunity Program (SHOP) Grant Monitoring

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.

An extension of the existing PRA approval is needed to permit SHOP Grantees to use a revised and updated SHOP Form HUD–40221(rev) ''LOCCS/VRS Selfhelp Homeownership Opportunity Program Payment Voucher'' to drawdown SHOP Grant funds through LOCCS/VRS.

DATES: *Comments Due Date:* January 2, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2506–0157) 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: Self-Help Homeownership Opportunity Program (SHOP) Grant Monitoring.

OMB Approval Number: 2506–0157.

Form Numbers: HUD–96011, HUD–2990, HUD–2880, HUD–424–CB, HUD–2995,HUD–424–CBW, HUD–2993.

Description of the need for the information and proposed use: An extension of the existing PRA approval is needed to permit SHOP Grantees to use a revised and updated SHOP Form HUD–40221(rev) ''LOCCS/VRS Selfhelp Homeownership Opportunity Program Payment Voucher'' to drawdown SHOP Grant funds through LOCCS/VRS.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	10	1		26.55		2,655

Total estimated burden hours: 2,655.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 28, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–29152 Filed 11–30–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–88]

Survey of New Manufactured (Mobile) Home Placements

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 Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the Nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability. Furthermore, the Survey of Manufactured (Mobile) Home Placements serves as the basis for HUD's mandated indexing of loan limits. Section 2145(b) of the Housing and Economic Recovery Act (HERA) of 2008 requires HUD to develop a method of indexing to annually adjust Title I manufactured home loan limits. This index is based on manufactured housing price data collected by this survey. Section 2145 of the HERA of 2008 also amends the maximum loan limits for manufactured home loans insured under Title I. HUD implemented the revised loan limits, as shown below, for all manufactured home loans for which applications are received on or after March 3, 2009.

DATES: *Comments Due Date:* January 2, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528–0029) 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: Survey of New Manufactured (Mobile) Home Placements.

OMB Approval Number: 2528–0029.

Form Numbers: C–MH–9A.

Description of the need for the information and proposed use:

The Survey of Manufactured (Mobile) Home Placements collects data on the characteristics of newly manufactured homes placed for residential use including number, sales price, location, and other selected characteristics. HUD uses the statistics to respond to a Congressional mandate in the Housing and Community Development Act of 1980, 42 U.S.C. 5424 note, which requires HUD to collect and report manufactured home sales and price information for the Nation, census regions, states, and selected metropolitan areas and to monitor whether new manufactured homes are being placed on owned rather than rented lots. HUD also used these data to monitor total housing production and its affordability. Furthermore, the Survey of Manufactured (Mobile) Home Placements serves as the basis for HUD's mandated indexing of loan limits. Section 2145(b) of the Housing and Economic Recovery Act (HERA) of 2008 requires HUD to develop a method of indexing to annually adjust Title I manufactured home loan limits. This index is based on manufactured housing price data collected by this survey. Section 2145 of the HERA of 2008 also amends the maximum loan limits for manufactured home loans insured under Title I. HUD implemented the revised loan limits, as shown below, for all manufactured home loans for which applications are received on or after March 3, 2009.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	6,000	1		0.5		3,000

Total estimated burden hours: 3,000.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 20, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–29155 Filed 11–30–12; 8:45 am]

BILLING CODE 4210–67–P

INTER-AMERICAN FOUNDATION

Sunshine Act; Board Meeting

TIME AND DATE: December 10, 2012. 9:00 a.m.–12:45 p.m.

PLACE: Woodrow Wilson International Center for Scholars, One Woodrow Wilson Plaza, 1300 Pennsylvania Ave. NW., 6th Floor Boardroom, Washington, DC 20004.

STATUS: Open session.

MATTERS TO BE CONSIDERED:

- Approval of the Minutes of the September 24, 2012, Meeting of the Board of Directors
- Presentation of Resolution Honoring Service of Kay Arnold
- Carrying Out the IAF's Strategic Plan
- Management Report
- Setting Next Board Meetings

PORTIONS TO BE OPEN TO THE PUBLIC:

- Approval of the Minutes of the September 24, 2012, Meeting of the Board of Directors
- Presentation of Resolution Honoring Service of Kay Arnold
- Carrying Out the IAF's Strategic Plan
- Management Report
- Setting Next Board Meetings

FOR FURTHER INFORMATION CONTACT: Paul Zimmerman, General Counsel, 202.683.7118.

Paul Zimmerman,

General Counsel.

[FR Doc. 2012–29195 Filed 11–29–12; 11:15 am]

BILLING CODE 7025–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; North Fork Rancheria of Mono Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 305.49 acres of land in trust for gaming purposes for the North Fork Rancheria of Mono Indians of California on November 26, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12(b) that notice be given of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. On November 26, 2012, the Assistant Secretary—Indian Affairs decided to accept approximately 305.49 acres of land in trust for the North Fork Rancheria of Mono Indians of California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465.

The Site is located approximately 36 miles from the Tribe's current government headquarters, which are located in the town of North Fork, Madera County, California, described as:

Real property in the City of UNINCORPORATED AREA, County of Madera, State of California, described as follows:

PARCEL NO. 1: APN: 033–030–(010 THRU 015 AND 017)

PARCELS 1, 2, 3, 4, 5, 6, AND 8 of PARCEL MAP 3426 IN THE UNINCORPORATED AREA OF THE COUNTY OF MADERA, STATE OF CALIFORNIA, AS PER MAP RECORDED SEPTEMBER 7, 1995 IN BOOK 44, PAGES 15 AND 16 OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

Dated: November 26, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–29044 Filed 11–30–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Enterprise Rancheria of Maidu Indians of California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Agency Determination.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 40 acres of land in trust for gaming purposes for the Enterprise Rancheria of Maidu Indians of California on November 21, 2012.

FOR FURTHER INFORMATION CONTACT: Paula L. Hart, Director, Office of Indian Gaming, Bureau of Indian Affairs, MS–3657 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1 and is published to comply with the requirements of 25 CFR Section 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. On November 21, 2012, the Assistant Secretary—Indian Affairs decided to accept approximately 40 acres of land into trust for the Enterprise Rancheria of Maidu Indians of California under the authority of the Indian Reorganization Act of 1934, 25 U.S.C. 465. The 40 acres are located approximately 4 miles southeast of the community of Olivehurst, near the intersection of Forty Mile Road and State Route 65 in Yuba County, California, described as:

A portion of the East half of Section 22, Township 14 North, Range 4 East, M.D.B.&M., described as follows:

Commence at the North quarter corner of said Section 22 and being marked by 2 brass monument stamped LS3341 in a monument well as shown on Record of Survey No. 2000–15 filed in Book 72 of Maps, Page 34, County Records; thence South 0°28′11″ East along the line dividing said Section 22 into East and West halves 2650.73 feet to a brass monument stamped LS3341 in a monument well as shown on said Record of Survey No. 2000–15 and marking the center of said Section 22; thence North 89°31′24″ East 65.00 feet to a point on the East right-of-way line of Forty Mile Road; thence North 0°28′11″ West along said East right-of-way line of Forty Mile Road 45.53 feet to a ½ inch rebar with LS3751 marking the point of beginning thence from said point of beginning continue along said East right-of-way line of Forty Mile Road the following courses and distances: North 0°28′11″ West 1133.70 feet; thence North 5°14′27″ East 50.25 feet; thence North 0°28′31″ West 750.00 to a ½ inch rebar with LS3751; thence leaving said East right-of-way line of Forty Mile Road run North 88°00′51″ East 1860.00 feet to a ½ inch with LS3751; thence South 0°28′11″ East 1932.66 feet to a ½ inch rebar with LS3751; thence South 87°59′10″ West 1865.03 feet to the point of beginning.

Said land is also shown as Parcel ''C'' on Certificate of Lot Line Adjustment 2002–07 recorded June 26, 2002, Instrument No. 2002–08119.

Official Records.

ANP: 014–280–095

Dated: November 21, 2012.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

[FR Doc. 2012–29043 Filed 11–30–12; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–SARA–11235; 4901–726]

Minor Boundary Revision of Saratoga National Historical Park

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary revision.

SUMMARY: Notice is hereby given that, pursuant to 16 U.S.C. 460*l*–9(c)(1)(ii), the boundary of Saratoga National Historical Park is modified to include approximately 21.06 acres of adjacent unimproved land identified as Tract 01–157 (18.89 acres) and Tract 01–158 (2.17 acres). The tracts, owned respectively by Open Space Conservancy, Inc., and the State of New York, will be donated to the United States. The boundary revision is depicted on Map No. 374/112,692 and dated February 2012. The map is available for inspection at the following locations: National Park Service, Northeast Land Resources Program Center, New England Office, 115 John Street, Fifth Floor, Lowell, Massachusetts 01852, and National Park Service, Department of the Interior, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Superintendent, Saratoga National Historical Park, 648 Route 32, Stillwater, New York 12170, telephone (518) 664–9821.

DATES: The effective date of this boundary revision is December 3, 2012.

SUPPLEMENTARY INFORMATION: 16 U.S.C. 460*l*–9(c)(1)(ii) provides that, after notifying the House Committee on Natural Resources and the Senate Committee on Energy and Resources, the Secretary of the Interior is authorized to make minor boundary revisions to areas of the National Park System. The Committees have been so notified. This boundary revision will contribute to, and is necessary for, the proper preservation, protection and interpretation of Saratoga National Historical Park.

Dated: September 14, 2012.

Dennis R. Reidenbach,

Regional Director, Northeast Region.

[FR Doc. 2012–29099 Filed 11–30–12; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0095]

Atlantic Wind Lease Sale 2 (ATLW2) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Rhode Island and Massachusetts—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Proposed Sale Notice for commercial leasing for wind power on the Outer Continental Shelf offshore Rhode Island and Massachusetts.

SUMMARY: This document is the Proposed Sale Notice (PSN) for the sale of commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Rhode Island and Massachusetts, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM proposes to offer for sale, using a multi-factor auction format, two leases that together encompass the Rhode Island and Massachusetts Wind Energy Area (WEA) that was identified on February 24, 2012 (see ''Areas Offered for Leasing'' below for a description of the WEA and lease areas). In this PSN, you will find information pertaining to the areas available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites comments during a 60-day comment period following this notice. The issuance of the proposed leases resulting from this announcement would not constitute an approval of

project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

DATES: Comments should be submitted electronically or postmarked no later than February 1, 2013. All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

The end of the comment period is also the deadline for potential bidders to submit qualification materials. All bidders interested in participating in the lease sale must submit the required qualification materials by the end of the 60-day comment period for this notice. All qualification materials must be postmarked no later than February 1, 2013.

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BOEM–2012–0095 and then click ''search.'' Follow the instructions to submit public comments.

2. *Written Comments:* In written form, delivered by hand or by mail, enclose comments in an envelope labeled ''Comments on Rhode Island and Massachusetts PSN'' to: Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

3. *Qualification Materials:* Those submitting qualification materials should contact Jessica Bradley, BOEM Office of Renewable Energy Programs, at 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320, or *jessica.bradley@boem.gov.*

If you wish to protect the confidentiality of your comments or qualification materials, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption, ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this PSN entitled, ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as subject to public release.

FOR FURTHER INFORMATION CONTACT: Jessica Bradley, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or *jessica.bradley@boem.gov.*

Authority: This PSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (''the Act''), as amended by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

Background: The proposed lease areas are the same as the WEA that BOEM announced on February 24, 2012, (see Area Identification announcement available at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*). BOEM published the Notice of Availability (NOA) for the *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf (OCS) Offshore Rhode Island and Massachusetts* Environmental Assessment (EA) (77 FR 39508) on July 3, 2012. The EA may be found at: *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx.* BOEM is currently considering the comments on the EA and possible revisions.

Ongoing consultations concurrent with the preparation of the EA include consultations under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), Section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). Once BOEM has completed the EA, and if the EA concludes that the proposed action will not cause significant environmental impacts, BOEM will publish a Finding of No Significant Impact (FONSI).

The proposed lease areas identified in this PSN match the Rhode Island and Massachusetts WEA described as the proposed action and preferred alternative in the EA. In the event that BOEM decides to substantially revise the terms and conditions outlined within this PSN as a result of the completion of the environmental review and consultation process, which will not occur until after the publication of this PSN, BOEM will publish a second PSN that includes the revised terms and conditions and publish it in the **Federal Register** for a 60-day public comment period before moving forward with publication of a Final Sale Notice (FSN). Additional environmental reviews will be conducted upon receipt of the lessees' proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

This PSN was developed in consultation with the joint Rhode Island and Massachusetts Renewable Energy Task Force. BOEM received comments from several Task Force members during the development of this PSN, including from the Rhode Island State Energy Office, the City of New Bedford Economic Development Commission, a Task Force member from the Town of Aquinnah, and the National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS). In addition, the Rhode Island Coastal Resources Management Council forwarded to BOEM comments on the draft PSN and EA that it had received from members of the Habitat Advisory Board established by the State. The Rhode Island State Energy Office requested that BOEM consider non-monetary factors in the multiple auction format and recommended that the Joint Development Agreement (JDA) executed by the State of Rhode Island be awarded a minimum 25 percent discount in the auction. Additional information on the JDA can be found in this notice in the section entitled, ''Multiple Factor Definitions.'' A member of the Rhode Island Habitat Advisory Board expressed concern about publication of the PSN before a FONSI determination has been made; reiterated concerns about areas within the WEA where glacial moraines are located; proposed additional requirements for protection of endangered species, in particular the North Atlantic Right Whale; and requested that BOEM consider implementing a discount for non-monetary values in the auction format. The additional measures proposed for North Atlantic Right Whale protection are similar to those previously developed by a consortium of nongovernmental organizations and wind industry representatives and presented to BOEM for consideration in issuing commercial wind leases off New Jersey, Delaware, Maryland, and Virginia. A Task Force member from the Town of Aquinnah suggested that BOEM consider proposals that provide community benefits in the auction format and expressed concern with the requirements for protection of North Atlantic Right Whales. The City of New Bedford Economic Development Commission expressed concern regarding the inclusion of a discount in the auction format for the State of Rhode Island's preferred developer. NMFS

provided recommendations for language to be clarified in the PSN, as well as in Addendum C of the proposed lease.

Financial Terms and Conditions: This section provides an overview of the basic annual payments required of the Lessee, which will be fully described in the lease.

Rent: The first year's rent payment for the entire leased area is due within 45 calendar days of the date the winning bidder receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the lease Effective Date until commercial operations on the lease commence, i.e., when the generation of electricity begins. The annual rental rate will be $3.00 per acre, and this rate will be applicable to the entire leased area. For example, for a lease the size of 164,750 acres (the size of the entire WEA), the amount of rent payment will be $494,250 per year. The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement, 200-feet wide and centered on the transmission cable, is $70.00 per statute mile. For any such additional acreage required, the Lessee must also pay the greater of $5.00 per acre per year or $450.00 per year.

Operating Fee: The initial annual operating fee is prorated and due within 45 calendar days after the commencement of commercial operations on the lease, and subsequent payments are due on or before each Lease Anniversary annually thereafter. The annual operating fee payment is calculated by multiplying an operating fee rate by the imputed wholesale market value of the projected electric power production. For the purposes of this calculation, the imputed market value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), an annual capacity factor, and the historical, annual average regional wholesale power price index.

Operating Fee Rate: The operating fee rate is 0.02 through the eighth year of commercial operations on the lease. Starting in the ninth year of commercial operations, the operating fee rate is 0.04 through the remaining term of the lease.

Nameplate Capacity: The nameplate capacity at the start of each year of commercial operations on the lease as specified in the COP will be used to allow for installation schedules or repowering, recognizing that a project's designed capacity may not be fully available in every year. Using the capacity at the beginning of each year, as specified in the COP, adjusts the nameplate capacity for these schedules.

Capacity Factor: The capacity factor for the first six full years of commercial operations on the lease is set to 0.4 to allow for one year of installation and testing followed by five years at full availability. At the end of the sixth full year, the capacity factor will be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor will be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index: The wholesale power price is determined at the time each annual operating fee payment is due. The wholesale power price will be based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast—Mass Hub power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual *State of the Markets Report* with specific reference to the summary entitled ''Electric Market Overview: Regional Spot Prices.''

Financial Assurance: BOEM will base the amounts of all SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. The amount of supplemental and decommissioning financial assurance requirements will be determined on a case-by-case basis. The amount of financial assurance required to meet all lease obligations includes:

- The projected amount of rent and other payments due to the Federal Government over the next 12 months;
- Any past due rent and other payments;
- Other monetary obligations (e.g., fines, liens); and
- The estimated cost of facility decommissioning.

Prior to lease issuance the Lessee must provide: (1) An initial lease-specific bond or other approved means of meeting the Lessor's initial financial assurance requirements in the amount of $100,000; and (2) a supplemental bond or other approved means of meeting the Lessor's supplemental financial assurance requirements in the amount of $292,494 for Lease OCS A–0486, and $201,756 for Lease OCS A–0487, to guarantee lease obligations from rental payments due to the Government over the first 12 months of the lease. Additional financial assurances will be required to address decommissioning, operating fee, and other obligations as the lease progresses.

The financial terms can be found in Addendum ''B'' of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island.aspx.*

Place and Time: The auction will be held online. The time that the auction will be held will be published in the FSN. The date has not been finalized at this time, but will be no earlier than 30 days after publication of the FSN in the **Federal Register**.

Public Seminar: BOEM will host a public seminar to introduce potential bidders and other stakeholders to the auction format provided in the PSN, explain the auction rules, and demonstrate the auction process through meaningful examples. The time and place of the seminar will be announced by BOEM and published on the BOEM Web site. No registration or RSVP will be required in order to attend.

Mock Auction: BOEM will host a mock auction to educate qualified bidders about the procedures to be employed during the auction and to answer questions. The mock auction will take place between the publication of the FSN in the **Federal Register** and the date of the auction. Following publication of the FSN in the **Federal Register**, details of the mock auction will be distributed to those eligible to participate in the auction. All qualified bidders that intend to participate in the auction are strongly encouraged to participate in the mock auction. Bidders will be eligible to participate in the Mock Auction if they have been legally, technically, and financially qualified, as discussed below.

Bid Deposit and Minimum Bid: A bid deposit is an advance cash deposit submitted to BOEM. No later than 14 calendar days following publication of the FSN, each bidder must have submitted a bid deposit (equal to a minimum cash bid) of at least $5.00 per acre, or fraction thereof, offered for sale. Approximately 97,498 acres would be offered for sale as Lease OCS–A 0486 (North Zone), and approximately 67,252 acres would be offered as Lease OCS–A 0487 (South Zone) in this auction. The bid deposit amount of $5.00 per acre represents the minimum bid that BOEM proposes for this lease sale. Therefore, the minimum acceptable bid will be $487,490 for Lease OCS–A 0486 (North Zone), and $336,260 for Lease OCS–A 0487 (South Zone). The required bid deposit for any participant intending to

bid on both leases will be $5.00 per acre for the combined total acreage being offered, which equals $823,750. Any participant intending to bid on only one of the leases must submit a bid deposit of no less than $5.00 per acre for the larger area being offered (Lease OCS–A 0486 (North Zone)), which equals $487,490. Any bidder that fails to submit the bid deposit by the deadline described herein may be prevented by BOEM from participating in the auction. Bid deposits will be accepted online via *pay.gov.*

Following publication of the FSN, each bidder must complete the Bidder's Financial Form included in the FSN. BOEM has made a copy of the proposed form available with this notice on its Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island.* This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov.* After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* Web site to submit a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations a successful bidder owes to BOEM. If the bid deposit exceeds the bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund the bid deposit to unsuccessful bidders.

Areas Offered for Leasing: The proposed lease area was identified as the Rhode Island and Massachusetts Wind Energy Area (WEA) on February 24, 2012 (see Area Identification announcement available at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Rhode-Island.aspx*). The proposed lease area offshore Rhode Island and Massachusetts comprises 13 whole OCS blocks and 26 sub-blocks encompassing 164,750 acres. The area available for sale will be auctioned as two leases, Lease OCS–A 0486 (North Zone) and Lease OCS–A 0487 (South Zone). The North Zone consists of 97,498 acres, and the South Zone consists of 67,252 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the lease areas and lease activities can be found in Addendum ''A'' of the proposed leases, which BOEM has made available with this notice on its Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island.aspx.*

The two areas that will be offered for leased within the Rhode Island/Massachusetts WEA are the North Zone and the South Zone, which are separated by an exclusion area surrounding Cox Ledge. This division into two Zones is based on the consideration of a number of factors, including: the prevailing winds as demonstrated in the RI Ocean Special Area Management Plan, which is available at: *http://www.crmc.ri.gov/samp_ocean/finalapproved/RI_Ocean_SAMP.pdf;* the project scale requirements under state laws and regulations (including Rhode Island General Laws, Chapter 39–26.1); the JDA executed by the State of Rhode Island; developer responses to the August 2011 Call for Information and Nominations; allowance for buffer zones between projects; and proximity to onshore infrastructure and markets.

Each zone is expected to be capable of supporting a project of at least 350 MW in nameplate capacity. The North Zone may be capable of supporting over 1,000 MW and is expected to have the advantage of closer proximity to onshore infrastructure. However, the South Zone could potentially support a project of 1,000 MW and is expected to be attractive due to its expansion opportunities to the south and east in potential future lease sales.

Map of the Area Offered for Leasing: A map of the areas and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: *http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island.aspx.*

A large scale map of these areas, showing boundaries of the area with numbered blocks, is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1300, Fax: (703) 787–1708.

Withdrawal of Blocks: BOEM reserves the right to withdraw areas from this lease sale prior to the execution of a lease.

Lease Terms and Conditions: BOEM has included proposed lease terms and conditions for OCS commercial wind leases in the Rhode Island and Massachusetts WEA in Addendum ''C'' of the proposed lease. BOEM reserves the right to apply additional terms and conditions that are consistent with the terms of the lease to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. The proposed lease, including Addendum ''C'', is available on BOEM's Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Rhode Island.aspx.* The proposed lease consists of an instrument with 18 sections and the following six attachments:

Addendum ''A'' (Description of Leased Area and Lease Activities);

Addendum ''B'' (Lease Term and Financial Schedule);

Addendum ''C'' (Lease Specific Terms, Conditions, and Stipulations);

Addendum ''D'' (Project Easement);

Addendum ''E'' (Rent Schedule); and

Appendix A (High Resolution Geophysical Surveys and Analysis for the Identification or Reporting of Archaeological Resources).

Addenda ''A'', ''B'', and ''C'' provide detailed descriptions of lease terms and conditions.

Addenda ''D'' and ''E'' will be completed at the time of COP approval.

After considering comments on the PSN and these proposed provisions, BOEM will publish final lease terms and conditions in a FSN.

The lease form included as part of this proposed lease has been updated since its publication on February 3, 2012. A discussion of specific changes to the lease form is available separately on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Lease_Forms.*

Plans: Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within six months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least six months before the end of the site assessment term.

Pursuant to 30 CFR 585.629, a leaseholder may include in its COP a request to develop its commercial lease in phases. If a leaseholder requests and BOEM approves phased development, this approval will not affect the length of the preliminary, site assessment, or commercial terms offered under the lease. The COP must describe in sufficient detail the activities proposed for all phases of commercial development, including a schedule detailing the proposed timelines for phased development. Further, the COP must include the results of all site characterization surveys, as described in 30 CFR 585.626(a), necessary to support each phase of commercial development. The requirements of the SAP remain the same as they would under a non-phased development scenario, and must meet the requirements set forth in the regulatory provisions in 30 CFR 585.605–613 for the full commercial lease area.

Qualifications—Who May Bid: Any potential bidder that has not already

submitted a complete set of qualification materials must do so by the end of the comment period of this PSN. To be eligible to participate in the auction, each potential bidder must be legally, technically and financially qualified under BOEM's regulations at 30 CFR 585.106–107 by the time the FSN for this sale is published. Please note that technical and financial qualifications are lease specific; it is not sufficient to have been technically and financially qualified to pursue a project offshore another state.

Guidance and examples of the appropriate documentation demonstrating your legal qualifications can be found in Chapter 2 and Appendix B of *Guidelines for the Minerals Management Service Renewable Energy Framework,* available on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Guidance regarding how you may demonstrate your technical and financial qualifications is provided in a document entitled, *Qualification Guidelines to Acquire and Hold Renewable Energy Leases and Grants and Alternate Use Grants on the U.S. Outer Continental Shelf:* (*http://boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx*). BOEM strongly recommends that you refer to this guidance before submitting your qualification materials, as the guidance has been updated recently. You must submit the documentation necessary to demonstrate your legal, technical, and financial qualifications to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy. In your qualification materials, provide a general description of the project you would like to construct on the lease area sought in this sale, including estimates of the project area and total nameplate capacity of the proposed facilities.

Please note that it may take a number of weeks for you to establish your legal, technical, and financial qualifications. We advise potential bidders planning to participate in this sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. BOEM will find any potential bidder whose qualification package is incomplete at the time the FSN for this sale is published in the **Federal Register** to have failed to establish its qualifications to participate in the sale, and, therefore, will be unable to participate in the sale.

Auction Procedures

Summary

For the sale of these leases, BOEM will use a multi-factor auction format, with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and nonmonetary factors, or ''variables,'' in determining the outcome of the auction. There will be two such variables considered by BOEM in this auction—(1) a cash bid, and (2) a credit if a bidder holds a Joint Development Agreement (JDA) or a Power Purchase Agreement (PPA), as defined below. A multi-factor auction, wherein both monetary and nonmonetary bid variables are considered, is provided for under BOEM's regulations at 30 CFR 585.220(a)(4) and 585.221(a)(6).

Under a multiple-factor bidding format, as set forth at 30 CFR 585.220(a)(4), BOEM may consider many factors as part of a bid. The regulation states that one bid proposal per bidder will be accepted, but does not further specify the procedures to be followed in the multiple-factor format. This multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulation leaves to BOEM the determination of how to administer the multiple-factor auction format in order to try to best achieve BOEM's goals of encouraging bidding, enhancing price discovery, and ensuring that BOEM receives a fair return for the leases auctioned, as required by the Outer Continental Shelf Lands Act, (OCSLA), 43 U.S.C. 1337(p)(2)(A).

BOEM's regulations at 30 CFR 585.220(a)(4) permit a multi-round auction provided only one cash bid proposal per zone or set of zones per bidder, per round of the auction, is accepted. This regulation presents an administratively efficient auction process. It also takes advantage of the flexibility built into the regulation by enabling BOEM to benefit from both the consideration of more than one factor and the price discovery involved in successive rounds of bidding.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for each zone being offered. In each round, each bidder will have the opportunity to submit one cash bid per zone at the asking price. A bid submitted at the asking price in a particular round is referred to as a ''live bid'' and a live bid signifies that the bidder is willing to pay that auction round's asking price for a particular zone. A bidder must submit a live bid on at least one of the zones in each round to remain ''active'' into the next round of the auction. As long as at least two live bids are submitted at the asking price on any zone in a particular round, the auction continues, and the next round is held. If there is only one live bid for a zone, and that bidder is not bidding on the other zone, BOEM automatically carries that bid forward into the next round. If BOEM carries a bid forward, the bid will be considered the equivalent of a live bid for the purpose of determining bidder eligibility. If there is more than one live bid for a zone, the stated price for that zone is raised in each subsequent round until there is only one live bid or no live bids for that zone. The auction concludes when there are one or zero live bids for each zone.

The series of rounds and the escalating asking prices set by BOEM will allow consideration of the first variable—the cash bid. BOEM will set one asking price per zone in each round. Each bidder will either place a live bid at this asking price or not, but no bidder will be permitted more than one bid per zone in any one round. Thus, bidders will not be outbidding each other in each round, but will be limited to one bid per zone per round, at the asking price, (or at a price subject to a credit due to the second variable, as explained below).

The second variable—a credit for holding a JDA or PPA of at least 350 megawatts each—will be applied throughout the auction rounds as a form of imputed credit against the amount of a cash bid proposal made by a particular bidder in a particular round. A bidder holding only a qualified JDA will receive a credit of 15%, a bidder holding only a qualified PPA will receive a credit of 25 percent, and a bidder that holds both will receive the larger of the two possible credit amounts, i.e. 25 percent. The total percentage credit is limited to 25 percent in the auction to address concerns about creating too large an advantage to certain bidders in the auction, as discussed in BOEM's Auction Format Information Request (76 FR 76174). BOEM considered the overall impact and relative strength of the JDA compared to that of a PPA in enabling a lessee to install a viable project on the OCS in setting the JDA credit at 15 percent. In the case of a bidder holding a credit and bidding on more than one zone, the credit will be applied only to the zone being offered at the higher asking price. By way of

example, a bidder holding a qualified JDA and bidding on two zones, one with an asking price of $1,000,000 and one with an asking price of $2,000,000, will receive a 15 percent credit against the higher priced $2,000,000 bid in that round, obligating the bidder to a payment of $1,700,000, or 15 percent less than the asking price for that zone, and $1,000,000 for the other zone, equal to the asking price for that other zone. Each bid in each round will thus be considered based on both factors—the amount of the cash bid proposed and the amount of a potential credit for holding a qualified JDA or PPA.

BOEM's regulations concerning multi-factor bidding require the use of a panel 30 CFR 585.222 (d), whose members are selected by the agency, to help weigh the variables considered in such an auction. The regulations state that BOEM ''will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel * * *.'' 30 CFR 585.224(h). The panel will evaluate any purported JDA or PPA proffered by a bidder to determine whether it is acceptable to BOEM, and therefore whether it will qualify for a credit for its holder. The panel will determine the winning bids for each zone on the basis of the Stage 1 and Stage 2 rules set forth herein.

Details of the Auction Process

Bidding—Live Bids

Each bidder is allowed to submit live bids on one or more zones based on its eligibility at the opening of each round. A bidder's initial eligibility to bid on either one or both zones in the opening round of the auction is determined based on the amount of the bid deposit submitted by the bidder prior to the auction. The required deposit for bidding on one zone is equal to the minimum bid of the zone with the most acreage. If a bidder wants to bid on both zones, the bidder is required to submit a deposit equal to the sum of the minimum bids for both zones. As the auction continues, a bidder's eligibility is determined by the number of live bids submitted in the round prior to the current round.

Before each round of the auction, BOEM raises the asking price for each zone that received more than one live bid in the previous round, while the asking price for zones that received one or no live bids in the previous round remains the same. Bidders must submit a live bid in each round of the auction (or have a bid automatically carried forward by BOEM) to remain active and continue bidding in future rounds. Between rounds, all bidders who are still active are informed, with respect to each zone, of the asking price for the upcoming round and the number of live bids submitted in the previous round. In cases where one of the zones which a bidder has bid on in the previous round has competition, i.e., the zone received two or more live bids, the bidder must independently submit bids identifying which zones it continues to be interested in acquiring in the current round. In cases where the bidder has bid on only one zone in the previous round and there is no competition for that zone, i.e., only that bidder has submitted a live bid, BOEM will automatically carry forward the bid for that bidder by recording that the bidder ''submitted'' a live bid in the current round on that zone at the previous round's asking price. In these latter cases i.e., when the bidder has bid on only one zone and BOEM has carried that bid forward, switching bids to other zones or submitting an intra-round bid are prohibited, as is reducing the number of zones on which the bidder has bid. Additional auction rounds occur as long as at least one of the zones offered receives two or more live bids in the previous round. The auction concludes at the end of the round in which the number of live bids received on each zone falls to one or zero.

A bidder may not increase the number of zones it bids on from one round to a subsequent round. Provided one or more live bids were received on at least one of the zones that the bidder itself has bid on in the previous round, a bidder may voluntarily reduce the number of the zones it bids on from one round to the next, switch its bids from one zone to another, or submit an ''intra-round'' bid in conjunction with reducing its eligibility as to the number of zones on which it can bid in future rounds. (Intra-round bids are discussed below.) Otherwise, in general, if there are no other bidders on any of the zones on which the bidder has bid in the previous round, the bidder must maintain its existing bids and BOEM will automatically record the bidder as having ''submitted'' its standing live bids at the previous round's asking price. For this two-zone sale, however, this situation can only occur for the case of one zone, because if there had been only a single live bid on each zone in the previous round, the auction would have closed.

Thus, if a bidder placed a live bid for both zones in the previous round, it can submit live bids for both zones in the current round. The bidder also has the option of submitting a live bid for only one of the zones or none of the zones in the current round.

If a bidder placed a live bid on only the South Zone in the previous round, and there was at least one other competing bid for that zone, then the bidder can submit a live bid on either the North or South Zone in the current round, or not bid on either zone, but it cannot bid on both zones. If there are no competing bids on the South Zone, the bidder cannot switch its bid to the North Zone or reduce its eligibility by not bidding on either zone. Once a bidder fails to submit a live bid for any zone (or have a bid carried forward by BOEM), it must depart the auction and will no longer be allowed to submit bids for any zone in any subsequent round.

Bidding—Intra-Round Bids

Subject to certain conditions, bidders are allowed to submit an ''intra-round'' bid in any round after the first round. Intra-round bids are similar to what were termed ''exit bids'' in BOEM's Auction Format Information Request (76 FR 76174). In contrast to exit bids, however, intra-round bids do not necessarily require that the bidder exit the auction—only that the number of live bids that the bidder is eligible to submit must be reduced.

An intra-round bid consists of a single offer price for exactly the same zone or set of zones that the bidder placed live bids on in the previous round. The single offer price must be greater than the sum of the asking prices for the zones bid on in the previous round and less than the sum of the asking prices for these zones in the current round. A bidder may not submit an intra-round bid for a single zone or set of zones in the current round when this bidder was the only bidder placing a live bid for all of these zone(s) in the previous round, i.e., an intra-round bid is prohibited in the current round when the asking price does not increase from the previous round on all of the zones on which the bidder bid (or was credited with bidding on) in the previous round. This situation can only arise in this two-zone sale for a bid on a single zone, because the auction would have closed in the previous round if both zones had only a single live bid.

A bidder may submit both live bids and an intra-round bid in the same round, as long as the bidder reduces the number of live bids by at least one zone in the current round compared to the previous round. The zones on which the live bids are submitted may coincide with some of the zones included in the intra-round bid. In the specific case of this two-zone sale, this situation can arise only if the bidder has submitted

live bids on both zones in the previous round, chooses to submit an intra-round bid in the current round (consisting of both zones as required in this example), and also submits a live bid at the current round's asking price on one of the zones in the bidder's intra-round bid.

A bidder may submit additional intra-round bids in subsequent rounds, following the same rules as applied to the first intra-round bid. A bidder now eligible to bid on one zone may submit an intra-round bid on one zone, but cannot also submit any live bids, because its eligibility to submit live bids from having submitted this intra-round bid is reduced from one to zero zones.

Intra-round bids are not considered to be live bids for the purpose of determining whether to conclude the auction or for determining whether to increase the asking price for a particular zone. When a bidder submits an intra-round bid on one zone, the bidder's bid eligibility is reduced to zero, and this bid represents the bidder's best-and-final offer prior to leaving the auction. In contrast, a bidder's intra-round bid for both zones represents a best-and-final offer for both zones and reduces a bidder's eligibility in the auction to one or zero zones, based on the number of live bids submitted in the round. In this manner, bidders are able to express their maximum bid amount for both zones and an individual zone prior to reducing their eligibility.

For example, consider the case of a bidder who has bid on both zones in previous rounds, and hence is eligible to continue bidding on both zones in the current round. Suppose the asking prices for the North and South Zones were $750,000 and $600,000 in the previous round and are now $800,000 and $600,000 in the current round, respectively. These results reflect that in the previous round the bidder had competition for the North Zone (because the asking price was increased in the current round), but not for the South Zone. The bidder may only enter a single, intra-round bid for both zones that it bid on in the previous round. This single offer price must be more than $1,350,000 and less than $1,400,000, and the bidder must simultaneously reduce its eligibility to submit live bids from two zones to one or zero zones. The bidder can satisfy this requirement by choosing to submit (along with its intra-round bid) a single live bid of $800,000 for the North Zone or $600,000 for the South Zone, or choose not to submit any live bids and hence exit the auction.

If the bidder had only bid on one zone in the previous round, it may be eligible to submit an intra-round bid during the current round. If its previous round's bid was for the North Zone, the bidder could submit an intra-round bid for that zone of more than $750,000 and less than $800,000, reduce its live bid eligibility to zero, and hence exit the auction. Alternatively, if the bidder's previous round's bid was on the South Zone, it cannot submit an intra-round bid, because the current round's asking price is unchanged from the asking price in the previous round, as there were no other competitive bids. In this case, since the bidder had no competition for the South Zone, its sole bid of $600,000 from the previous round is automatically recorded by BOEM as a submitted live bid of the same amount in the current round.

Stages—Stage 1

After the bidding ends, a panel will determine the winning bids in two stages. This determination, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the auction, and on confirmation of the absence of conduct detrimental to the integrity of the competitive auction.

In Stage 1, a zone is awarded to the bidder with a live bid in the final round of the auction. A bidder who submits a final round live bid for a zone is guaranteed to be the winning bidder for that zone. A bidder who is awarded a zone only as a result of a final round live bid is obligated to pay the cash bid amount for that zone (i.e., the asking price of that zone in the final round less any credit earned).

If both zones are awarded to bidders in Stage 1, the second award stage would not be necessary. If at least one zone is not awarded in Stage 1, which received either an intra-round bid within any round or a live bid in a prior-to-final round, then a second award stage would be conducted.

Stages—Stage 2

In Stage 2, all of the remaining prior-to-final round live bids and any intra-round bids received during the auction are considered alongside one another to award any remaining unsold zones. Determination of the winning Stage 2 bids is based on the principle of maximization of gross auction revenue subject to the award of zones in Stage 1.

Live bids from previous rounds are considered in the same way as intra-round bids received within any round, i.e., at a single aggregate price per round per bidder based on the sum of the asking prices for each zone in the round the bid was received. For example, if a bidder placed live bids in a previous round for both the North and South Zones and the asking prices in that round for each zone were $600,000 and $750,000, respectively, the bid would be evaluated at $1,350,000 for award purposes.

Thus, in Stage 2, bids from bidders in each applicable round are considered as unique packages of intra-round bids and live bids. A bidder is able to win bids submitted from only a single round, which will consist of either all of the zones in an intra-round bid or all of the zones on which it submitted live bids in the winning round for that bidder. A bidder cannot win only some of the zones on which it submitted live bids in a round. Rather, a bidder wins all of the zones or none of them from one round based on its live bids. Further, a bidder may only win one intra-round bid and may not win a set of live bids and an intra-round bid—it wins one or the other based on auction revenue maximization subject to the Stage 1 awards.

In particular, any intra-round bids or sets of prior-to-final round live bids from one bidder, which include a zone awarded in Stage 1 to another bidder, are eliminated from consideration. Thus, if Bidder A was awarded the South Zone in Stage 1, and Bidder B submitted either an intra-round bid or set of live bids for both the North Zone and South Zone in one or more previous rounds, those bids of Bidder B would be eliminated because they overlap with a zone that has already been awarded to Bidder A in Stage 1.

Also, any intra-round bids or sets of prior-to-final round live bids from a bidder who itself was awarded one or more zones in Stage 1 are eliminated unless such bids represent a superset of the zones (i.e., in this sale, both zones) won by the bidder in Stage 1, i.e., those bids must contain all the zones won by this bidder in Stage 1 to be considered in Stage 2. For example, if a bidder was already awarded the North Zone in Stage 1, any previous rounds' bids by that bidder for just the South Zone would be eliminated from consideration, whereas that bidder's previous rounds' bids for both zones would be considered for award in Stage 2.

Acceptance of a bidder's superset bid over the final round bid would depend on whether the superset bid was consistent with maximizing gross auction revenue. To demonstrate, suppose only the North Zone received a final round live bid, equal to $1,000,000, and the same bidder submitted the highest previous round's set of live bids or an intra-round bid for

both the North and South Zones with a gross auction price of $1,400,000. In this case, the bidder's superset bid of $1,400,000 for both zones would replace the final round live bid from this same bidder for only the North Zone of $1,000,000.

In summary, unsold zones following the Stage 1 evaluations are considered for award to the bidders in Stage 2 for eligible intra-round bids and sets of live bids in a manner that would yield the highest gross auction revenue to BOEM given the Stage 1 awards. If more than one combination of remaining previous-round live and intra-round bids exist that would yield the same highest gross auction revenue to the seller, while preserving the zones awarded in Stage 1, the resulting tie is settled by a random draw.

All zone awards are based on the bids submitted during the auction at their asking and intra-round bid (i.e., ''as-bid'') prices. For each bidder, the as-bid price will be considered to have a cash component and an imputed credit component, if applicable, as described in the following section. The amount each bidder is obligated to pay at the conclusion of the auction will be equal to the cash component of the as-bid auction price (i.e., the as-bid auction price less the imputed amounts associated with the credits, as described in the following section).

Factor Two Credits: Prior to the auction, BOEM will convene a panel (as provided in BOEM's regulations, discussed above) to evaluate whether and to what extent each bidder is eligible for a credit applicable to the as-bid auction price for one of the zones in each round of the auction, as described below. In order to receive the JDA or PPA credit a bidder must be legally, technically, and financially qualified to acquire a commercial OCS wind lease, and must not be affiliated with any other bidding entity also seeking credit for the same JDA or PPA.

The percentage credit is determined based on the panel's evaluation of required documentation submitted by the bidders as of the deadline specified in the Final Sale Notice. Bidders will be informed prior to the first round of the auction about the percentage credit applicable to their bid for a single zone. Then, in subsequent rounds, bidders will be provided information showing how their as-bid auction prices are affected by the credit imputed to their bid to determine their net payment due to BOEM, should their bids prevail as winning bids in the award stages. This process is conceptually similar to one in which the multiple bid factors are combined into an aggregate score for the purpose of awarding zones, but is more transparent to bidders and facilitates the bidding process in a dynamic, multi-factor, multiple round auction process, such as we propose to use for this sale.

The percentage amount of credit imputed will be based on the greater of the following two conditions associated with the development activities within the Rhode Island lease sale area:

- A bidder having entered into one or more qualified joint development agreements (JDAs) supporting 350 MW or more of total capacity will receive a credit of 15 percent; or
- A bidder having entered into one or more qualified Power Purchase Agreements (PPAs) supporting 350 MW or more of total capacity under contract will receive a credit of 25 percent.

The panel will determine whether a proffered JDA or PPA is qualified to receive a credit, based on the definitional information provided below.

A bidder with both a qualified JDA and a qualified PPA is eligible to receive the larger of the two credits. For example, if a bidder's winning bid for its highest-priced zone is $1,000,000 and the bidder has entered into a JDA for 400 MW and a PPA for 570 MW, the bidder would qualify for a credit of 15 percent for the JDA and 25 percent for the PPA, and be eligible for an award equal to the larger of the two credit amounts, in this case 25 percent. Accordingly, the bidder would have an imputed credit of $250,000 for its winning bid and would pay BOEM the cash component of its bid, which would be $750,000.

In another example, if the bidder entered a JDA for 400 MW and a PPA for 170 MW, then under the first condition, the bidder with a qualified JDA would receive a credit of 15 percent, while under the second condition, the bidder would not receive any credit since the capacity under the PPA contract falls below the 350 MW threshold level. The bidder would be eligible for an award equal to 15 percent, and hence would have an imputed credit of $150,000 and pay BOEM $850,000 (the cash component of its bid) for its winning gross auction priced zone of $1,000,000.

The bidding software interface will be tailored to each bidder based on the percentage credit awarded to the bidder. In each round of the auction, the bidder will be provided with the gross and net stated auction prices for each zone, along with the aggregate bid price the bidder would be obligated to pay if the zones were to be awarded to them based on that round's bids, both with and without the bidder's credit. For a bid on both zones in a given round, the software interface would highlight the zone with the highest stated auction price among the zones selected by the bidder to which the credit would be applied in each round. For example, suppose a bidder is eligible for a 15 percent credit, and the gross stated auction prices for the North and South Zones in the current round are $1,000,000 and $800,000 respectively. The potential net payment to be made by the bidder for its live bids for both zones would be shown as a net bid of $850,000 for the higher-priced North Zone, and a gross bid of $800,000 for the lower-priced South Zone.

The same principle is applied when an intra-round bid, rather than a live bid, is offered. If an intra-round bid includes only one zone, the percent credit will be applied to the zone's asking price in the previous round. Note that the credit does not apply to the full amount of the intra-round bid, i.e., it does not apply to the increment above the asking price in the previous round. For example, say the stated auction price for the North Zone was $800,000 in the previous round and $1,000,000 in the current round and a bidder who was awarded a 15 percent credit submits an intra-round bid price of $900,000 for the zone. The bidder would be obligated to pay $780,000 if its bid is successful. This amount would reflect an imputed $120,000 credit to its $900,000 bid price which would be calculated by applying its 15 percent credit to the previous-round's asking price of $800,000, and then subtracting the amount of that calculation $120,000 from its bid of $900,000.

In the case of an intra-round bid for both zones, the highest priced zone will be determined based on the asking prices of both zones in the round previous to the submission of the intra-round bid. Continuing with the previous example, assume the stated auction price for the South Zone is $500,000 in both the previous and current rounds, and for the North Zone the stated auction prices are the same as before, i.e., $800,000 in the previous round and $1,000,000 in the current round. Suppose the bidder offers an intra-round bid price of $1,400,000 for both zones. In this instance, the price of the North Zone ($800,000) is greater than the South Zone ($500,000) in the previous round, and the dollar value of the credit is calculated to be 15 percent of $800,000, equal to $120,000 as before. So, the bidder would be obligated to pay $1,280,000 for its intra-round bid if successful.

BOEM considered alternative specifications of these conditions,

including options to have the maximum credit for the JDA and PPA be 10 percent and 15 percent, respectively, and where the total credit would then be the sum of two conditions. BOEM also considered the option to provide a pro-rated credit for JDAs and PPAs involving less than the 350 MW level anticipated to be needed to support a viable project. BOEM recognizes that few if any developers will have entered into PPA at the time of the proposed lease sale, but has elected to include the discussion of PPA and the alternative specifications in this PSN to obtain comment that will be considered for both this and future lease sales.

Factor Two Definitions: The definitions below will apply to the factors for which bidders may earn a credit.

Joint development agreement (JDA) is a binding agreement between a State and a legal entity that proposes to develop renewable (wind) energy, which sets forth the rights, obligations, and certain economic development activities of the parties in connection with the development of an offshore wind project. The legal entity named in a JDA must be selected through a competitive selection process, such as a request for proposals (RFP), that is conducted by a state adjacent to the wind energy area issuing and entering into the JDA agreement, where the subsequent submitted proposals are evaluated by a State agency, committee, or public utility board. The JDA will qualify if the panel determines that the agreement includes the following identifiable factors: (1) Sufficient specificity to the size, timing, and location of the proposed project on the OCS; (2) the financial commitment of the State, the identified legal entity, and/or a third party (buyer of power), if applicable, included in the agreement; (3) the developmental, financial, and/or regulatory processes through which the State will support the identified legal entity that proposes to develop renewable (wind) energy; (4) significant project milestones; (5) the ramifications for not meeting said milestones; and (6) any exclusionary rights awarded to said identified legal entity.

Power purchase agreement (PPA) is any legally enforceable contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. The PPA must have been approved by a public utility commission or similar legal authority. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity, energy, and/or environmental attribute products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the State's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA must be specified in the PPA. In order to qualify, a PPA must contain the following terms or supporting documentation:

(i) A complete description of the proposed project;

(ii) Identification of both the electricity Generator and (Buyer) that will enter into a long term contract;

(iii) A time line for permitting, licensing, and construction;

(iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;

(v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;

(vi) The term for the long term contract;

(vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and

(viii) Copies of or citations to interconnection filings related to the PPA.

Additional Information Regarding the Auction Format

Specific details about certain administrative aspects of the auction sale process will be described in the FSN. These aspects include how much the asking price will increase in various stages of the auction, the duration of each bidding round, the amount of time provided between rounds, the number of rounds expected per day, and the days on which the auction process will continue, if necessary, beyond the first day. Bidders may expect multiple rounds per day to occur during normal business hours. The amount of time allowed for bidders to enter bids and the time between rounds may be reduced as the auction progresses based on the patterns of bidding, to increase the pace of the auction. At the start of each day, bidders will be notified of the round schedule for that day.

Acceptance, Rejection or Return of Bids: BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) the bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, but not limited to, bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be returned to the bidder submitting that bid by the Program Manager of BOEM's Office of Renewable Energy Programs and not considered for acceptance.

Process for Issuing the Lease: If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease form to each winning bidder. Within 10 business days after receiving the lease copies, each winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515–537; and
3. Pay the balance of the bonus bid (bid amount less the bid deposit).

If a winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if a winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the winning bidder's financial assurance, and BOEM has processed the winning bidder's payment. Please note the required timelines for providing financial assurance. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 calendar days of the date that the lessee receives the lease copies, the lessee must pay the first year's rent.

Anti-Competitive Behavior: In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws

designed to prevent anticompetitive behavior in the marketplace. Compliance with the BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will ''allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of the lease sale.''

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid pursuant to its regulations at 30 CFR 585.222(a)(2).

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid in a particular location;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease if doing so would otherwise create a situation inconsistent with the antitrust laws (*e.g.,* heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see: *http://www.justice.gov/atr/public/business-resources.html,* or consult counsel.

Post-Auction Certification: In addition to the steps described in the section entitled, ''Process for Issuing the Lease,'' following the lease sale, each winning bidder will be required to certify the following, in accordance with 18 U.S.C. 1001 (Fraud and False Statements):

> I certify that [name of qualified bidder] did not engage in anticompetitive bidding behavior in violation of Federal law, BOEM's regulations, or auction procedures.
>
> I certify that this bid is made in a good faith effort to win a lease to engage in the development of renewable energy resources.

Non-Procurement Debarment and Suspension Regulations: Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy Lessee must comply with the U.S. Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

Final Sale Notice: BOEM will consider comments received or postmarked during the PSN comment period in preparing a FSN that will provide the final details concerning the offering and issuance of an OCS commercial wind energy lease in the Rhode Island and Massachusetts WEA. The FSN will be published in the **Federal Register** at least 30 days before the lease sale is conducted and will provide the date and time of the auction. The possibility also exists that there could be a second PSN, with another 60-day public comment period, prior to issuance of the FSN.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN in case of a force majeure event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703–787–1300 or access the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.*

Appeals: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons, and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing adverse final decisions with respect to lease sales are described in 30 CFR 585.118(c).

Protection of Privileged or Confidential Information:

Freedom of Information Act: BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a)): BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as confidential.

Dated: November 27, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–29096 Filed 11–30–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2012–0033]

Atlantic Wind One (ATLW1) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Virginia—Proposed Sale Notice

AGENCY: Bureau of Ocean Energy Management (BOEM), Interior.

ACTION: Proposed Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Virginia.

SUMMARY: This document is the Proposed Sale Notice (PSN) for the sale of a commercial renewable energy lease on the Outer Continental Shelf (OCS) offshore Virginia, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM will auction the area described in the

Call for Information and Nominations (77 FR 5545) as a single lease using an ascending clock auction. In this PSN, you will find information pertaining to the area available for leasing, proposed lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. BOEM invites comments during a 60-day comment period following this notice.

DATES: Comments should be submitted electronically or postmarked no later than February 1, 2013. All comments received or postmarked during the comment period will be made available to the public and considered prior to publication of the Final Sale Notice (FSN).

The end of the comment period is also the deadline for the submission of qualification materials. All bidders interested in participating in the lease sale must have submitted all such qualification materials by the end of the 60-day comment period for this notice. All qualification materials must be postmarked no later than February 1, 2013.

ADDRESSES: Potential auction participants, Federal, state, and local government agencies, tribal governments, and other interested parties are requested to submit their written comments on the PSN in one of the following ways:

1. *Electronically: http://www.regulations.gov.* In the entry titled ''Enter Keyword or ID,'' enter BOEM–2012–0033 then click ''search.'' Follow the instructions to submit public comments.

2. *Written Comments:* In written form, delivered by hand or by mail, enclosed in an envelope labeled ''Comments on Virginia PSN'' to: Office of Renewable Energy Programs, Bureau of Ocean Energy Management, 381 Elden Street, HM 1328, Herndon, Virginia 20170.

3. *Qualifications Materials:* Those submitting qualifications packages should contact Erin Trager, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320, or *erin.trager@boem.gov.*

If you wish to protect the confidentiality of your nominations or comments, clearly mark the relevant sections and request that BOEM treat them as confidential. Please label privileged or confidential information with the caption, ''Contains Confidential Information'' and consider submitting such information as a separate attachment. Treatment of confidential information is addressed in the section of this PSN entitled ''Protection of Privileged or Confidential Information.'' Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

FOR FURTHER INFORMATION CONTACT: Erin Trager, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, (703) 787–1320 or *erin.trager@boem.gov.*

Authority: This PSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (''the Act''), as amended by section 388 of the Energy Policy Act of 2005 (EPAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 & 585.216.

Background: The proposed lease area is the same as the area described in the Virginia Call for Information and Nominations (Call), which was published in the **Federal Register** on February 3, 2012. Additional information about the proposed lease area is provided in the Call (77 FR 5545).

On February 3, 2012, BOEM published the Notice of Availability (NOA) (77 FR 5560) for the final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore New Jersey, Delaware, Maryland, and Virginia. Consultations ran concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). The *Commercial Wind Lease Issuance and Site Characterization Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia Environmental Assessment* (Regional EA) can be found at: *http://www.boem.gov/Renewable-Energy-Program/Smart-from-the-Start/Index.aspx.*

The proposed lease area identified in this PSN matches the Virginia Wind Energy Area (WEA) described in the preferred alternative in the Regional EA. Additional environmental documentation will be prepared upon receipt of plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

Potential bidders should be aware of two unsolicited nominations under consideration by BOEM, situated within or near the Virginia WEA. Additional information is provided below.

Atlantic Grid Holdings LLC (ROW) Grant Request: On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a ROW grant. Following publication of a notice to determine competitive interest in the grant area and a 60-day public comment period, BOEM published its determination of no competitive interest on May 15, 2012 (77 FR 28620). The nomination and associated notices can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx.*

Virginia Department of Mines, Minerals, and Energy (DMME) Research Lease Request: On June 1, 2012, the Commonwealth of Virginia (DMME) submitted an unsolicited nomination for a research lease under 30 CFR 585.238 for the siting of two meteorological ocean and environmental monitoring platforms. The nomination can be found at: *http://www.boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

Financial Terms and Conditions: This section provides an overview of the basic annual payments required of the Lessee that will be fully described in the lease.

Rent: The first year's rent payment for the entire leased area is due within 45 calendar days of the date the winning bidder receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the lease Effective Date until commercial operations on the lease commence, i.e., when the generation of electricity begins. The annual rental rate will be $3.00 per acre applicable to the entire leased area. For example, for a lease the size of 112,799 acres, the amount of rent payment will be $338,397 per year. The Lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) describing the project easement. Annual rent for a project easement, 200-feet wide and centered on the transmission cable, is $70.00 per statute mile. For any additional acreage required, the Lessee must also pay the greater of $5.00 per acre per year or $450.00 per year.

Operating Fee: The initial annual operating fee is prorated and due within 45 calendar days after the commencement of commercial operations on the lease, and subsequent payments are due on or before each Lease Anniversary annually thereafter. The annual operating fee payment is calculated by multiplying an operating fee rate by the imputed wholesale market value of the projected electric power production. For the purposes of this calculation, the imputed market

value is the product of the project's annual nameplate capacity, the total number of hours in the year (8,760), an annual capacity factor, and an historical, annual average regional wholesale power price index.

Operating Fee Rate: The operating fee rate is 0.02 through the 8th year of commercial operations on the lease. Starting in the 9th year of commercial operations, the operating fee rate is 0.04 through the remaining term of the lease.

Nameplate Capacity: The nameplate capacity at the start of each year of commercial operations on the lease as specified in the COP will be used to accommodate installation schedules or repowering.

Capacity Factor: The capacity factor for the first eight full years of commercial operations on the lease is set to 0.4 to allow for three years of installation and testing followed by five years at full availability. At the end of the 8th full year, the capacity factor will be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity factor will be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

Wholesale Power Price Index: The price is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast—PJM West power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual *State of the Markets Report* with specific reference to the summary entitled ''Electric Market Overview: Regional Spot Prices.''

Financial Assurance: BOEM will base the amounts of all SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. The amount of supplemental and decommissioning financial assurance requirements is determined on a case-by-case basis. The amount of financial assurance required to meet all lease obligations includes:

- The projected amount of rent and other payments due to the Government over the next 12 months;
- Any past due rent and other payments;
- Other monetary obligations (e.g., fines, liens); and
- The estimated cost of facility decommissioning.

Prior to lease issuance the Lessee must provide: (1) An initial lease-specific bond or other approved means of meeting the Lessor's initial financial assurance requirements in the amount of $100,000; and (2) a supplemental bond or other approved means of meeting the Lessor's supplemental financial assurance requirements in the amount of $338,397 to guarantee lease obligations from rental payments due to the Government over the first 12 months of the lease. Additional financial assurances will be required to address decommissioning, operating fee, and other obligations as the lease progresses.

The financial terms can be found in Addendum ''B'' of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

Place and Time: The auction will be held online. The time that the auction will be held will be published in the FSN. The date has not been finalized at this time, but will be no earlier than 30 days after publication of the FSN in the **Federal Register**.

Public Seminar: BOEM will host a public seminar to introduce potential bidders and other stakeholders to the auction format provided in the PSN, explain the auction rules, and demonstrate the auction process through meaningful examples. The time and place of the seminar will be announced by BOEM and published on the BOEM Web site. No registration or RSVP is required to attend.

Mock Auction: BOEM will host a mock auction to educate bidders about the procedures to be employed, and answer questions. The mock auction will take place between the publication of the FSN in the **Federal Register** and the date of the auction. Following publication of the FSN in the **Federal Register**, details of the mock auction will be distributed to those eligible to participate in the auction. All bidders that intend to participate in the auction are strongly encouraged to participate in the mock auction.

Bid Deposit and Minimum Bid: A bid deposit is an advance cash deposit submitted to BOEM. No later than 14 calendar days following publication of the FSN, each bidder must have submitted a bid deposit (i.e., minimum bid) of at least $5.00 per acre, or fraction thereof, offered for sale. Approximately 112,799 acres will be offered for sale in this auction. Therefore, the minimum bid deposit for any participant in this auction is $563,995. Any bidder that fails to submit the bid deposit by the deadline described herein may be prevented by BOEM from participating in the auction. Bid deposits will be accepted online via *pay.gov.*

Following publication of the FSN, each bidder must fill out the Bidder's Financial Form included in the FSN. BOEM has made a copy of the proposed form available with this notice on its Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.* This form requests that bidders designate an email address, which bidders should use to create an account in *pay.gov.* After establishing the pay.gov account, bidders may use the Bid Deposit Form on the *pay.gov* Web site to leave a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds the bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder.

Area Offered for Leasing: The proposed lease area offshore Virginia contains 19 whole OCS blocks and 13 sub-blocks. The western edge of the proposed lease area is approximately 23.5 nautical miles (nmi) from the Virginia Beach coastline, and extends to an eastern edge that is approximately 36.5 nmi from the same location. The longest north/south portion is approximately 10.5 nmi in length and the longest east/west portion is approximately 13 nmi in length. The entire area is approximately 112,799 acres, or 45,648 hectares. A description of the lease area and lease activities can be found in Addendum ''A'' of the proposed lease, which BOEM has made available with this notice on its Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

Map of the Area Offered for Leasing: A map of the area and a table of the boundary coordinates in X, Y (eastings, northings) UTM Zone 18, NAD83 Datum and geographic X, Y (longitude, latitude), NAD83 Datum can be found at the following URL: *http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.*

A large scale map of this area showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787–1300, Fax: (703) 787–1708.

Area Offered as a Single Lease: The area available for sale will be auctioned as a single lease. One lease will be issued pursuant to this lease sale.

BOEM has decided to auction the area as a single zone resulting in a single lease in order to take advantage of the simplicity of this type of sale, the importance of which was highlighted by comments received in response to the Auction Format Information Request (76 FR 76174). Feedback from a member of the BOEM Virginia Renewable Energy Task Force suggested that offering the area in two zones could attract lower electricity prices for offshore wind generation in the event two different developers won different zones. However, splitting the area into two zones would not have prevented a single developer from winning both zones. Other Task Force members have endorsed the proposed single zone approach to facilitate potential phased development. If additional relevant comments regarding the auction format are submitted to BOEM in response to this PSN, BOEM will consider them.

Withdrawal of Blocks: BOEM reserves the right to withdraw areas from this lease sale prior to the execution of the lease.

Lease Terms and Conditions: Proposed lease terms and conditions for an OCS commercial wind lease in the Virginia WEA have been included in Addendum ''C'' of the proposed lease. BOEM reserves the right to apply additional terms and conditions that are consistent with the terms of the lease to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. The proposed lease, including Addendum ''C'', is available on BOEM's Web site at: *http://boem.gov/Renewable-Energy-Program/State-Activities/Virginia.aspx.* The proposed lease consists of an instrument with 18 sections and the following five attachments:

Addendum ''A'' (Description of Leased Area and Lease Activities);

Addendum ''B'' (Lease Term and Financial Schedule);

Addendum ''C'' (Lease Specific Terms, Conditions, and Stipulations);

Addendum ''D'' (Project Easement);

Addendum ''E'' (Rent Schedule); and

Appendix A (High Resolution Geophysical Surveys and Analysis for the Identification or Reporting of Archaeological Resources).

Addenda ''A'', ''B'', and ''C'' provide detailed descriptions of lease terms and conditions. Addenda ''D'' and ''E'' will be completed at the time of COP approval.

After considering comments on the PSN and these proposed provisions, BOEM will publish final lease terms and conditions in a FSN.

The lease form included as part of this proposed lease has been updated since its publication on February 3, 2012. A discussion of specific changes to the lease form is available separately on BOEM's Web site at: *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx#Lease_Forms.*

Plans: Pursuant to 30 CFR 585.601, the leaseholder must submit a SAP within six months of lease issuance. If the leaseholder intends to continue its commercial lease with an operations term, the leaseholder must submit a COP at least six months before the end of the site assessment term.

Pursuant to 30 CFR 585.629, a leaseholder may request in its COP to develop its commercial lease in phases. If a leaseholder requests, and BOEM approves, phased development, this approval will not affect the length of the preliminary, site assessment, or commercial terms offered under the lease. The COP must describe in sufficient detail the activities proposed for all phases of commercial development, including a schedule detailing the proposed timelines for phased development. Further, the COP must include the results of all site characterization surveys, as described in 30 CFR 585.626(a), necessary to support each phase of commercial development. The requirements of the SAP remain the same as they would under a non-phased development scenario, and must meet the requirements provided in the regulatory provisions in 30 CFR 585.605–613 for the full commercial lease area.

Qualifications—Who May Bid: Entities wishing to participate in the lease sale must be legally, technically, and financially qualified under BOEM's regulations at 30 CFR 585.106–107. Any potential bidder that has not already submitted a complete qualification package must do so by the end of the comment period of this PSN. To be eligible to participate in the auction, each potential bidder must be legally, technically and financially qualified by the time the FSN for this sale is published. Please note that technical and financial qualifications are project specific; it is not sufficient to have been technically and financially qualified to pursue a project offshore another state.

Guidance and examples of the appropriate documentation demonstrating your legal qualifications can be found in Chapter 2 and Appendix B of *Guidelines for the Minerals Management Service Renewable Energy Framework,* available on BOEM's Web site at *http://www.boem.gov/Renewable-Energy-Program/Regulatory-Information/Index.aspx.* Guidance regarding how you may demonstrate your technical and financial qualifications is provided in a document entitled, *Qualification Guidelines to Acquire and Hold Renewable Energy Leases and Grants and Alternate Use Grants on the U.S. Outer Continental Shelf.* (*http://boem.gov/Renewable-Energy-Program/Regulatory-Information/QualificationGuidelines-pdf.aspx*). It is strongly recommended that you refer to this guidance before submitting your materials as the guidance has been updated recently. Documentation you submit to demonstrate your legal, technical, and financial qualifications must be provided to BOEM in both paper and electronic formats. BOEM considers an Adobe PDF file stored on a compact disc (CD) to be an acceptable format for submitting an electronic copy. In your qualification materials, provide a general description of the project you would like to construct on the lease area sought in this sale, including estimates of the project area and total nameplate capacity of the proposed facilities.

Please note that it may take a number of weeks for you to establish your legal, technical, and financial qualifications. We advise potential bidders planning to participate in a sale to establish their qualifications promptly. It is not uncommon for BOEM to request additional materials establishing qualifications following an initial review of the qualifications package. Any potential bidder whose qualification package is incomplete at the time the FSN for this sale is published in the **Federal Register**, will be found to have failed to establish its qualifications to participate in the sale, and, therefore, will be unable to participate in the sale.

Auction Procedures: The sale is being conducted using an online bidding system and follows an ''ascending clock'' auction format. In this format, BOEM sets an initial asking or ''clock'' price for the single lease being offered, and increases that price incrementally in subsequent rounds until no more than a single active bidder remains in the auction. During each round, active bidders may either (1) submit an active bid indicating that they are interested in acquiring the lease at the stated auction price or (2) exit the auction.

A bidder remains active as long as it continues to meet BOEM's asking price associated with ensuing rounds. If more than one active bid is received in a round, BOEM increases the asking price incrementally and conducts another auction round. Between rounds, active

bidders are informed about the number of bids submitted in the previous round. Additional auction rounds occur as long as two or more bidders continue to submit active bids for the lease in each round. The auction concludes at the end of the round in which the number of active bids received falls to one or zero.

Bidders exiting the auction are allowed to submit an exit bid at an offer price greater than the clock price in the previous round and less than the incremented clock price in the current round. Once a bidder exits the auction, either by submitting an exit bid or by failing to submit an active bid, it will no longer be allowed to submit bids in any subsequent round. If a bidder leaves the auction without submitting an exit bid, BOEM will treat the last round's clock price as the bidder's exit bid in the current round. Exit bids are not considered to be active bids for purpose of determining whether to conclude the auction.

The lease is awarded to the sole bidder submitting an active bid in the final round of the auction at the final round's stated auction price. If an active bid is not received in the final round, the lease is awarded to the bidder offering the highest exit bid price for the lease. If there is a tie at the highest exit bid price offered, the winning bidder is chosen by a random draw.

Specific details about certain administrative aspects of the auction sale process will be described in the FSN. These aspects include how the clock price will increase in various stages of the auction, the duration of each bidding round, the amount of time provided between rounds, the number of rounds expected per day, and the days on which the auction process will continue, if necessary, beyond the first day. Bidders may expect multiple rounds per day to occur during normal business hours. The amount of time allowed for bidders to enter bids and the time between rounds may be reduced as the auction progresses based on the patterns of bidding to increase the pace of the auction. Bidders will be notified of the round schedule at the start of each day of the auction.

Acceptance, Rejection or Return of Bids: BOEM reserves the right and authority to reject any and all bids. In any case, no bid will be accepted, and no lease will be awarded to any bidder, unless (1) the bidder has complied with all requirements of the FSN and applicable regulations; (2) the bid is the highest valid bid; (3) and the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not conform to the requirements of the FSN, the Act, and other applicable regulations may be returned to the bidder submitting that bid by the Program Manager of BOEM's Office of Renewable Energy Programs and not considered for acceptance. The winning bid will be evaluated for its conformance with the requirements and rules of the auction, including, but not limited to, applicable bidder qualifications, bid deposits, and the integrity of the bidding process.

Process for Issuing the Lease: If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease form to the winning bidder. Within 10 business days after receiving the lease copies, a winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance as required under 30 CFR 585.515–537; and
3. Pay the balance of the bonus bid (bid amount less the bid deposit).

If a winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if a winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

BOEM will not execute a lease until the three requirements above have been satisfied, BOEM has accepted the winning bidder's financial assurance, and BOEM has processed the winning bidder's payment. Please note the required timelines for providing financial assurance. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 calendar days of the date that the Lessee receives the lease copies, the Lessee must pay the first year's rent.

Anti-Competitive Behavior: In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent anticompetitive behavior in the marketplace. Compliance with the BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will ''allow the Attorney General, in consultation with the Federal Trade Commission, thirty days to review the results of the lease sale.''

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid pursuant to its regulations at 30 CFR 585.222(a)(2).

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid in a particular location;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.
- If awarding a lease would otherwise create a situation inconsistent with the antitrust laws (*e.g.,* heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see *http://www.justice.gov/atr/public/business-resources.html,* or consult counsel.

Post-Auction Certification: In addition to the steps described in the section entitled, ''Process for Issuing the Lease,'' following the lease sale, each winning bidder will be required to certify the following in accordance with 18 U.S.C. 1001 (Fraud and False Statements):

> I certify that [name of qualified bidder] did not engage in anticompetitive bidding behavior in violation of Federal law, BOEM's regulations, or auction procedures.
>
> I certify that this bid is made in a good faith effort to win a lease to engage in the development of renewable energy resources.

Non-Procurement Debarment and Suspension Regulations: Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy Lessee must comply with the U.S. Department of the Interior's non-procurement debarment and suspension regulations at 2 CFR Parts 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the Lessee does business as it relates to this lease by including this term as a condition in their contracts and other transactions.

Final Sale Notice: BOEM will consider comments received or postmarked during the PSN comment period in preparing a FSN that will provide the final details concerning the offering and issuance of an OCS commercial wind energy lease in the Virginia WEA. The FSN will be published in the **Federal Register** at least 30 days before the lease sale is conducted and will provide the date and time of the auction.

Force Majeure: The Program Manager of BOEM's Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN in case of a force majeure event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to, natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders should call 703–787–1300 or access the BOEM Web site at: *http://www.boem.gov/Renewable-Energy-Program/index.aspx.*

Appeals: The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225,

(a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons and refund any money deposited with your bid, without interest.

(b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing adverse final decisions with respect to lease sales are described in 30 CFR 585.118(c).

Protection of Privileged or Confidential Information

Freedom of Information Act: BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information ''Contains Confidential Information'' and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Section 304 of the National Historic Preservation Act (16 U.S.C. 470w–3(a)):

BOEM is required, after consultation with the Secretary, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources or impede the use of a traditional religious site by practitioners. Tribal entities and other interested parties should designate information that they wish to be held as confidential.

Dated: November 27, 2012.

Tommy P. Beaudreau,

Director, Bureau of Ocean Energy Management.

[FR Doc. 2012–29097 Filed 11–30–12; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–909 (Second Review)]

Low Enriched Uranium From France; Institution of a Five-Year Review Concerning the Antidumping Duty Order on Low Enriched Uranium From France

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on low enriched uranium from France would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 2, 2013. Comments on the adequacy of responses may be filed with the Commission by February 15, 2013. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On February 13, 2002, the Department of Commerce issued an antidumping duty order on imports of low enriched uranium from France (67 FR 6680). Following the five-year reviews by Commerce and the Commission, effective January 3, 2008, Commerce issued a continuation of the antidumping duty order on imports of low enriched uranium from France (73 FR 449). The Commission is now conducting a second review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–279, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is France.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination and its full first five-year review determination, the Commission determined that there was one *Domestic Like Product* consisting of all low enriched uranium corresponding to Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its full first five-year review determination, the Commission determined that there was a single *Domestic Industry* consisting of the sole domestic producer of low enriched uranium at that time, USEC Inc. The Commission also considered during its full first five-year review determination that the *Domestic Industry* would include Louisiana energy Services' National Enrichment Facility within a reasonably foreseeable time.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 2, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 15, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be provided in response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the

Subject Merchandise, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2006.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in separative work units (''SWUs'') and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in separative work units (''SWUs'') and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in separative work units (''SWUs'') and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2006, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree

with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 26, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–28992 Filed 11–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Third Review)]

Fresh Tomatoes From Mexico: Institution of a Five-Year Review Concerning the Suspended Investigation on Fresh Tomatoes From Mexico

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether termination of the suspended investigation on fresh tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is January 2, 2013. Comments on the adequacy of responses may be filed with the Commission by February 15, 2013. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* December 3, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On November 1, 1996, the Department of Commerce (''Commerce'') suspended an antidumping duty investigation on imports of fresh tomatoes from Mexico (61 FR 56618). On October 1, 2001, Commerce initiated its first five-year review of the suspended investigation (66 FR 49926). On the basis of the withdrawal from the suspension agreement by Mexican tomato growers which accounted for a significant percentage of all fresh tomatoes imported into the United States from Mexico, Commerce terminated the suspension agreement, terminated the first five-year review, and resumed the antidumping investigation, effective July 30, 2002 (67 FR 50858, August 6, 2002). On December 16, 2002, Commerce suspended the antidumping duty investigation on imports of fresh tomatoes from Mexico (67 FR 77044). On November 1, 2007, Commerce initiated its second five-year review of the suspended investigation (72 FR 61861). Once again, based on the withdrawal from the suspension agreement by Mexican tomato growers which accounted for a significant percentage of all fresh tomatoes imported into the United States from Mexico, Commerce terminated the suspension agreement, terminated the first five-year review, and resumed the antidumping investigation, effective January 18, 2008 (73 FR 2887, January 16, 2008). The antidumping investigation was again suspended effective January 22, 2008 (73 FR 4831, January 28, 2008). The Commission is now instituting a third five-year review to determine whether termination of the suspended investigation would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Mexico.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* For the purpose of the preliminary investigation, the Commission defined the *Domestic Like Product* as all fresh market tomatoes. Fresh market tomatoes do not include processing tomatoes.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. For the purpose of the preliminary investigation, the Commission defined the *Domestic Industry* as growers and packers of fresh tomatoes.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 13–5–280, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

underlying original investigation. The Commission's designated agency ethics official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is January 2, 2013. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is February 15, 2013. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to this Notice of Institution: As used below, the term ''firm''includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the termination of the suspended investigation on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2006.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (*i.e.,* the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2006, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: November 26, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–28986 Filed 11–30–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–873–875, 878–880, and 882 (Second Review)]

Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine; Scheduling of Full Five-Year Reviews Concerning the Antidumping Duty Orders on Steel Concrete Reinforcing Bar From Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on steel concrete reinforcing bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* November 27, 2012.

FOR FURTHER INFORMATION CONTACT: Joanna Lo (202–205–1888), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for

these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. On October 5, 2012, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that a full reviews pursuant to section 751(c)(5) of the Act should proceed (77 F.R. 64127, October 18, 2012). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the reviews will be placed in the nonpublic record on April 5, 2013, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on April 25, 2013, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 19, 2013. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 23, 2013, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions. Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is April 16, 2013. Parties may also provide written testimony in connection with their presentation at the hearing, as provided in sections 207.24 and 207.66(b) of the Commission's rules, and may file posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is May 6, 2013. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before May 6, 2013. On June 3, 2013, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 5, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: November 27, 2012.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2012–29068 Filed 11–30–12; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

On November 27, 2012, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Northern District of Illinois in the lawsuit entitled *United States* v. *Capital Tax Corporation, et al.,* Civil Action No. 04-cv-4138.

In the original complaint filed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in 2004 and amended complaints filed in 2005 and 2010, the United States sought reimbursement of response costs for costs incurred by the United States at the National Lacquer and Paint Superfund Site in Chicago, Illinois and penalties and punitive damages for failure to comply with EPA administrative orders related to the Site. The consent decree lodged on November 26, 2012 resolves the complaint by providing for reimbursement of response costs of $325,000.

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. *Capital Tax Corporation, et al.,* D.J. Ref. No. 90–11–2–08218. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $4.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–29056 Filed 11–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On November 20, 2012, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Mississippi in the lawsuit entitled *United States and State of Mississippi* v. *City of Jackson, Mississippi,* Civil Action No. 3:12-cv-790 TSL.

The proposed Consent Decree would resolve certain claims under Sections 301, 309, and 402 of the Clean Water Act, 33 U.S.C. 1251, et seq. and under the Mississippi Air and Water Pollution Control Law (''MAWPCL'') (Miss. Code Ann. §§ 49–17–1 through 49–17–45), against the City of Jackson, Mississippi (''City'' or ''Jackson''), through the performance of injunctive measures, the payment of a civil penalty, and the performance of a Supplemental Environmental Project (''SEP''). The United States and the State of Mississippi allege that the City is liable as a person who has discharged a pollutant from a point source to navigable waters of the United State without a permit and, in some cases, in excess of permit limitations.

The proposed Consent Decree would resolve the liability of Jackson for the violations alleged in the complaint filed in this matter. To resolve these claims, Jackson would perform the injunctive measures as described in the proposed Consent Decree. More specifically, the proposed Consent Decree will require Jackson to implement comprehensive injunctive relief to assess and rehabilitate a majority of its collection system within approximately 18 years to eliminate wet weather/capacity-related Sanitary Sewer Overflows (''SSOs'') and develop and implement specific management, operation, and maintenance (''MOM'') programs that EPA determined were missing or deficient. The goal of the injunctive relief required under the proposed Consent Decree is to ensure Jackson's compliance with water quality standards and the Clean Water Act.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States & State of Mississippi* v. *City of Jackson, Mississippi,* D.J. Ref. No. 90–5–1–1–09841. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $95.75 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits, the cost is $26.50.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–29070 Filed 11–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Proposed Settlement Agreement Under the National Marine Sanctuaries Act

Notice is hereby given that the U.S. Department of Justice, on behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, has reached a Settlement Agreement with Dennis W. McGuire regarding claims for response costs and damages under the National Marine Sanctuaries Act, 16 U.S.C. 1443(a). The Florida Department of Environmental Protection, on behalf of the Board of Trustees of the Internal Improvement Trust Fund of the State of Florida, joins the settlement and resolves its claims under Section 253.04, Florida Statutes.

The United States' claims arise from the grounding of the vessel M/V Freedom in the Florida Keys National Marine Sanctuary on July 12, 2009. The

grounding injured Sanctuary resources. Pursuant to the Agreement, the United States will recover a total of $540,000.

The publication of this notice opens a period for public comment on the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to the Settlement Agreement between the United States and Dennis McGuire, DJ No. 90–5–1–1–10016. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, D.C. 20044–7611.

During the public comment period, the proposed Settlement Agreement may be examined and downloaded at this Justice Department Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Settlement Agreement upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $2.25 (25 cents per page reproduction cost) payable to the United States Treasury.

During the public comment period, the proposed Settlement Agreement may also be examined at: Florida Keys National Marine Sanctuary, Nancy Foster Florida Keys Environmental Complex, Main Office, 33 East Quay Road, Key West, FL 33040.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2012–29071 Filed 11–30–12; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employment and Training Administration Financial Report

ACTION: Notice.

SUMMARY: On November 30, 2012, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Employment and Training Administration Financial Report,'' (Forms ETA–9130, ETA–9130–A, and ETA–9130–B) to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before December 31, 2012.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain*, as of December 1, 2012, or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: Regulations 29 CFR 95.52 and 97.41 codify ETA requirements for certain financial reporting. Various statutes, regulations, and/or individual grant agreements specify administrative cost limitation requirements. The associated reporting requirements are met with a line item for total administrative expenditures, providing a mechanism for assessing compliance with the requirements. The ETA uses the data collected to assess the effectiveness of ETA programs and to monitor and analyze the financial activity of its grantees. Pre-designed software is provided to the grantees to reflect the requirements of Form ETA–9130, so that required data is reported directly into the E-Grants Grantee Reporting System by grant recipients.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0461. The current approval is scheduled to expire on November 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 29, 2012 (77 FR 31641).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section by December 31, 2012. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0461. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Employment and Training Administration Financial Report.

OMB Control Number: 1205–0461.

Affected Public: Private Sector—not for profit institutions—and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 848.

Total Estimated Number of Responses: 3,392.

Total Estimated Annual Burden Hours: 1,696.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 26, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–29047 Filed 11–30–12; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Unemployment Insurance Random Audit of Emergency Unemployment Compensation 2008 Claimants

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Unemployment Insurance Random Audit of Emergency Unemployment Compensation 2008 Claimants,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before January 2, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: The Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, compels States to perform random audits of the work search requirements for all claimants in the Emergency Unemployment Compensation Program of 2008. In addition to the random audits, the collection of data documenting State audit activities and results is required. This information collection is necessary for oversight of the program and is also authorized under Social Security Act section 303(a)(6), 42 U.S.C. 503(a)(6).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0495. The current approval is scheduled to expire on November 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 22, 2012 (77 FR 37713).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0495. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: Unemployment Insurance Random Audit of Emergency Unemployment Compensation 2008 Claimants.

OMB Control Number: 1205–0495.

Affected Public: Individuals or households and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 475,703.

Total Estimated Number of Responses: 951,565.

Total Estimated Annual Burden Hours: 692,863.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 19, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–29064 Filed 11–30–12; 8:45 a.m.]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Administration of Applications and Grants for Self Employment Assistance Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''State Administration of Applications and Grants for Self Employment Assistance Program,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork

Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before January 2, 2013.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–ETA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503, Fax: 202–395–6881 (this is not a toll-free number), email: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This information collection addresses operational requirements needed to comply with reporting requirements recently revised by Middle Class Tax Relief and Job Creation Act, Public Law 112–96, sections 2181–2183. That Act has permanently changed existing self employment assistance programs and provides for grants to help States expand activities for current or prospective programs. The statutory provisions provide the basis for the ETA's operational guidance, administrative requirements, and reporting and financing framework for States.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1205–0096. The current approval is scheduled to expire on November 30, 2012; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on June 22, 2012 (77 FR 37715).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1205–0496. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Title of Collection: State Administration of Applications and Grants for Self Employment Assistance Program.

OMB Control Number: 1205–0496.

Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Respondents: 26.

Total Estimated Number of Responses: 208.

Total Estimated Annual Burden Hours: 8,060.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 19, 2012.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2012–29063 Filed 11–30–12; 8:45 a.m.]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–81,475]

Huntington Foam LLC, Fort Smith, AR; Notice of Revised Determination on Reconsideration

On August 8, 2012, the Department of Labor issued a Notice of Affirmative Determination Regarding Application for Reconsideration applicable to workers and former workers of Huntington Foam LLC, Fort Smith, Arkansas (subject firm). The workers are engaged in activities related to the production of expanded polystyrene shape molded parts (packaging and internal components for side-by-side refrigerators). The worker group does not include any on-site leased workers.

Workers of the subject firm was previously certified eligible to apply for Trade Adjustment Assistance (TAA) under TA–W–73,292 (certification expired on May 24, 2012).

Section 222(a)(1) has been met because a significant number or proportion of the workers in the subject firm have become totally or partially separated, or are threatened with such separation.

Based on information provided during the reconsideration investigation, the Department determines that worker separations at the subject firm are related to a shift in production of expanded polystyrene shape molded parts (or like or directly competitive articles) to a foreign country and that the shift in production contributed importantly to worker separations at the subject firm.

Conclusion

After careful review of the additional facts obtained during the reconsideration investigation, I determine that workers of Huntington Foam LLC, Fort Smith, Arkansas, who were engaged in employment related to the production of expanded polystyrene shape molded parts, meet the worker group certification criteria under Section 222(a) of the Act, 19 U.S.C. 2272(a). In accordance with Section 223 of the Act, 19 U.S.C. 2273, I make the following certification:

All workers of Huntington Foam LLC, Fort Smith, Arkansas who became totally or partially separated from employment on or after May 25, 2012, through two years from the date of certification, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for

adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 9th day of November, 2012.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–29059 Filed 11–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period of November 5, 2012 through November 9, 2012.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) Imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) Imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) Imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) Imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) The increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) A significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) There has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) There has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) The shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) A significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The public agency has acquired from a foreign country services like or directly competitive with services which are supplied by such agency; and

(3) The acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) A significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) The workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) An affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) An affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) An affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) The petition is filed during the 1-year period beginning on the date on which—

(A) A summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) Notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) The workers have become totally or partially separated from the workers' firm within—

(A) The 1-year period described in paragraph (2); or

(B) Notwithstanding section 223(b)(1), the 1- year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,892	Basileus Company	Manlius, NY	August 14, 2011.
81,937	Clearon Corporation, ICL–IP Division, ICL (Israel Chemicals Limited).	South Charleston, WV	September 4, 2011.
81,944	JMC Steel Group, Wheatland Tube Company	Wheatland, PA	September 5, 2011.
81,944A	JMC Steel Group, Wheatland Tube Company	Sharon, PA	September 5, 2011.
81,956	Exide Technologies, Transportation Division	Bristol, TN	September 7, 2011.
82,000	Parker Hannifin Corporation, Racor Division, Aerotek and Ambassador Personnel.	Beaufort, SC	September 24, 2011.
82,026	FesslerUSA	Orwigsburg, PA	October 1, 2011.
82,026A	Sew Mohr, An Affiliate of FesslerUSA	Reading, PA	October 1, 2011.
82,026B	Key Manufacturing Textiles, Inc., An Affiliate of FesslerUSA	Allentown, PA	October 1, 2011.
82,027	GreenVolts, Inc., Snap Design, Appsun, Delta General Corporation, etc.	Fremont, CA	October 1, 2011.
82,043	Advantage Transcription Services	Valencia, CA	September 27, 2011.
82,084	Greene Brothers Furniture Company	North Wilkesboro, NC	September 20, 2011.
82,117	Simple Way Limited Partnership, Doing Business as The Rosary Shop.	McMinnville, OR	October 31, 2011.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
81,839	Swisher International, Inc., Spherion	Jacksonville, FL	July 31, 2011.
81,967	OMCO Machining Concepts, Inc	Winchester, IN	August 13, 2011.
81,988	Georgia-Pacific Consumer Products LP, Day Street Location, Georgia-Pacific, Encadria Staffing.	Green Bay, WI	July 13, 2012.
82,060	Rolls-Royce Energy Systems, Inc., Rolls-Royce Holdings PLC, Belcan Staffing Solutions.	Mount Vernon, OH	September 26, 2011.
82,066	Gatehouse Media MA I, Inc., Creative Services Division	Framingham, MA	October 9, 2011.
82,066A	Gatehouse Media MA I, Inc., Creative Services Division	Marshfield, MA	October 9, 2011.
82,071	Covidien LP, Medical Supplies Segment, SharpSafety Division, Kelly Services, etc.	Commerce, TX	October 10, 2011.
82,097	Tholstrup Cheese USA Inc	Norton Shores, MI	October 18, 2011.
82,101	British Telecom Americas, British Telecom Operate	EL Segundo, CA	October 15, 2011.
82,102	PPD Development, LLC	Morrisville, NC	October 17, 2011.
82,102A	PPD Development, LLC	Austin, TX	October 17, 2011.
82,106	Xyratex International, Inc., Xyratex, Ltd., Manpower, Inc	West Sacramento, CA	October 22, 2011.
82,122	Straits Steel and Wire Company, Wire Production Division, SSW Holding Company, Inc.	Ludington, MI	October 31, 2011.

The following certifications have been issued. The requirements of Section 222(c) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,065	Mersen USA St. Marys-PA Corporation, High Temperature Division, Mersen USA BN Corporation.	St. Marys, PA	September 24, 2011.

The following certifications have been issued. The requirements of Section 222(c) (downstream producer for a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,030	KT-Grant, Inc., RG Steel Sparrows Point, LLC	Export, PA	September 28, 2011.

The following certifications have been issued. The requirements of Section 222(f) (firms identified by the International Trade Commission) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
82,040	3V Corporation, Accustaff	Georgetown, SC	May 8, 2011.
82,041	Treasure Coast Fasteners, Advantage HR	Fort Pierce, FL	May 8, 2011.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs (a)(2)(A)(i) (decline in sales or production, or both) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,989	Siemens Energy, Inc, Renewables (Wind Power) Division	Fort Madison, IA	

The investigation revealed that the criteria under paragraphs (a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
81,740	Graham Packaging Plastic Products, Inc., Graham Packaging Company, Inc.	Vandalia, IL	
81,958	Comair, Inc	Erlanger, KY	
81,959	International Union of Operating Engineers Local 37	Baltimore, MD	

Determinations Terminating Investigations of Petitions for Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

The following determinations terminating investigations were issued because the petitioning groups of workers are covered by active certifications. Consequently, further investigation in these cases would serve no purpose since the petitioning group of workers cannot be covered by more than one certification at a time.

TA–W No.	Subject firm	Location	Impact date
82,038	Verso Paper Corporation, Securitas Security, Manpower, Banick, Beck, Bell, etc.	Sartell, MN	November 9, 2012.

I hereby certify that the aforementioned determinations were issued during the period of November 5, 2012 through November 9, 2012. These determinations are available on the Department's Web site tradeact/taa/taa search firm.cfm under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Dated: November 14, 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2012–29061 Filed 11–30–12; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 13, 2012.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 13, 2012.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training

Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of November 2012.

Elliott S. Kushner,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX—17 TAA PETITIONS INSTITUTED BETWEEN 11/5/12 AND 11/9/12

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
82127	Esteves Group LLC (Company)	Randleman, NC	11/05/12	10/30/12
82128	Navistar Truck Group, SST Truck Company LLC (State/One-Stop).	Garland, TX	11/05/12	11/02/12
82129	Boise Inc. (Union)	St. Helens, OR	11/05/12	11/02/12
82130	Orion Bus (State/One-Stop)	Oriskany, NY	11/06/12	10/31/12
82131	Newell Operating Company dba Ashland Hardware (Company).	Lowell, IN	11/06/12	11/05/12
82132	Lattice Semiconductor Corporation, Sales, Corp. Marketing, Finance Dept. (Company).	Hillsboro, OR	11/06/12	11/02/12
82133	Hewlett-Packard Co. (State/One-Stop)	Vancouver, WA	11/07/12	11/06/12
82134	United Chemi-Con, Inc. (Company)	Lansing, NC	11/07/12	11/06/12
82135	THOCC@ New Britain General Campus (Company)	New Britain, CT	11/07/12	11/06/12
82136	Peabody Energy (Workers)	Vincennes, IN	11/07/12	11/06/12
82137	Naugatuck Valley Surgical Center (State/One-Stop)	Waterbury, CT	11/08/12	11/06/12
82138	Prudential Financial Services—Annuity Department (Workers).	Dresher, PA	11/09/12	11/07/12
82139	Avery Dennison (Company)	Lenoir, NC	11/09/12	11/08/12
82140	Comcast Cable (Workers)	Livermore, CA	11/09/12	10/01/12
82141	Kontron America (Workers)	Columbia, SC	11/09/12	11/08/12
82142	Axle Tech International (Union)	Oshkosh, WI	11/09/12	11/08/12
82143	Brake Parts, Inc. (Company)	Stanford, KY	11/09/12	11/08/12

[FR Doc. 2012–29060 Filed 11–30–12; 8:45 am]

BILLING CODE 4510–FN–P

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board (MSPB) intends to request approval of a revised information collection from the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 and 3507). The MSPB Appeal Form (MSPB Form 185) has been revised. At this time, the MSPB is requesting public comments on the revised MSPB Form 185, which is available for review on the MSPB's Web site at *http://www.mspb.gov*.

DATES: Written comments must be received on or before February 1, 2013.

ADDRESSES: Submit written comments on the collection of information to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419. Because of possible mail delays, respondents are encouraged to submit comments by email to *mspb@mspb.gov* or by fax to 202–653–7130.

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; email to *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.

Revised Appeal Form 185

The instructions at the beginning of the written appeal form have been streamlined and reorganized, with a focus on more clearly setting forth the Board's review authority; the option to file an appeal electronically; the time limits for filing an appeal; and where to file an appeal. In addition, the Privacy Act Statement and Public Reporting Burden notice have been moved to the end of the form.

Part 1—Appellant and Agency Information: This section remains largely unchanged, apart from the inclusion of some updated language (such as ''cell'' under telephone numbers in box 3). In box 11, ''Hearing,'' the sentence, ''If you choose to have a hearing, the administrative judge will notify you when and where it is to be held[,]'' has been eliminated, due to its potentially misleading character (the right to a hearing is conditional on a finding of jurisdiction). The appellant's certification that ''all of the statements made in this form and any attachments are true, complete, and accurate * * * '' has been moved from box 12, to its own section at the end of the form.

Part 2—Agency Personnel Action or Decision (non-retirement): The introductory language to this section has been altered, reflecting the following change in the overall organization of the form: whereas the current version solicits information about non-retirement actions in this part and then subsequently cites to affirmative defenses to such actions and particular classes of such actions (IRA, USERRA, and VEOA) in two separate sections, the revised form addresses all non-retirement actions and associated claims in Part 2. The present Part 4, which invites appellants to check boxes next to various affirmative defense claims, a frequent source of confusion, has been eliminated. Information regarding such claims, along with the descriptions of IRA, USERRA, and VEOA appeals, currently contained in Part 5, has been placed together in a new Appendix A and referenced at the beginning of this revised section, which provides as follows:

Complete this part if you are appealing a Federal agency personnel action or decision other than a decision addressing your retirement rights or benefits. Certain actions

that might not otherwise be appealable to the Board may be challenged as an individual right of action (IRA) appeal under the Whistleblower Protection Act (WPA) or as an appeal under the Uniformed Services Employment and Reemployment Rights Act (USERRA) or the Veterans Employment Opportunities Act (VEOA). An explanation of these three types of appeals is provided in Appendix A.

* * * * *

and in the new box 16, which provides as follows:

Explain briefly why you think the agency was wrong in taking this action. In challenging such an action, you may choose to allege that the agency engaged in harmful procedural error, committed a prohibited practice, or engaged in one of the other claims listed in Appendix A. Attach the agency's proposal letter, decision letter, and SF–50, if available. Attach additional sheets if necessary (bearing in mind that there will be later opportunities to supplement your filings).

As a result of this change, current boxes 13a, 14, 15, 16, 17, and 18 have been replaced with revised boxes 13, 14, 15, and 16. Current box 19, asking the appellant ''[w]hat action would you like the Board to take in this case [,]'' has been eliminated, as superfluous. Moreover, the language of current box 20 (revised box 17), has been changed to eliminate the request for information about the agency against which any negotiated grievance has been filed (as this agency will almost certainly be the same as the one having taken the personnel action itself). Finally, revised boxes 18 and 19, requesting information related to exhaustion of remedies in IRA and USERRA/VEOA appeals, respectively, replace current boxes 31, 32, and 33.

Part 3—OPM or Agency Retirement Decision: This section remains largely unchanged. Current boxes 26 and 27, requesting information regarding if and when a final retirement decision has been received, have been consolidated into revised box 24. Current box 29, asking the appellant ''[w]hat action would you like the Board to take in this case[,]'' has been eliminated, as superfluous.

Part 4—Designation of Representative: As previously noted, the current Part 4, soliciting information about affirmative defenses, has been eliminated. The revised Part 4 replaces the current Part 6, with some slight changes in language.

Part 5—Certification: As previously noted, the current Part 5, providing information about IRA, USERRA, and VEOA appeals, has been eliminated. The revised Part 5 contains the appellant certification, presently included in Part 1 of the form, along with the Privacy Act Statement and Public Reporting Burden.

Appendix A and B: As previously noted, Appendix A provides information regarding affirmative defenses and IRA, USERRA, and VEOA appeals, as well as the special time limits for filing such appeals, making this material available to those to whom it applies, while otherwise streamlining and simplifying the appeal form itself. Appendix B provides full contact information for each of the Board's regional offices, together with their corresponding geographic areas.

Estimated Reporting Burden

In accordance with the requirements of the Paperwork Reduction Act of 1995, the 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, the 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 the 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, 1208, and 1209	7,150	1	7,150	1.0	7,150

William D. Spencer,

Clerk of the Board.

[FR Doc. 2012–29072 Filed 11–30–12; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (12–104)]

NASA Advisory Council; Science Committee; Planetary Protection Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Protection Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other person's scientific and technical information relevant to program planning.

DATES: Wednesday, December 19, 2012, 9:00 a.m. to 4:30 p.m., and Thursday, December 20, 2012, 8:30 a.m. to 3:00 p.m. Local Time.

ADDRESSES: NASA Headquarters, 300 E Street SW., Room 7H45 and 9H40, respectively, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The meeting will also be available telephonically and by WebEx. Any interested person may call the USA toll free conference call number 800–988–9533, pass code PPS, to participate in this meeting by telephone. The WebEx link is *https://nasa.webex.com/,* the meeting number on December 19 is 994 053 572, password PPS@Dec19; the meeting number on December 20 is 997 808 043,

password PPS@Dec20. The agenda for the meeting includes the following topics:

—Update on NASA Planetary Protection Activities

—Potential Technology Investments to Support Planetary Protection Requirements

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Marian Norris via email at *mnorris@nasa.gov* or by fax at (202) 358–1377. U.S. citizens and green card holders are requested to submit their name and affiliation 3 working days prior to the meeting to Marian Norris.

Susan M. Burch,

Acting Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2012–29119 Filed 11–30–12; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10:00 a.m., Thursday, December 6, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. NCUA's Rules and Regulations, Alternatives to the Use of Credit Ratings.
2. NCUA's Rules and Regulations, Fidelity Bond and Insurance Coverage for Federal Credit Unions.
3. Request from Focus Federal Credit Union to Convert to a Community Charter.
4. Request from The Atlantic Federal Credit Union to Convert to a Community Charter.
5. Temporary Corporate Credit Union Stabilization Fund Budget.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, December 6, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Creditor Claim Appeal. Closed pursuant to exemptions (4) and (6).
2. Termination of Investment Pilot Programs. Closed pursuant to exemption (8).
3. Personnel. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2012–29267 Filed 11–29–12; 4:15 pm]

BILLING CODE 7535–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–21; Order No. 1555]

New International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to enter into an additional Global Reseller Expedited Package Services 3 contract. This document invites public comments on the request and addresses several related procedural steps.

DATES: *Comments are due:* December 6, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Contents of Filing
III. Commission Action
IV. Ordering Paragraphs

I. Introduction

Notice of filing. On November 26, 2012, the Postal Service filed a notice announcing that it is entering into an additional Global Expedited Package Services (GEPS) 3 contract (Contract).[1] The Notice was filed in accordance with 39 CFR 3015.5. Notice at 1. The Postal Service seeks to have the instant Contract included within GEPS 3 product on grounds of functional equivalence to a previously approved baseline agreement. *Id.* at 2.

Background. Customers for GEPS contracts are small- or medium-sized businesses that mail products directly to foreign destinations using Express Mail International, Priority Mail International, or both. *Id.* at 4. The Commission added GEPS 1 to the competitive product list, based on Governors' Decision No. 08–7, by operation of Order No. 86. *Id.* at 1. It later approved the addition of GEPS 3 contracts to the competitive product list as a result of Docket Nos. MC2010–28 and CP2010–71.[2] The Commission designated the contract filed in Docket No. CP2010–71 as the baseline agreement for purposes of establishing the functional equivalency of other agreements proposed for inclusion within the GEPS 3 product. *Id.* at 1–2.

II. Contents of Filing

The filing includes a Notice, along with the following attachments:

- Attachment 1–a redacted copy of the instant contract;
- Attachment 2–a redacted copy of the certification required under 39 CFR 3015.5(c)(2);
- Attachment 3–a redacted copy of Governors' Decision No. 08–7; and
- Attachment 4–an application for non-public treatment of material filed under seal.

The material filed under seal consists of unredacted copies of the contract and supporting financial documents. *Id.* at 2. The Postal Service filed redacted versions of the sealed financial documents in public Excel spreadsheets.

Functional equivalency. The Postal Service asserts that the instant Contract and the baseline contract are functionally equivalent because they share similar cost and market

[1] Notice of United States Postal Service of Filing a Functionally Equivalent Global Expedited Package Services 3 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, November 26, 2012 (Notice).

[2] *See* Docket Nos. MC2010–28 and CP2010–71, Order No. 503, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010.

characteristics. *Id.* at 3. It notes that the pricing formula and classification established in the Governors' Decision No. 08–7 ensure that each GEPS contract meets the criteria of 39 U.S.C. 3633 and related regulations. *Id.* The Postal Service further asserts that the functional terms of the two contracts are the same and the benefits are comparable. *Id.*

The Postal Service states that prices may differ, depending on when an agreement is signed, due to updated costing information. *Id.* at 4. It also identifies other differences in contractual terms, but asserts that the differences do not affect either the fundamental service being offered or the fundamental structure of the contract.[3] *Id.* at 4–6.

Term. The term of the agreement is one calendar year (from the effective date), unless terminated sooner pursuant to contractual provisions. *Id.* Attachment 1 at 7. The effective date is tied to receipt of regulatory approval, but no later than 30 days after such approval. *Id.*

III. Commission Action

The Commission establishes Docket No. CP2013–21 for consideration of matters raised in the Notice. Interested persons may submit comments on whether the Postal Service's contract is consistent with the requirements of 39 CFR 3015.5 and the policies of 39 U.S.C. 3632 and 3633. Comments are due no later than December 6, 2012. The public portions of the Postal Service's filing can be accessed via the Commission's Web site at *http://www.prc.gov.* Information on how to obtain access to nonpublic material appears at 39 CFR 3007.40.

The Commission appoints James F. Callow to represent the interest of the general public (Public Representative) in this case.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–21 for consideration of matters raised in the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission designates James F. Callow to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than December 6, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–29066 Filed 11–30–12; 8:45 am]

BILLING CODE 7710–FW–P

[3] The list includes, among other things, deletion of an article that appears in the baseline contract, the addition of articles, and related renumbering of articles. *See* id. at 4–6.

POSTAL REGULATORY COMMISSION

[Docket No. R2013–1; Order No.1556]

Standard Mail Pricing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning Standard Mail pricing and related matters. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* December 4, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Summary of Proposed Changes to Standard Mail Rates
III. Nonprofit Discounts
IV. Mail Classification Schedule Changes (MCS)
V. Administrative Actions

I. Background

In Order No. 1541, the Commission determined provisionally that, pursuant to 39 CFR 3010.13(j), the planned adjustments do not violate the price cap in 39 U.S.C. 3622(d); are consistent with, or justified by an exception to, the workshare discount limitations in 39 U.S.C. 3622(e); and establish prices that satisfy 39 U.S.C. 3626.[1] In addition, however, the Commission found that the planned Standard Mail Flats rates failed to satisfy the applicable directives set forth in the FY 2010 Annual Compliance Determination (ACD), which were further clarified and reaffirmed in Order No. 1427 and Order No. 1472.[2] Order No. 1541 at 2. Accordingly, the Commission remanded all Standard Mail rates to allow the Postal Service to modify its planned rates to comply with the FY 2010 ACD and applicable statutory standards. In addition, the Commission requested the Postal Service to respond to certain other rate matters, each of which is discussed below.

Pursuant to Order No. 1541, on November 26, 2012, the Postal Service filed revised prices for Standard Mail Flats.[3] It also addressed the miscellaneous rate matters discussed in Order No. 1541.

II. Summary of Proposed Changes to Standard Mail Rates

The revised prices for Standard Mail Flats reflect an above-average increase of 2.617 percent. No other Standard Mail prices were changed. Response at 3.

The following table presents the Postal Service's planned percentage price changes for Standard Mail products.

STANDARD MAIL PRICE CHANGES

Standard mail product	Percent change (%)
Letters	2.610
Flats	2.617
Parcels	3.081
High Density/Saturation Letters	2.059
High Density/Saturation Flats and Parcels	2.092
Carrier Route	2.907
Overall	2.569

To achieve the above-average price increase for the Standard Mail Flats product, the Postal Service made two principal changes to its initially filed planned Standard Mail Flats price adjustments. First, it reduced the prebarcoding discount between automation and non-automation Flats from 7.5 to 5.5 cents. Second, the Postal Service used the correct avoided cost of 4.6 cents for automation 3-Digit Flats. *Id.* at 3–4. As a result of these changes, some rate cells would receive a price decrease, so a number of minor mechanical adjustments were also made to mitigate the deviation from the desired overall price increase. *Id.* at 4.

[1] Order No. 1541, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 16, 2012 (Order No. 1541).

[2] Docket No. ACR2010, Order on Remand, August 9, 2012 (Order No. 1427); Docket No. ACR2010–R, Notice and Order Confirming Termination of Stay, September 21, 2012 (Order No. 1472).

[3] United States Postal Service Response to Order No. 1541, November 26, 2012 (Response).

The Postal Service acknowledges that the Commission's FY 2010 ACD Order requested that the Postal Service provide '' 'an explanation of how the proposed prices will move the Flats cost coverage toward 100 percent' '' (footnote omitted). *Id.* It states that given the short amount of time allowed to prepare revised rate adjustments and to obtain Governors' approval, it has not been able to assess the full impact on the revised price increase on Standard Mail Flats' projected cost coverage. *Id.* It also states that although it is complying with the Commission's directive by proposing an above-average price increase for Standard Mail Flats, it believes that the Commission has overstepped its authority by ordering such an increase. *Id.* at 5.

III. Nonprofit Discounts

In Order No. 1541, the Commission requested that the Postal Service explain why different discount levels for Commercial and Nonprofit Standard Mail are consistent with the Postal Accountability and Enhancement Act (PAEA) and not contrary to *National Easter Seal Society* v. *USPS,* 656 F.2d 754 (DC Cir 1981). Order No. 1541 at 51. The Postal Service maintains that *National Easter Seal Society* did not hold that phasing in nonprofit discounts would necessarily be discriminatory, but rather simply required that the Postal Service have a reasonable ground for the phased in schedule. Response at 6.

The Postal Service states that ''[t]he varying presort discounts among Commercial and Nonprofit Standard Mail arise from the complex task of designing rates that comply with 39 U.S.C. 3626(a)(6),'' which requires that the average revenue per piece from nonprofit products equal, as nearly as practicable, 60 percent of the average revenue per piece from the corresponding Commercial products. *Id.* The complexity of this task may ''preclude[] the Postal Service from making Nonprofit presort discounts identical to Commercial presort discounts without setting the Nonprofit base rate higher than would be most efficient or preferable from a policy perspective.'' *Id.* at 7.

The Postal Service points out that, in both previous rate cases and the current docket, some nonprofit discounts have varied from the corresponding Commercial presort discounts. *Id.* The Postal Service also filed updated pages reflecting worksharing discounts and benchmarks for Flats, High Density and Saturation Letters, and High Density and Saturation Flats/Parcels in Attachment B to its Response. It has shown nonprofit discounts on a separate line when they differ from Commercial discounts, along with the other discounts in the relevant category. *Id.* Attachment B. The Postal Service states that the passthroughs for nonprofit discounts are all at 100 percent or below, and can be justified the same way as the corresponding Commercial discounts.[4] *Id.* at 8.

IV. Mail Classification Schedule Changes (MCS)

In conformance with 39 CFR 3010.14(b)(9), the Postal Service identifies changes to the Standard Mail Flats MCS. Attachment A to the Response presents price and classification changes.

V. Administrative Actions

Public comment period. The Commission's rules provide a period of 10 days from the date of the Postal Service's filing for public comment. 39 CFR 3010.13(f). The Postal Service plans to implement the planned prices on January 27, 2013. To permit the Commission to fully consider this matter and to enable the Postal Service to provide the requisite 45 day notice before implementing the planned prices, the Commission finds it appropriate to shorten the comment period. Comments by interested persons are due no later than December 4, 2012.

Interested persons are encouraged to review the Postal Service's Response and workpapers in their entirety.

Pursuant to Commission rule 3010.13(f), comments should address subjects identified in rule 3010.13(b) and may address the substance of the Postal Service's Response.

Participation and designated filing method. Interested persons are not required to file a notice of intervention prior to submitting comments. Instead, they are to submit comments electronically via the Commission's Filing Online system, unless a waiver is obtained. Instructions for obtaining an account to file documents online may be found on the Commission's Web site, (*http://www.prc.gov*), or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Persons without access to the Internet or otherwise unable to file documents electronically may request a waiver of the electronic filing requirement by filing a motion for waiver with the Commission. The motion may be filed along with any comments the person may wish to submit in this docket. Persons requesting a waiver may file hardcopy documents with the Commission either by mailing or by hand delivery to the Office of the Secretary, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001 during regular business hours by the date specified for such filing. Any person needing assistance in requesting a waiver may contact the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846. Hardcopy documents will be scanned and posted on the Commission's Web site.

Public Representative. Kenneth E. Richardson will continue to serve as Public Representative in this proceeding.[5]

It is ordered:

1. Comments by interested persons on the planned price adjustments are due no later than December 4, 2012.

2. The Commission directs the Secretary of the Commission to arrange for prompt publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–29067 Filed 11–30–12; 8:45 am]

BILLING CODE 7710–FW–P

[4] The Postal Service also refers to Order No. 1541 n.65 in Attachment C of its Response, regarding the High Density Plus rate category.

[5] *See* Order No. 1501, Notice and Order on Planned Rate Adjustments and Classification Changes for Market Dominant Postal Products, October 15, 2012, at 16.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68293; File No. SR–Phlx–2012–132]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to EEM Options Position Limits

November 27, 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 13, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 1001, titled ''Position Limits'' to increase the position and exercise limits for options on the iShares MSCI Emerging Markets Index Fund (''EEM'') to 500,000 contracts.

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

Position limits for exchange-traded fund (''ETFs'') options, such as EEM options, are determined pursuant to Rule 1001, Commentary .05(a) and vary according to the number of outstanding shares and trading volume during the most recent six-month trading period of an underlying stock or ETF. The largest in capitalization and most frequently traded stocks and ETFs have an option position limit of 250,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market; smaller capitalization stocks and ETFs have position limits of 200,000, 75,000, 50,000 or 25,000 contracts (with adjustments for splits, re-capitalizations, etc.) on the same side of the market. The current position limit for EEM options is 250,000 contracts. The purpose of the proposed rule change is to amend Rule 1001 to increase the position and exercise limits for EEM options to 500,000 contracts.[3] There is precedent for establishing position limits for options on actively-traded ETFs and these position limit levels are set forth in Rule 1001.[4]

In support of this proposed rule change, and as noted by the Chicago Board Options Exchange, Incorporated (''CBOE'') in a related filing,[5] the below trading statistics compare EEM to IWM and SPY. As shown in the table, the average daily volume in 2011 for EEM was 65 million shares compared to 64.1 million shares for IWM and 213 million shares for SPY. The total shares outstanding for EEM are 922.9 million compared to 192.6 million shares for IWM and 716.1 million shares for SPY. Further, the fund market cap for EEM is $41.1 billion compared to $15.5 billion for IWM and $98.3 billion for SPY.

ETF	2011 ADV (mil. shares)	2011 ADV (option contracts)	Shares outstanding (mil.)	Fund market cap ($bil)
EEM	65	280,000	922.9	41.1
IWM	64.1	662,500	192.6	15.5
SPY	213	2,892,000	716.1	98.3

In further support of this proposal, the Exchange represents that EEM still qualifies for the initial listing criteria set forth in Rule 1009 at Commentary .06 for ETFs holding non-U.S. component securities.[6] EEM tracks the performance of the MSCI Emerging Markets Index, which has approximately 800 component securities.[7] ''The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance of emerging markets. The MSCI Emerging Markets Index consists of the following 21 emerging market country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.''[8] The Exchange represents that more than 50% of the weight of the securities held by EEM are now subject to a comprehensive surveillance agreement (''CSA'').[9] Additionally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any one country that is not subject to a CSA do not represent 20% or more of the weight of the MSCI Emerging Markets Index.[10] Finally, the component securities of the MSCI Emerging Markets Index on which EEM is based for which the primary market is in any two countries that are not subject to CSAs do not represent 33% of [sic] more of the weight of the MSCI Emerging Markets Index.[11]

The Exchange believes that the liquidity in the underlying ETF and the liquidity in EEM options support its request to increase the position and exercise limits for EEM options. As to the underlying ETF, through October 17,

[3] By virtue of Rule 1002, which is not being amended by this filing, the exercise limit for EEM options would be similarly increased. *See* Rule 1002 (Exercise Limits).

[4] Rule 1001 lists exceptions to standard position limits which are: Put or call option contracts overlying the PowerShares QQQ Trust (''QQQQ'')® for which the position limit shall be 900,000 contracts on the same side of the market; the Standard and Poor's Depositary Receipts (''SPDRs''); options overlying the iShares® Russell 2000® Index (''IWM''), for which the position limit shall be 500,000 contracts; options overlying the Diamonds Trust (''DIA''), for which the position limit shall be 300,000 contracts on the same side of the market; and options overlying the Standard and Poor's Depositary Receipts (''SPDRs''), which shall have no position limits.

[5] *See* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[6] The Exchange notes that the initial listing criteria for options on ETFs that hold non-U.S. component securities are more stringent than the maintenance listing criteria for those same ETF options. *See* Rule 1009 at Commentary .06 and Rule 1010, Commentary .08.

[7] *See http://us.ishares.com/product_info/fund/overview/EEM.htm* and *http://www.msci.com/products/indices/licensing/msci_emerging_markets/.* Identification of the specific securities in the EEM and their individual concentrations in the EEMcan [sic] be accessed at: *http://us.ishares.com/product_info/fund/holdings/EEM.htm.*

[8] *See http://www.msci.com/products/indices/tools/index.html#EM.*

[9] *See* Rule 1009, Commentary .06(b)(i).

[10] *See* Rule 1009, Commentary .06(b)(ii).

[11] *See* Rule 1009, Commentary .06(b)(iii).

2012 the year-to-date average daily trading volume for EEM across all exchanges was 49.3 million shares. As to EEM options, the year-to-date average daily trading volume for EEM options across all exchanges was 250,304 contracts. The Exchange believes that increasing position limits for EEM options will lead to a more liquid and competitive market environment for EEM options that will benefit customers interested in this product.

Under the Exchange's proposal, the options reporting requirement for EEM would continue unabated. Thus, the Exchange would still require that each member and member organization that maintain [sic] a position in EEM options on the same side of the market, for its own account or for the account of a customer, report certain information to the Exchange. This information would include, but would not be limited to, the option position, whether such position is hedged and, if so, a description of the hedge, and the collateral used to carry the position, if applicable. Exchange Market Makers would continue to be exempt from this reporting requirement, as Market Maker information can be accessed through the Exchange's market surveillance systems. In addition, the general reporting requirement for customer accounts that maintain an aggregate position of 200 or more option contracts would remain at this level for EEM options.[12]

As the anniversary of listed options trading approaches its fortieth year, the Exchange believes that the existing surveillance procedures and reporting requirements at the Phlx, other options exchanges, and at the several clearing firms are capable of properly identifying unusual and/or illegal trading activity. In addition, routine oversight inspections of the Exchange's regulatory programs by the Commission have not uncovered any material inconsistencies or shortcomings in the manner in which the Exchange's market surveillance is conducted. These procedures utilize daily monitoring of market movements via automated surveillance techniques to identify unusual activity in both options and underlying stocks.[13]

Furthermore, large stock holdings must be disclosed to the Commission by way of Schedules 13D or 13G.[14] Options positions are part of any reportable positions and, thus, cannot be legally hidden. Moreover, the Exchange's requirement that members and member organizations are to file reports with the Exchange for any customer who held aggregate large long or short positions of any single class for the previous day will continue to serve as an important part of the Exchange's surveillance efforts.

The Exchange believes that the current financial requirements imposed by the Exchange and by the Commission adequately address concerns that a member or member organization or its customer may try to maintain an inordinately large un-hedged position in an option, particularly on EEM. Current margin and risk-based haircut methodologies serve to limit the size of positions maintained by any one account by increasing the margin and/or capital that a member or member organization must maintain for a large position held by itself or by its customer.[15] In addition, the Commission's net capital rule, Rule 15c3–1 [16] under the Act imposes a capital charge on members and member organizations to the extent of any margin deficiency resulting from the higher margin requirement.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder, including the requirements of Section 6(b) of the Act.[17] In particular, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the proposed rule change will benefit large market makers (which generally have the greatest potential and actual ability to provide liquidity and depth in the product), as well as retail traders, investors, and public customers, by providing them with a more effective trading and hedging vehicle. In addition, the Exchange believes that the structure of EEM options and the considerable liquidity of the market for EEM options diminish the opportunity to manipulate this product and disrupt the underlying market that a lower position limit may protect against.

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

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and Rule 19b–4(f)(6) thereunder.[20]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative for 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that it can increase the position and exercise limits for EEM options immediately, which will result in consistency and uniformity among the competing options exchanges as to the position and exercise limits for EEM options. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[21] The Commission notes the proposal is substantively identical to

[12] Reporting requirements are stated in Rule 1003(b) [sic] (Reporting of Options Positions).

[13] These procedures have been effective for the surveillance of EEM options trading and will continue to be employed.

[14] 17 CFR 240.13d–1.

[15] *See* Rule 721 (Proper and Adequate Margin) for a description of margin requirements.

[16] 17 CFR 240.15c3–1.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with 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 fulfilled this requirement.

[21] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

a proposal that was recently approved by the Commission, and does not raise any new regulatory issues.[22] For these reasons, the Commission designates the proposed rule change as operative upon filing.

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–Phlx–2012–132 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–2012–132. 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–2012–132 and should be submitted on or before December 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29073 Filed 11–30–12; 8:45 am]

BILLING CODE 8011–01–P

[22] *See* Securities Exchange Act Release No. 68086 (October 23, 2012), 77 FR 65600 (October 29, 2012) (SR–CBOE–2012–066).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68294; File No. SR–BOX–2012–019]

Self-Regulatory Organizations; BOX Options Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Rule 7110 Regarding Session Orders

November 27, 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 19, 2012, BOX Options Exchange LLC (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule 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 rules to amend Rule 7110 regarding Session Orders. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://boxexchange.com.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Rule 7110(e)(1)(iii)(C) to add a provision related to an exception to the manner in which certain Session Orders are handled when they have been routed to an away exchange. Specifically, the Exchange proposes to add a provision in Rule 7110(e)(1)(iii)(C)(3) to provide that any remaining quantity of a Session Order that has been routed away, if a Triggering Event occurs while the order is routed away and receives a partial execution, will be cancelled by BOX upon the return of the remainder to BOX from the away exchange.[3]

Exchange Rule 7110(e)(1)(iii) provides that a Session Order will remain active in the BOX trading system until a ''Triggering Event'' occurs that causes a BOX Participant to lose its connection to the BOX system, or causes BOX to be unable to process the Session Order.[4] The following are ''Triggering Events'': (1) The connection between the Participant and BOX that was used to enter the order is interrupted; (2) there is a disconnection between internal BOX components used to process orders, causing a component to lose its connection to the Participant or the Trading Host while in possession of the Session Order; or (3) a component of the

[3] Note that the Triggering Event does not need to be ongoing at the time the remainder is returned to BOX for it to be cancelled.

[4] *See* Securities Exchange Act Release No. 62959 (September 21, 2010) 75 FR 59304 (September 27, 2010) (Notice of Filing and Immediate Effectiveness To Provide an Additional Order Type Which Will Give Options Participants Greater Control Over the Circumstances in Which Their Orders Are Executed) (BX–2010–065). *See also* BOX Informational Circular IC–2010–005 (New Order Duration Type—Session Order) available on the BOX Web site here: *http://boxexchange.com/f_circulars/_BOX_Informational_Circular_2010-005_Session_Order.pdf.*

Trading Host experiences a system error in which it is unable to process open orders while in possession of the Session Order. Upon the occurrence of a Triggering Event, Session Orders within the affected BOX system are cancelled.

Currently, Rule 7110(e)(1)(iii)(C) provides certain exceptions to the cancellation of Session Orders. Specifically, the rule provides that a Session Order will not be cancelled and shall remain active in the BOX market if the order is in one of the following BOX system processes when a Triggering Event occurs:

(1) The order is being exposed to the BOX market pursuant to Rule 7130(b);

(2) The order is a Directed Order to which the Executing Participant has not yet responded pursuant to Rule 8040(d)(2);

(3) The order has been routed to an away exchange pursuant to Rule 15030.

Exchange Rule 15030 provides that certain orders that are specifically designated by Options Participants as eligible for routing will be routed to an Away Exchange (''Eligible Orders''). If BOX cannot execute or book an Eligible Order, then it will route the Eligible Order to an Away Exchange on behalf of the Options Participant who submitted the Eligible Order through a third-party broker dealer. The full quantity of an Eligible Order is routed to one or more Away Exchange(s) as Immediate or Cancel limit order(s) priced at the current NBBO. If the Eligible Order routed away is not executed in its entirety at the Away Exchange(s) and its limit price is reached, then it is returned to BOX.

A technology system upgrade will now allow BOX to cancel any remaining quantity of a Session Order if a Triggering Event occurs while the order has been routed away, received a partial execution, and is returned to BOX by the away exchange. As such, the Exchange is proposing to add a provision to Rule 7110(e)(1)(iii)(C)(3). Upon the effectiveness of this proposed rule change, BOX will inform Options Participants via Information Circular about the implementation date of this change in the manner in which certain Session Orders are handled when they have been routed to an away exchange.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that this proposed rule change will benefit the marketplace and protect investors because, consistent with the purpose of Session Orders, it will further reduce the risk of erroneous or stale orders on BOX in the event that an Options Participant loses connectivity with the BOX system. Furthermore, Session Orders are intended to provide for the protection of Options Participants and their customers, who must bear the burden of market risk for stale orders caused by circumstances outside of their control. The additional provision to the exception to provide for when a Triggering Event occurs while a Session Order has been routed to an away exchange, so that any remaining quantity that might be returned to BOX will be cancelled, is consistent with the purpose of the Session Order, and would further provide for the protection of investors and the efficiency and fairness of the market. As such, the Exchange believes the proposed change is consistent with the Act.

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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

This proposed rule change is filed pursuant to paragraph (A) of section 19(b)(3) of the Exchange Act[7] and Rule 19b–4(f)(6) thereunder.[8] This proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[9]

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–BOX–2012–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BOX–2012–019. 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

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change along with a brief description and the 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.

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–BOX–2012–019 and should be submitted on or before December 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29074 Filed 11–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68300; File No. SR–ICC–2012–21]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Correct One Term in the ICC Rules

November 27, 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 13, 2012, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3)[4] thereunder, so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to change the word ''customer'' to ''client'' in the defined term ''Client Omnibus Margin Account'' in one instance in Section 20–605(d) in order to ensure consistency of defined terms throughout the ICE Clear Credit Rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC is updating one word in Section 20–605(d) of the Rules to change the word ''customer'' to ''client'' in the defined term ''Client Omnibus Margin Account.'' ICC is making this correction in order to ensure that the defined terms in the ICC Rules are consistent. This change does not require any changes to the ICC risk management framework. The only change submitted is the correction of one defined term in ICC Rule 20–605(d).

Section 17A(b)(3)(F) of the Act[5] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions. ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17A(b)(3)(F), because the correction of ''customer'' to ''client'' in the defined term ''Client Omnibus Margin Account'' in ICC Rule 20–605(d) will facilitate the prompt and accurate settlement of securities transactions and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody of control of ICC or for which it is responsible. ICC believes the proposed change will alleviate any potential confusion with defined terms in the ICC Rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change would have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule changes have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii)[6] of the Act and Rule 19b–4(f)(3)[7] thereunder because it is concerned solely with the administration of the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2012–21 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2012–21. 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

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

[8] 15 U.S.C. 78s(b)(3)(C).

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 filings will also be available for inspection and copying at the principal office of ICC and on ICC's Web site (*https://www.theice.com/publicdocs/regulatory_filings/ICEClearCredit_111312.pdf*).

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ICC–2012–21 and should be submitted on or before December 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29075 Filed 11–30–12; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68301; File No. SR–CBOE–2012–111]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend CBOE Rule 6.18 Concerning the Exchange's Disaster Recovery Facility

November 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the text of Rule 6.18, ''Disaster Recovery Facility,'' to clarify how the Exchange intends to continue to operate in the event the Exchange's trading floor or trading systems are compromised. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission'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

CBOE Rule 6.18 (Disaster Recovery Facility) currently provides for a disaster recovery site in the event that open outcry trading is not available. In such an event, Trading Permit Holders (''TPHs'') are required to utilize a floorless configuration of the trading system similar to the electronic component of the Exchange's Hybrid System platform, the primary difference being that this configuration is not programmed to require open outcry. Because of a change in location of the Exchange's back-up data center (the Exchange is moving its primary data center to the East coast and will use its current Chicago data center as the back-up data center), the Exchange is proposing to amend Rule 6.18 in order to provide that (1) in the case the Exchange must use the back-up data center, the Exchange's trading floor may still be operable, and (2) TPHs will need to use the alternate trading system if the Exchange's trading floor should become inoperable. Finally, the Exchange is proposing to make conforming changes to the entire rule to reflect this change in location by eliminating references to a ''Disaster Recovery Facility'' and eliminating portions of the rule that are no longer relevant. This change in location of the Exchange's primary and back-up data centers is anticipated to take effect on December 3, 2012.

First, the Exchange is proposing to modify Rule 6.18 to clarify that when an event or other circumstance renders the Exchange's primary electronic platform inoperable, assuming the trading floor has not been affected, TPHs may still be able to utilize the Exchange's trading floor. The Exchange's current Rule 6.18 specifies that if the Disaster Recovery Facility were used, no open outcry trading would be available. Because of the change of location of the back-up data center, this will no longer be the case. In the event the Exchange back-up data center must be utilized, the Exchange's trading floor may still be operable and all Exchange rules associated with the trading floor, including those codifying the integration of the electronic trading platform with the trading floor, will remain in effect. As such, trading on the Exchange would not change.

Second, the Exchange is proposing to amend Rule 6.18 to clarify that TPHs will need to use the floorless configuration in the event a disaster or other unusual circumstance renders the Exchange trading floor inoperable. In the current Exchange rules, TPHs must only utilize a floorless configuration in the event the Disaster Recovery Facility is utilized. In the proposed changes, TPHs will need to use this configuration of the trading system if the trading floor is inoperable which could be the case in an instance when the primary data center is still operating. In this configuration, there will be no change in the Exchange trading rules associated with electronic trading. TPHs will be required to follow the same rules associated with electronic trading as they would if the trading floor were operable. This proposed change is also a result of the change in location of the Exchange's various data centers.

Finally, other conforming changes have been made throughout the rule to eliminate references to a Disaster Recovery ''Facility'' to reflect that dual locations may now be used in the event the Exchange experiences an event or other circumstance rendering either the trading floor or the primary data center inoperable. In addition, references to

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

portions of the rule that are no longer relevant have been eliminated from the rule text. More specifically, section (e) of the Rule has been eliminated because the back-up data center in Chicago will have the capacity to accommodate all TPHs.[3]

It should be noted, however, that no material changes are being made to the Exchange Rule 6.18(b) which states that the Exchange will announce, prior to the commencement of trading, all classes that will continue to trade. Depending upon the specifics of the circumstances, the Exchange's trading floor may or may not be operable. In this announcement, the Exchange will clarify the current status of the trading floor. In addition, pursuant to the current Exchange Rule 6.18(d), TPHs will still be required to maintain access to both the primary electronic platform and the back-up data center in order to continue trading in all circumstances.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[4] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[5] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

In particular, the modification to Exchange Rule 6.18 fully clarifies how TPHs can trade in the event that unforeseen circumstances arise. The proposed changes promote just and equitable principles of trading by putting all TPHs, and other market centers, on notice about how the Exchange intends to operate in the event either the primary data center or the trading floor becomes inoperable which also provides for a free and open market for all TPHs. The proposed changes also prevent fraudulent and manipulative acts on the Exchange as the changes more clearly explain different venues available to the TPHs and alert TPHs of how the Exchange will operate if such circumstance should arise. Finally, it protects investors by alerting all TPHs to the different trading alternatives if one of these events should occur so they are aware of their options.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(1) of the Act,[6] which provides that the Exchange be organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by the Exchange's TPHs and persons associated with its TPHs with the Act, the rules and regulations thereunder, and the rules of the Exchange. By clearly stating what will happen in the event that normal trading venues are not available, the Exchange is explicitly stating its capacity to operate in any unusual or unpredictable circumstance that may arise. Thus, the Exchange is preparing to exercise its obligations as a Self-Regulatory Organization (''SRO'') under the Act in the event of unusual circumstances.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–111 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–111. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–111 and should be submitted on or before December 24, 2012.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act, including Section 6(b) of the Act,[7] and the rules and regulations thereunder applicable to a national securities exchange.[8]

In its filing, the Exchange requested that the Commission approve the proposal on an accelerated basis pursuant to Section 19(b)(2) of the Act, so that the proposal may become operative in time to accommodate the Exchange's planned transfer of its primary data center to the East coast of the United States.[9] The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[10] for approving the

[3] The Commission notes that CBOE Rule 6.18(e) currently authorizes the Exchange to restrict access to the Disaster Recovery Facility if necessitated by system capacity limitations, and priority access would have been afforded to TPHs subject to certain conditions. *See* CBOE Rule 6.18(e).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(1).

[7] 15 U.S.C. 78f(b).

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. Currently, CBOE's electronic systems and its floor are housed in close proximity to one another and, as a result, in the event that one is rendered inoperable or inaccessible, it is possible that the other could be compromised as well. As CBOE notes above, CBOE's current Rule 6.18 acknowledges this by presuming that if the Disaster Recovery Facility is used, no open outcry trading would be available. However, CBOE now plans to relocate its primary electronic systems to a different location on the East coast of the United States, and thus the primary electronic systems and the physical floor will be in separate locations. Accordingly, CBOE is proposing to clarify Rule 6.18 to reflect that it may, to the extent possible, continue to operate its physical trading floor in Chicago in the event that it needs to operate in disaster recovery mode on account of its primary data systems on the East coast being unavailable.

CBOE also has proposed to eliminate paragraph (e) of Rule 6.18, as its new back-up systems will no longer necessitate that it retain the ability to restrict access to its back-up data facility. Other than the elimination of paragraph (e), CBOE has not proposed any material changes to Rule 6.18, or how it would operate in recovery mode.

Finally, CBOE's Rule 6.18 will continue to require TPHs to take action to be able to accommodate CBOE's ability to trade options through the back-up data center in the event that CBOE operates in disaster recovery mode.

Accordingly, the Commission believes that accelerated approval of the proposed rule change to clarify the operation of CBOE Rule 6.18 in light of CBOE's planned relocation of its primary data facility to the East coast will allow CBOE to effectively revise its disaster recovery rule without delay and thereby avoid any potential interruption to CBOE's exchange operations. CBOE's proposed changes to Rule 6.18 are not material and consist of technical updates to its rule to allow for CBOE to resume operations on its physical floor in Chicago (along with its back-up data center in Chicago) in the event of a disruption to its primary data center on the East coast. Thus, accelerated approval of this proposed rule change will grant CBOE the ability to continue its operations to the fullest extent possible under its rules if a disaster recovery situation were to occur between the time of transfer of its primary data center to the East coast on December 3, 2012 and the time that CBOE would have otherwise been able to obtain Commission action on its proposed rule change under Section 19(b)(2) of the Act [11] had the Commission not granted accelerated approval to its proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–CBOE–2012–111) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29076 Filed 11–30–12; 8:45 am]

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[11] 15 U.S.C. 78s(b)(2). As provided by Section 19(b)(2) of the Act, the Commission must, within 45 days of the date of publication of notice of a proposed rule change in the **Federal Register** (unless such period is extended by the Exchange or the Commission) either: (1) By order approve or disapprove such proposed rule change, or (2) institute proceedings to determine whether the proposed rule change should be disapproved. *See id.* Section 19(b)(2) also provides that the Commission may not approve a proposed rule change earlier than 30 days after the date of publication unless it finds good cause for doing so and publishes the reason for the finding. *See id.*

[12] *Id.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68303; File No. SR–BYX–2012–019]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Order Granting Approval to Proposed Rule Change, as Modified by Amendment No. 2, To Adopt a Retail Price Improvement Program

November 27, 2012.

I. Introduction

On August 14, 2012, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish a Retail Price Improvement Program (''Program'') on a pilot basis for a period of one year from the date of implementation, if approved. The proposed rule change was published for comment in the **Federal Register** on August 31, 2012.[3] The Commission received one comment on the BYX proposal.[4] On October 12, 2012, the Commission extended the time for Commission action on the proposed rule change until November 29, 2012.[5] The Exchange submitted a response letter on November 13, 2012.[6] On October 4, 2012, the Exchange filed Amendment No. 1 to its proposal.[7] On November 13, 2012, the Exchange filed Amendment No. 2 to its proposal.[8]

In connection with the proposal, the Exchange requested exemptive relief from Rule 612 of Regulation NMS,[9] which, among other things, prohibits a national securities exchange from accepting or ranking orders priced greater than $1.00 per share in an increment smaller than $0.01.[10] On November 19, 2012, the Exchange submitted a letter requesting that the staff of the Division of Trading and Markets not recommend any enforcement action under Rule 602 of Regulation NMS (''Quote Rule'') based on the Exchange's and its members' participation in the Program (''No-Action Request Letter'').[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 67734 (August 27, 2012), 77 FR 53242 (SR–BYX–2012–019) (''Notice'').

[4] *See* Letter from Theodore R. Lazo, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, to Elizabeth M. Murphy, Secretary, Commission, dated September 26, 2012 (''SIFMA Letter'').

[5] *See* Securities Exchange Act Release No. 68049, 77 FR 64180 (October 18, 2012).

[6] *See* Letter from Eric Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Elizabeth M. Murphy, Secretary, Commission, dated November 13, 2012 (''Exchange Response to Comments'').

[7] The Exchange withdrew Amendment No. 1 on October 4, 2012.

[8] In Amendment No. 2, the Exchange proposes to delete a statement explaining that a Retail Liquidity Identifier for Tape C securities would not be published until after October 1, 2012. The Exchange is deleting this statement because the processor is currently able to disseminate the identifier. The Exchange also proposes to clarify that the securities will be phased into the Program, and modify its statutory basis discussion to support this change. Finally, the Exchange proposes to modify the Rule Text to state that the Exchange will notify its membership regarding the securities included in the Program through an information circular (''Amendment No. 2''). Because the changes made in Amendment No. 2 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[9] 17 CFR 242.612 (''Sub-Penny Rule'').

[10] *See* Letter from Eric Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Elizabeth M. Murphy, Secretary, Commission, dated August 14, 2012 (''Request for Sub-Penny Rule Exemption'').

[11] *See* Letter from Eric J. Swanson, Senior Vice President and General Counsel, BATS Global Markets, to Robert Cook, Division of Trading and Markets, Commission, dated November 19, 2012 (''No-Action Letter'').

This order approves the proposed rule change, as modified by Amendment No. 2, and grants the exemption from the Sub-Penny Rule sought by the Exchange in relation to the proposed rule change.

II. Description of the Proposal

The Exchange is proposing a one-year pilot program to attract additional retail order flow to the Exchange, while also providing the potential for price improvement to such order flow. The Program would be limited to trades occurring at prices equal to or greater than $1.00 per share.

All securities traded on the Exchange would be eligible for inclusion in the Program. As proposed in Amendment No. 2, for the first 90 days of the pilot program, a group of up to 25 securities would participant in the program. These securities would represent those securities traded most heavily by retail investors. After the initial 90 day period, the Program will be expanded gradually until all securities traded on the Exchange are included. The Exchange will notify Members in an information circular of the securities that are subject to the Program both initially and as additional securities become eligible for inclusion.[12]

Under the Program, a new class of market participants called Retail Member Organizations (''RMOs'') [13] would be eligible to submit certain retail order flow (''Retail Orders'') to the Exchange. All Exchange Users [14] would be permitted to provide potential price improvement for Retail Orders in the form of non-displayed interest that is better than the national best bid that is a Protected Quotation (''Protected NBB'') or the national best offer that is a Protected Quotation (''Protected NBO,'' and together with the Protected NBB, the ''Protected NBBO'') [15] called a Retail Price Improvement Order (''RPI Order''). When an RPI Order priced at least $0.001 better than the Protected Bid or Protected Offer for a particular security is available in the System, the Exchange would disseminate an identifier, known as the Retail Liquidity Identifier, indicating that such interest exists. A Retail Order would interact, to the extent possible, with available contra-side RPI Orders.[16]

The Exchange represents that its proposed rule change is based on New York Stock Exchange LLC's (''NYSE'') Rule 107C, which governs NYSE's previously approved Retail Liquidity Program,[17] with three distinctions. First, the NYSE's Retail Liquidity Program creates a category of members, Retail Liquidity Providers, who are required to maintain an RPI that betters the protected best bid or offer at least 5% of the trading day in each assigned security. Under the BYX's proposal, the Exchange would not create such a category of users. Second, NYSE's Retail Liquidity Program does not permit the execution of Retail Orders against other resting non-displayed liquidity. BYX's proposal would permit such executions. Finally, under the NYSE'S Retail Liquidity Program, Retail Orders execute at the single price at which the order will be fully executed. Pursuant to the BYX's proposal, Retail Orders execute at multiple price levels rather than a single price level.[18]

Types of Orders and Identifier

A Retail Order would be an agency order that originates from a natural person and is submitted to the Exchange by a RMO, provided that no change is made to the terms of the order with respect to price or side of market, and the order does not originate from a trading algorithm or any other computerized methodology. Users and RMOs could enter odd lots, round lots, or mixed lots as RPI Orders and as Retail Orders, respectively.

A RPI Order would be non-displayed interest on the Exchange that is better than the Protected NBB or Protected NBO by at least $0.001 and that is identified as a RPI Order in a manner prescribed by the Exchange. An RPI Order may also be entered in a sub-penny increment with an explicit limit price. When such an order is available in the System in a particular security, the Exchange would disseminate an identifier, known as the Retail Liquidity Identifier, indicating that such interest exists. The Exchange would implement the Program in a manner that allowed the dissemination of the identifier through consolidated data streams (*i.e.,* pursuant to the Consolidated Tape Association Plan/Consolidated Quotation Plan (''CTA/CQ Plan'') for Tape A and Tape B securities, and the Nasdaq UTP Plan for Tape C securities as well as through proprietary Exchange data feeds. The Retail Liquidity Identifier would reflect the symbol and the side (buy or sell) of the RPI Order, but it would not include the price or size. In particular, CQ and UTP quoting outputs would include a field for codes related to the Retail Liquidity Identifier. The codes will indicate RPI Orders that are priced better than the Protected Bid or Protected Offer by at least the minimum level of price improvement as required by the Program.

Retail Member Organizations

In order to become a RMO, a Member must conduct a retail business or handle retail orders on behalf of another broker-dealer. Any Member that wishes to obtain RMO status would be required to submit: (1) An application form; (2) an attestation, in a form prescribed by the Exchange, that any order submitted by the Member as a Retail Order would meet the qualifications for such orders; and (3) supporting documentation sufficient to demonstrate the retail nature and characteristics of the applicant's order flow.[19] If the Exchange disapproves the application, it would provide a written notice to the Member. The disapproved applicant could appeal the disapproval as provided below and/or re-apply 90 days after the disapproval

[12] *See* Amendment No. 2, *supra* note 8.

[13] A RMO would be a Member (or a division thereof) that has been approved by the Exchange to submit Retail Orders. A ''Member'' is any registered broker or dealer that has been admitted to membership in the Exchange. *See* BYX Rule 1.5(n).

[14] A ''User'' is any Member or sponsored participant of the Exchange who is authorized to obtain access to the System. *See* BYX Rule 1.5(cc).

[15] The term Protected Quotation has the same meaning as defined in Rule 600(b)(58) of Regulation NMS. *See* BYX Rule 1.5(t). Rule 600(b)(58) of Regulation NMS defines ''protected quotation'' as ''a protected bid or a protected offer.'' 17 CFR 242.600(b)(58). The Protected NBB is the best-priced protected bid and the Protected NBO is the best-priced protected offer. *See* BYX Rule 1.5(s). The Exchange represents that, generally, the Protected NBB and Protected NBO, and the national best bid (''NBB'') and national best offer (''NBO,'' together with the NBB, the ''NBBO''), will be the same. However, it further represents that a market center is not required to route to the NBB or NBO if that market center is subject to an exception under Regulation NMS Rule 611(b)(1) or if such NBB or NBO is otherwise not available for an automatic execution. In such case, the Exchange states that the Protected NBB or Protected NBO would be the best-priced protected bid or offer to which a market center must route interest pursuant to Rule 611 of Regulation NMS.

[16] As explained further below, the Exchange has proposed two types of Retail Orders, one of which could execute against other interest if it was not completely filled by contra-side RPI Interest or other price-improving liquidity. All Retail Orders would first execute against available contra-side RPI Orders or other price-improving liquidity. Any remaining portion of the Retail Order would then either cancel, be executed as an immediate-or-cancel order, or be routed to another market for execution, depending on the type of Retail Order.

[17] *See* Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40673 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84) (''RLP Approval Order''). In the RLP Approval Order, the Commission also approved a Retail Liquidity Program for NYSE Amex LLC (now known as NYSE MKT LLC) (''NYSE MKT'').

[18] *See* Notice, *supra* note 3, 77 FR at 53245–46 (explaining the three distinctions in detail).

[19] For example, a prospective RMO could be required to provide sample marketing literature, Web site screenshots, other publicly disclosed materials describing the retail nature of their order flow, and such other documentation and information as the Exchange may require to obtain reasonable assurance that the applicant's order flow would meet the requirements of the Retail Order definition.

notice is issued by the Exchange. An RMO also could voluntarily withdraw from such status at any time by giving written notice to the Exchange.

The Exchange would require a RMO to have written policies and procedures reasonably designed to assure that it will only designate orders as Retail Orders if all the requirements of a Retail Order are met. Such written policies and procedures would have to require the Member to exercise due diligence before entering a Retail Order to assure that entry as a Retail Order is in compliance with the proposed rule, and monitor whether orders entered as Retail Orders meet the applicable requirements. If the RMO represents Retail Orders from another broker-dealer customer, the RMO's supervisory procedures must be reasonably designed to assure that the orders it receives from such broker-dealer customer that it designates as Retail Orders meet the definition of a Retail Order. The RMO must obtain an annual written representation, in a form acceptable to the Exchange, from each broker-dealer customer that sends it orders to be designated as Retail Orders that entry of such orders as Retail Orders will be in compliance with the requirements of this rule, and monitor whether its broker-dealer customer's Retail Order flow continues to meet the applicable requirements.[20]

Retail Order Designations

Under the proposal, a RMO submitting a Retail Order could choose one of two designations dictating how it would interact with available contra-side interest. First, a Retail Order could interact only with available contra-side RPI Orders and other price-improving liquidity. The Exchange would label this a Type 1 Retail Order and such orders would not interact with available non-price-improving, contra-side interest in Exchange systems or route to other markets. Portions of a Type 1 Retail Order that are not executed would be cancelled immediately and automatically.

Second, a Retail Order could interact first with available contra-side RPI Orders and other price-improving liquidity, and any remaining portion would be eligible to interact with other interest in the System[21] and, if designated as eligible for routing, would route to other markets in compliance with Regulation NMS.[22] The Exchange would label this a Type 2 Retail Order, and it could either be submitted as a BATS Only Order[23] or as an order eligible for routing.

Priority and Allocation

The Exchange would follow price-time priority, ranking RPI Orders in the same security according to price and then time of entry into the System. Any remaining unexecuted RPI Orders would remain available to interact with other incoming Retail Orders if such interest is at an eligible price. Any remaining unexecuted portion of a Retail Order would cancel or execute in accordance with the proposed rule.[24]

Failure of RMO To Abide by Retail Order Requirements

The proposed rule addresses an RMO's failure to abide by Retail Order requirements. If a RMO were to designate orders submitted to the Exchange as Retail Orders and the Exchange determined, in its sole discretion, that those orders failed to meet any of the requirements of Retail Orders, the Exchange could disqualify a Member from its status as a RMO. When disqualification determinations are made, the Exchange would provide a written disqualification notice to the Member. A disqualified RMO could appeal the disqualification as provided below and/or re-apply 90 days after the disqualification notice is issued by the Exchange.

Appeal Process

Under the proposal, the Exchange would establish a Retail Price Improvement Program Panel (''RPI Panel'') to review disapproval or disqualification decisions. If a Member disputes the Exchange's decision to disapprove or disqualify it as a RMO, such Member could request, within five business days after notice of the decision is issued by the Exchange, that the RPI Panel review the decision to determine if it was correct. The RPI Panel would consist of the Exchange's Chief Regulatory Officer or his or her designee, and two officers of the Exchange designated by the Exchange's Chief Operating Officer, and it would review the facts and render a decision within the timeframe prescribed by the Exchange. The RPI Panel could overturn or modify an action taken by the Exchange and all determinations by the RPI Panel would constitute final action by the Exchange on the matter at issue.

III. Comment Letters and the Exchange's Responses

As noted above, the Commission received one comment letter that raised concerns about the BYX proposal.[25] The main areas of concern expressed therein were: (1) Whether the proposal impedes fair access; (2) the proposal's impact on the Sub-Penny Rule; and (3) the dissemination of quotations.[26]

The commenter argued that the BYX's proposal would result in a two-tiered market wherein market participants could only access available interest identified by the Retail Liquidity Identifier if they were seeking to interact with an order placed by a retail customer. The commenter believes that this is inconsistent with the requirements of Section 6(b)(5) of the Exchange Act as it would allow for unfair discrimination against institutional investors. The commenter expressed concern that approval of the NYSE Retail Liquidity Program, coupled with approval of the BYX proposal, would set a precedent for other exchanges to discriminate among members.[27]

In response, the Exchange explained that it believes that the differential treatment proposed in connection with the Program is not designed to permit unfair discrimination, but instead to promote a competitive process through which retail investors would receive better prices than they currently do in light of bilateral internalization arrangements currently utilized to execute such orders. The Exchange argued the Program is consistent with Section 6(b)(5) of the Exchange Act as it is designed to attract retail order flow to the Exchange and help ensure that retail investors benefits from the better prices that liquidity providers are willing to give such orders.

The commenter also express concern that under the BYX proposal, priority

[20] The Exchange represents that it or another self-regulatory organization on behalf of the Exchange will review a RMO's compliance with these requirements through an exam-based review of the RMO's internal controls. *See* Notice, *supra* note 3, 77 FR at 53244 n.9.

[21] The System is ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' BYX rule 1.5(aa).

[22] *See* BYX Rule 11.9(b)(1).

[23] A BATS Only Order is an order that is not eligible for routing to other trading centers. *See* BYX Rule 11.9(c)(4).

[24] The Exchange provides three examples of how the priority and ranking of RPI Orders would operate. *See* Notice, *supra* note 3, 77 FR at 53245.

[25] *See* note 4, *supra.*

[26] *See* SIFMA Letter, p. 3–4. In addition to commenting on the proposal, the commenter suggested that the Commission, rather than the staff by delegated authority, should consider whether to approve or disapprove BYX's proposed rule change because of the important issues it raises. The commenter further stated that the Commission should consider and resolve market structure issues through the formal rulemaking process, as opposed to allowing such issues to be addressed in rule changes. *See* SIFMA Letter, p. 1–2.

[27] *See* SIFMA Letter, p. 3.

would be given based on sub-penny increments, and tick size would be reduced to $.001 even though Rule 612 of Regulation NMS prohibits national securities exchanges from accepting or ranking certain order based on an increment smaller than the minimum price increment. The commenter noted that quoting in sub-penny increments does not contribute to the maintenance of orderly markets and that it encourages market participants to step ahead of competing limit orders to gain an insignificant price improvement. The commenter suggested that if the Commission has determined that the protections of Rule 612 are no longer necessary, it should address this in a rulemaking, rather than granting individual exchange exemptions.[28]

In response, the Exchange noted that Rule 612 was adopted to address the Commission's concern that sub-penny increments could erode the incentives of investors to display limit orders. The Exchange argued that its Program would not reduce such incentives. The Exchange explained that market participants currently are not able to interact with retail order flow because it is routinely routed to internalizing OTC market makers that offer sub-penny executions. The Exchange believes that allowing the Exchange to compete for this retail order flow through the Program should not materially detract from current incentives to display limit orders, and could result in greater order interaction and price improvement for market retail orders on the Exchange. Further, the Exchange explained that its Program would not encourage market participants to step ahead of competing limit orders to gain an insignificant price improvement because pursuant to the Program, neither Retail Orders nor RPI Orders will be displayed by the Exchange.

Finally, the commenter argued that the Exchange's Retail Liquidity Identifier that would be disseminated through the consolidated data stream is an indication of interest that is a quotation, and encouraged the Commission to conduct its own analysis of whether these identifiers are quotations. The commenter also questioned whether broker-dealers would be required to consider these identifiers in making routing decisions consistent with their best execution obligations and expressed concern that a proliferation of the use of identifiers such as that proposed by BYX would increase broker-dealers' compliance burdens because they would be required continuously to evaluate these identifiers on multiple exchanges and it could pose obligations under the order protection rule of Regulation NMS.[29]

In response, the Exchange explained that it believes that neither the Program's RPI Orders nor the retail liquidity identifiers meet the definition of a ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS, and therefore are not quotations, because they do not communicate a specific price. Because the Exchange does not believe that RPI are quotations pursuant to Rule 602, it argues that they are not subject the Rule 611of Regulation NMS (Order Protection Rule). Finally, the Exchange stated that it believes that a broker-dealer should consider the Program when conducting its best execution analysis, but does not believe that the Program would create any best execution challenges for broker-dealer's that do not already exist in today's market.

IV. Discussion and Commission Findings

After careful review of the proposal, the comment letter received, and the Exchange's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change, subject to its term as a pilot, is consistent with Section 6(b)(5) of the Act,[30] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission finds that the Program, as it is proposed on a pilot basis, is consistent with the Act because it is reasonably designed to benefit retail investors by providing price improvement to retail order flow.[31] The Commission also believes that the Program could promote competition for retail order flow among execution venues, and that this could benefit retail investors by creating additional price improvement opportunities for their order flow. Currently, most marketable retail order flow is executed in the OTC markets, pursuant to bilateral agreements, without ever reaching a public exchange. The Commission has noted that ''a very large percentage of marketable (immediately executable) order flow of individual investors'' is executed, or ''internalized,'' by broker-dealers in the OTC markets.[32] A review of the order flow of eight retail brokers revealed that nearly 100% of their customer market orders were routed to OTC market makers.[33] The same review found that such routing is often done pursuant to arrangements under which retail brokers route their order flow to certain OTC market makers in exchange for payment for such order flow.[34] To the extent that the Program may provide price improvement to retail orders that equals what would be provided under such OTC internalization arrangements, the Program could benefit retail investors. To better understand the Program's potential impact, the Exchange represents that it ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure, and would be reviewed by the Commission prior to any extension of the Program beyond the proposed one-year pilot term, or permanent approval of the Program.'' [35]

The Program proposes to create additional price improvement opportunities for retail investors by segmenting retail order flow on the Exchange and requiring liquidity providers that want to interact with such retail order flow to do so at a price at least $0.001 per share better than the Protected Best Bid or Offer. As noted above, the commenter questioned the fairness of treating retail order flow differently from other order flow on an exchange by offering price improvement opportunities only to retail orders. The Commission finds that, while the Program would treat retail order flow differently from order flow submitted by other market participants, such segmentation would not be inconsistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange

[28] *See* SIFMA Letter, p. 4.

[29] *See* SIFMA Letter, p. 4–5.

[30] 15 U.S.C. 78f(b)(5).

[31] The Commission recently approved similar Retail Liquidity Programs for NYSE and NYSE MKT. *See* RLP Approval Order, *supra* note 17.

[32] *See* Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594, 3600 (Jan. 21, 2010) (''Concept Release on Equity Market Structure'').

[33] *See id.*

[34] *See id.*

[35] *See* Notice, *supra* note 3, 77 FR at 53245.

are not designed to permit unfair discrimination.[36] The Commission has previously recognized that the markets generally distinguish between individual retail investors, whose orders are considered desirable by liquidity providers because such retail investors are presumed on average to be less informed about short-term price movements, and professional traders, whose orders are presumed on average to be more informed.[37] The Commission has further recognized that, because of this distinction, liquidity providers are generally more inclined to offer price improvement to less informed retail orders than to more informed professional orders.[38] Absent opportunities for price improvement, retail investors may encounter wider spreads that are a consequence of liquidity providers interacting with informed order flow. By creating additional competition for retail order flow, the Program is reasonably designed to attract retail order flow to the exchange environment, while helping to ensure that retail investors benefit from the better price that liquidity providers are willing to give their orders.

The commenter also expressed concern that the Program could create a two-tiered market and questioned the fairness of preventing institutional investors from submitting Retail Orders, and thus receiving price improvement on their orders.[39] The Commission notes that the Program might create a desirable opportunity for institutional investors to interact with retail order flow that they are not able to reach currently. Today, institutional investors often do not have the chance to interact with marketable retail orders that are executed pursuant to internalization arrangements. Thus, by submitting RPI Orders, institutional investors may be able to reduce their possible adverse selection costs by interacting with retail order flow.

When the Commission is engaged in rulemaking or the review of a rule filed by a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[40] As discussed above, the Commission believes this Program will promote competition for retail order flow by allowing Exchange members to submit RPI Orders to interact with Retail Orders. Such competition may promote efficiency by facilitating the price discovery process. Moreover, the Commission does not believe that the Program will have a significant effect on market structure, or will create any new inefficiencies in current market structure. Finally, to the extent the Program is successful in attracting retail order flow, it may generate additional investor interest in trading securities, thereby promoting capital formation.

The Commission also believes that the Program is sufficiently tailored to provide the benefits of potential price improvement only to bona fide retail order flow originating from natural persons.[41] The Commission finds that the Program provides an objective process by which a member organization could become a RMO, and for appropriate oversight by the Exchange to monitor for continued compliance with the terms of these provisions. The Exchange has limited the definition of Retail Order to an agency order that originates from a natural person and not a trading algorithm or any other computerized methodology. Furthermore, a Retail Order must be submitted by a RMO that is approved by the Exchange. In addition, RMOs would be required to maintain written policies and procedures to help ensure that they designate as Retail Orders only those orders which qualify under the Program. If a member's application to become a RMO is denied by the Exchange, that member may appeal the determination or re-apply. The Commission believes that these standards should help ensure that only retail order flow is submitted into the Program and thereby promote just and equitable principles of trade and protect investors and the public interest, while also providing an objective process through which members may become RMOs.

In addition, the Commission finds that the Program's proposed dissemination of a Retail Liquidity Identifier would increase the amount of pricing information available to the marketplace and is consistent with the Act. The identifier would be disseminated through the consolidated public market data stream to advertise the presence of a RPI Order with which Retail Orders could interact. The identifier would reflect the symbol for a particular security and the side of the RPI Order interest, but it would not include the price or size of such interest. The identifier would alert market participants to the existence of a RPI Order and should provide market participants with more information about the availability of price improvement opportunities for retail orders than is currently available.

The commenter questioned whether the Retail Liquidity Identifier is a ''quotation''.[42] As we note above, because the Commission has determined that the Program is not unfairly discriminatory pursuant to Rule 610, it need not determine whether the Retail Liquidity Identifier[43] is a ''quote'' for purposes of Rule 610. Furthermore, the Commission notes that the staff granted the no-action requests of the New York Stock Exchange LLC and NYSE MKT concerning Rule 602 of Regulation NMS with respect to the Retail Liquidity Identifier.[44]

[36] The comment letter discussed whether the Program's proposed Retail Liquidity Identifier constitutes a ''quote'' which would be subject to Rule 610 of Regulation NMS. That rule, known as the ''Fair Access Rule,'' contains a similar prohibition on unfair discrimination. The Commission finds that the Program is not unfairly discriminatory under both Section 6(b)(5) of the Act and Rule 610 of Regulation NMS. Because the Commission has determined that the Program is not unfairly discriminatory pursuant to Rule 610, it need not determine whether the Retail Liquidity Identifier is a ''quote'' for purposes of Rule 610.

[37] *See also* Concept Release on Equity Market Structure, *supra* note 32; Securities Exchange Act Release No. 64781 (June 30, 2011), 76 FR 39953 (July 7, 2011) (approving a program proposed by an options exchange that would provide price improvement opportunities to retail orders based, in part, on questions about execution quality of retail orders under payment for order flow arrangements in the options markets). The commenter expressed concern that institutional investors would not be able to submit RMOs. The Commission notes that institutional investors tend to be more informed than retail investors. *See supra* note 29 and accompanying text.

[38] *See also* Securities Exchange Act Release No. 64781 (June 30, 2011), 76 FR 39953 (July 7, 2011) (noting that ''it is well known in academic literature and industry practice that prices tend to move against market makers after trades with informed traders, often resulting in losses for market makers,'' and that such losses are often borne by uninformed retail investors through wider spreads (citing H.R. Stoll, ''The supply of dealer services in securities markets,'' *Journal of Finance* 33 (1978), at 1133–51; L. Glosten & P. Milgrom, ''Bid ask and transaction prices in a specialist market with heterogeneously informed agents,'' *Journal of Financial Economics* 14 (1985), at 71–100; and T. Copeland & D. Galai, ''Information effects on the bid-ask spread,'' *Journal of Finance* 38 (1983), at 1457–69)).

[39] *See supra* note 29 and accompanying text.

[40] *See* 15 U.S.C. 78c(f).

[41] In addition, the Commission believes that the Program's provisions concerning the approval and potential disqualification of RMOs are not inconsistent with the Act. *See* RLP Approval Order, *supra* note 17, 77 FR at 40680 & n.77.

[42] ''Quotation'' means a bid or an offer. 17 CFR 242.601(62).

[43] The Commission notes that the Retail Liquidity Identifier proposed by the Exchange is identical to that used by NYSE and NYSE MKT.

[44] In that letter, the staff recognized the representations made by NYSE and NYSE MKT that the Retail Liquidity Identifier does not meet the definition of ''bid'' or ''offer'' in Rule 600(b)(8) of Regulation NMS because it does not communicate a specific price. *See* Letter from David Shillman, Associate Director, Division of Trading and Markets, to Janet McGinness, Senior Vice President-

The commenter also raised concerns about the additional burdens broker-dealers would face in evaluating the information contained in the identifiers to determine their routing obligations. The Commission believes that the Program will not create any best execution challenges that are not already present in today's markets. A broker's best execution obligations are determined by a number of facts and circumstances, including: (1) The character of the market for the security (*e.g.,* price, volatility, relative liquidity, and pressure on available communications): (2) the size and type of transaction; (3) the number of markets checked; (4) accessibility of the quotation; and (5) the terms and conditions of the order which result in the transaction.[45] A broker would consider the Program when conducting this analysis. Given the benefits of adding this information to the marketplace, the Commission believes that the Retail Liquidity Identifier is an appropriate part of the Program.

The Exchange believes that the proposed distinctions between its Program and the approved programs for NYSE and NYSE MKT will both enhance competition amongst market participants and encourage competition amongst exchange venues.[46] Specifically, the Exchange believes that: allowing all Exchange Users to enter RPI Orders, as opposed to adopting a special category of retail liquidity provider, will result in a higher level of competition and maximize price improvement to incoming Retail Orders; the Program will provide the maximum price improvement available to incoming Retail Orders because they will always interact with available contra-side RPI Orders and any other price-improving contra-side interest; and the Program will provide all of the price improvement available to incoming Retail Orders by allowing executions at multiple price levels, as opposed to a single clearing price level.[47] The Commission finds that the Program is reasonably designed to enhance competition amongst market participants and encourage competition amongst exchange venues. The Commission also finds that the distinctions between the Exchange's Program and the approved NYSE and NYSE MKT programs are reasonably designed to enhance the Program's price-improvement benefits to retail investors and, therefore, are consistent with the Act.

The Commission notes that it is approving the Program on a pilot basis. Approving the Program on a pilot basis will allow the Exchange and market participants to gain valuable practical experience with the Program during the pilot period. This experience should allow the Exchange and the Commission to determine whether modifications to the Program are necessary or appropriate prior to any Commission decision to approve the Program on a permanent basis. The Exchange also has agreed to provide the Commission with a significant amount of data that should assist the Commission in its evaluation of the Program. Specifically, the Exchange has represented that it ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [48] The Commission expects that the Exchange will monitor the scope and operation of the Program and study the data produced during that time with respect to such issues, and will propose any modifications to the Program that may be necessary or appropriate.

The Commission also welcomes comments, and empirical evidence, on the Program during the pilot period to further assist the Commission in its evaluation of the Program. The Commission notes that any permanent approval of the Program would require a proposed rule change by the Exchange, and such rule change will provide an opportunity for public comment prior to further Commission action.

V. Exemption From the Sub-Penny Rule

Pursuant to its authority under Rule 612(c) of Regulation NMS,[49] the Commission hereby grants the Exchange a limited exemption from the Sub-Penny Rule to operate the Program.[50] For the reasons discussed below, the Commission determines that such action is necessary or appropriate in the public interest, and is consistent with the protection of investors. The exemption shall operate for a period of 12 months, coterminous with the effectiveness of the proposed rule change approved today.

When the Commission adopted the Sub-Penny Rule in 2005, it identified a variety of problems caused by sub-pennies that the Sub-Penny Rule was designed to address:

- If investors' limit orders lose execution priority for a nominal amount, investors may over time decline to use them, thus depriving the markets of liquidity.
- When market participants can gain execution priority for a nominal amount, important customer protection rules such as exchange priority rules and the Manning Rule could be undermined.
- Flickering quotations that can result from widespread sub-penny pricing could make it more difficult for broker-dealers to satisfy their best execution obligations and other regulatory responsibilities.
- Widespread sub-penny quoting could decrease market depth and lead to higher transaction costs.
- Decreasing depth at the inside could cause institutions to rely more on execution alternatives away from the exchanges, potentially increasing fragmentation in the securities markets.[51]

At the same time, the Commission ''acknowledge[d] the possibility that the balance of costs and benefits could shift in a limited number of cases or as the markets continue to evolve.'' [52] Therefore, the Commission also adopted Rule 612(c), which provides that the Commission may grant exemptions from the Sub-Penny Rule, either unconditionally or on specified terms and conditions, if it determined that such an exemption is necessary or appropriate in the public interest, and is

Legal and Corporate Secretary, Office of the General Counsel, NYSE Euronext, dated July 3, 2012.

A ''bid'' or ''offer'' means the bid price or the offer price communicated by a member of a national securities exchange or member of a national securities association to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of an NMS security, as either principal or agent, but shall not include indications of interest. 17 CFR 242.601(8).

The Exchange similarly requested that the staff of the Commission not recommend enforcement action to the Commission against the Exchange under the Quote Rule relating to the kind of information disseminated through Retail Liquidity Identifier. See No-Action Letter, *supra* note 13. The staff has determined to grant the Exchange's No-Action request pursuant to a letter which is also being issued today. *See* Letter from David Shillman, Associate Director, Division of Trading and Markets, to Eric Swanson, Senior Vice President and General Counsel, BATS, dated November 27, 2012.

[45] *See* FINRA Rule 5310.

[46] *See* Notice, *supra* note 3, 77 FR at 52346.

[47] *See* Notice, *supra* note 3, 77 at 53245–46.

[48] *See supra* note 37 and accompanying text.

[49] 17 CFR 242.612(c).

[50] The commenter opined that if the Commission believes that the protections afforded by sub-penny rule are no longer necessary, the Commission should address that change in policy through a formal rulemaking rather than individual exemptions. *See supra* note 30. For the reasons expressed in this section, the Commission believes that granting an exemption from Rule 612 for purposes of the BYX RLP as proposed is appropriate.

[51] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37551–52 (June 29, 2005).

[52] *Id.* at 37553.

consistent with the protection of investors.

The Commission believes that the Exchange's proposal raises such a case. As described above, under the current market structure, few marketable retail orders in equity securities are routed to exchanges. The vast majority of marketable retail orders are internalized by OTC market makers, who typically pay retail brokers for their order flow. Retail investors can benefit from such arrangements to the extent that OTC market makers offer them price improvement over the NBBO. Price improvement is typically offered in sub-penny amounts.[53] An internalizing broker-dealer can offer sub-penny executions, provided that such executions do not result from impermissible sub-penny orders or quotations. Accordingly, OTC market makers typically select a sub-penny price for a trade without quoting at that exact amount or accepting orders from retail customers seeking that exact price. Exchanges—and exchange member firms that submit orders and quotations to exchanges—cannot compete for marketable retail order flow on the same basis, because it would be impractical for exchange electronic systems to generate sub-penny executions without exchange liquidity providers or retail brokerage firms having first submitted sub-penny orders or quotations, which the Sub-Penny Rule expressly prohibits.

The limited exemption granted today should promote competition between exchanges and OTC market makers in a manner that is reasonably designed to minimize the problems that the Commission identified when adopting the Sub-Penny Rule. Under the Program, sub-penny prices will not be disseminated through the consolidated quotation data stream, which should avoid quote flickering and its reduced depth at the inside quotation. Furthermore, while the Commission remains concerned about providing enough incentives for market participants to display limit orders, the Commission does not believe that granting this exemption (and approving the accompanying proposed rule change) will reduce such incentives. Market participants that display limit orders currently are not able to interact with marketable retail order flow because it is almost entirely routed to internalizing OTC market makers that offer sub-penny executions. Consequently, enabling the Exchanges to compete for this retail order flow through the Program should not materially detract from the current incentives to display limit orders, while potentially resulting in greater order interaction and price improvement for marketable retail orders. To the extent that the Program may raise Manning and best execution issues for broker-dealers, these issues are already presented by the existing practices of OTC market makers.

The exemption being granted today is limited to a one-year pilot. The Exchange has stated that ''sub-penny trading and pricing could potentially result in undesirable market behavior,'' and, therefore, it will ''monitor the Program in an effort to identify and address any such behavior.'' [54] Furthermore, the Exchange has represented that it ''will produce data throughout the pilot, which will include statistics about participation, the frequency and level of price improvement provided by the Program, and any effects on the broader market structure.'' [55] The Commission expects to review the data and observations of the Exchange before determining whether and, if so, how to extend the exemption from the Sub-Penny Rule.[56]

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[57] that the proposed rule change (SR–BYX–2012–019), as modified by Amendment No. 2, be and hereby is, approved on a one-year pilot basis.

It is also hereby ordered that, pursuant to Rule 612(c) of Regulation NMS, the Exchange is given a limited exemption from Rule 612 of Regulation NMS allowing it to accept and rank orders priced equal to or greater than $1.00 per share in increments of $0.001, in the manner described in the proposed rule change above, on a one-year pilot basis coterminous with the effectiveness of the proposed rule change.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Kevin O'Neill,

Deputy Secretary.

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[53] When adopting the Sub-Penny Rule, the Commission considered certain comments that asked the Commission to prohibit broker-dealers from offering sub-penny price improvement to their customers, but declined to do so. The Commission stated that ''trading in sub-penny increments does not raise the same concerns as sub-penny quoting'' and that ''sub-penny executions due to price improvement are generally beneficial to retail investors.'' *Id.* at 37556.

[54] *See* Request for Sub-Penny Rule Exemption, *supra* note 10, at 3, n.7.

[55] *See supra* note 37 and accompanying text.

[56] In particular, the Commission expects the Exchange to observe how maker/taker transaction charges, whether imposed by the Exchange or by other markets, might impact the use of the Program. Market distortions could arise where the size of a transaction rebate, whether for providing or taking liquidity, is greater than the size of the minimum increment permitted by the Program ($0.001 per share).

[57] 15 U.S.C. 78s(b)(2).

[58] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(83).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–68302; File No. SR–NYSE–2012–65]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Moving the Rule Text That Provides for Pegging on the Exchange From Supplementary Material .26 of NYSE Rule 70 to NYSE Rule 13 and Amending Such Text to (i) Permit Designated Market Maker Interest To Be Set as Pegging Interest; (ii) Change References From National Best Bid, National Best Offer and National Best Bid or Offer to Best Protected Bid, Best Protected Offer and Best Protected Bid or Offer, Respectively; (iii) Permit Pegging Interest To Peg to the Opposite Side of the Market; and (iv) Provide for An Offset Value To Be Specified for Pegging Interest

November 27, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 13, 2012, New York Stock Exchange LLC (the ''Exchange'' or ''NYSE'') 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 Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder.[4] 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 move the rule text that provides for pegging on the Exchange from Supplementary Material .26 of NYSE Rule 70 (''Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

70.26'') to NYSE Rule 13 (''Rule 13'') and amend such text to (i) permit Designated Market Maker (''DMM'') interest to be set as pegging interest; (ii) change references from national best bid (''NBB''), national best offer (''NBO'') and national best bid or offer (''NBBO'') to best protected bid (''PBB''), best protected offer (''PBO'') and best protected bid or offer (''PBBO''), respectively; (iii) permit pegging interest to peg to the opposite side of the market; and (iv) provide for an offset value to be specified for pegging interest. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to move the rule text that provides for pegging on the Exchange from Rule 70.26 (Pegging for d-Quotes and e-Quotes)[5] to Rule 13 and amend such text to (i) permit DMM interest to be set as pegging interest; (ii) change references from NBB, NBO and NBBO to PBB, PBO and PBBO, respectively; (iii) permit pegging interest to peg to the opposite side of the market; and (iv) provide for an offset value to be specified for pegging interest. In moving this text to Rule 13, the Exchange proposes to make several other changes to the rule text, so that the proposed substantive changes described above can be incorporated in a logical and transparent manner and to streamline the rule in a non-substantive manner.

Background

The Exchange adopted Rule 70.26 as part of its Hybrid Market initiative to provide the ability for Floor brokers to add pegging instructions to e-Quotes.[6] Since its original adoption, the pegging functionality has been amended a number of times to, among other things, include d-Quotes and change the pegging functionality from pegging to the Exchange best bid or offer to pegging to the NBBO.[7]

As set forth in Rule 70.26(i), e-Quotes, other than tick-sensitive e-Quotes, may be set to peg to the NBB (for pegging interest to buy) or to the NBO (for pegging interest to sell) as the NBBO changes, so long as the NBBO is at or within the limit price. Rule 70.26(ii) specifies that d-Quotes may also employ pegging. Rule 70.26(iii) provides that pegging is active only when auto-quoting is active and that Exchange systems will reject e-Quotes that employ pegging that are entered 10 seconds or less before the scheduled close of trading. Rule 70.26(iv) provides that pegging e-Quotes and d-Quotes trade on parity with other interest at the NBBO after interest entitled to priority is executed, and Rule 70.26(vi) provides that a pegging e-Quote or d-Quote that sets the Exchange best bid or offer is entitled to priority.

Rule 70.26(v) provides that pegging is reactive, and that an e-Quote or d-Quote will not establish the NBBO as a result of pegging. Rule 70.26(vii) provides that pegging e-Quotes will only peg to non-pegging interest that is within the pegging range selected by the Floor broker, and that such non-pegging interest may be available on the Exchange or be a protected bid or offer on an away market. Rule 70.26(viii) provides that an e-Quote or d-Quote will not sustain the NBBO as a result of pegging if there is no other non-pegged interest at that price, and such price is not the e-Quote's or d-Quote's limit price. Rule 70.26(viii)(A) and (B) provide that if a buy (sell) pegging e-Quote reaches its lowest (highest) quotable price and it is the NBB (NBO), such interest will remain displayed at the NBB (NBO) even if all other interest at that price cancels. Rule 70.26(ix) further provides detail of definitions of the price range that a Floor broker may designate for pegging e-Quotes, which is a price range that a Floor broker can add that is in addition to the limit price for the pegging e-Quote, provided that it is not inconsistent with the order's limit price.

Rule 70.26(x) provides that pegging interest will join the NBB or NBO provided that it is within the e-Quote's pegging range. As noted in Rule 70.26(x)(A), a pegging e-Quote will not join the NBBO if it is locking or crossing the Exchange best bid or offer, in which case the pegging e-Quote would peg to the next available best-priced non-pegging interest. Rule 70.26(x)(B) further provides that if the NBBO is not within the price range specified for the pegging e-Quote, it will peg to the next available best-priced non-pegging interest within the price range selected by the Floor broker.

Rule 70.26(xi) also provides that if a pegging range has not been included, the pegging e-Quote will peg to the NBBO so long as the NBBO is within the limit price of the e-Quote. Rule 70.26(xii) provides that the discretionary price range of a d-Quote will move with a pegging d-Quote, subject to any floor or ceiling set by the Floor broker. Rule 70.26(xii)(A)–(C) then set forth that if the NBBO moves out of the range of the pegging e-Quote, the pegging e-Quote will remain at the best price to which there may be non-pegging interest to peg, and that once the NBBO returns to within the price range designated for the pegging e-Quote, it will once again peg to the NBBO. Finally, Rule 70.26(xiii) provides that a Floor broker may establish a minimum size of same-side volume to which the e-Quote or d-Quote will peg.

Summary of Proposed Rule Changes

As noted above, the Exchange proposes to permit DMM interest to be set as pegging interest. Because pegging for DMM interest would generally be the same as pegging for e-Quotes and d-Quotes, the Exchange proposes to amend the existing text, as described in more detail below, to define the term ''pegging interest'' to include e-Quotes, d-Quotes, and DMM interest.[8] The Exchange believes that it is appropriate to expand the availability of pegging interest to DMM interest because it will assist DMMs in meeting their obligations pursuant to NYSE Rule 104(a)(1) to maintain a continuous, two-sided quote at or near the NBBO throughout the trading day.

In particular, the Exchange notes that other markets have recently been approved to provide market makers with pegging order functionality so that

[5] E-Quotes are Floor broker agency interest files. D-Quotes are e-Quotes for which a Floor broker has entered discretionary instructions as to size and/or price.

[6] *See* Securities Exchange Act Release No. 54577 (October 5, 2006), 71 FR 60208 (October 12, 2006) (SR–NYSE–2006–36).

[7] *See* Securities Exchange Act Release No. 61072 (November 30, 2009), 74 FR 64103 (December 7, 2009) (SR–NYSE–2009–106).

[8] Trading interest that has been set to peg, i.e., e-Quotes, d-Quotes, and DMM interest, will be referred to collectively as ''pegging interest.''

market makers may automatically track the NBBO in compliance with the market-wide market maker quoting requirements.[9] The rules adopted or proposed by those markets set the pegging functionality to automatically track the designated percentages set forth in the market-wide quoting rule (i.e., NYSE Rule 104(a)(1)(B)(iii) designated percentages). While the Exchange's expansion of pegging functionality to DMMs would not include those set percentages, the Exchange believes that providing DMMs with the flexibility to engage in same-side or opposite-side pegging with offset values of their own choosing, as discussed in more detail below, will enable DMMs to set their market-making quoting interest to automatically track the PBBO at a tighter ratio than the quoting requirements contemplated by NYSE Rule 104(a)(1)(B).[10]

The Exchange also proposes to change references to NBB, NBO and NBBO throughout Rule 70.26 to PBB, PBO and PBBO, respectively. The Exchange believes that these changes are more consistent with the requirements of the Regulation NMS Order Protection Rule[11] and the related definition of protected bid and offer, as set forth in Regulation NMS Rule 600(b)(57),[12] which defines a protected bid or protected offer as a quote in an NMS stock that is (i) displayed by an automated trading center; (ii) disseminated pursuant to an effective national market system plan; and (iii) an automated quotation that is the best bid or best offer of a national stock exchange or a national securities association. Exchange systems monitor the PBBO for purposes of the Order Protection Rule and, in this respect, Exchange systems also move pegging interest based on moves to the PBBO, not the NBBO.[13]

The Exchange further proposes to expand the pegging functionality to permit pegging to the opposite side of the market. The existing functionality, for which pegging interest to buy (sell) pegs to the PBB (PBO), would be renamed in the rule as a ''Primary Pegging Interest.''[14] The proposed new functionality, whereby pegging interest would peg to the opposite side of the market (buy (sell) pegs to the PBO (PBB)) would be referred to in the proposed rule as a ''Market Pegging Interest.''[15] The Exchange believes that adding Market Pegging Interest functionality would contribute to narrower spreads for securities and is consistent with approved rules of other markets.[16]

The Exchange also proposes to provide for an offset value, which would be a specified amount by which the price of pegging interest would differ from the price of the interest to which it pegs.[17] The Exchange proposes to specify that an offset value would be optional for Primary Pegging Interest,[18] but would be required for Market Pegging Interest.[19] As proposed, when applying an offset value to Primary Pegging Interest, the adjusted price for buy (sell) pegging interest would be the PBB (PBO) minus (plus) the offset value. When applying the offset value to Market Pegging Interest, the adjusted price for buy (sell) pegging interest would be the PBO (PBB) minus (plus) the offset value.[20] If the offset value of pegging interest to buy (sell) would result in a price that is greater than $1.00 in an increment smaller than $0.01, the price of the pegging interest to buy (sell) would be rounded down (up) to the nearest permissible minimum price variation, consistent with NYSE Rule 61.[21]

The Exchange believes that adding Market Pegging functionality would enable pegging interest to potentially establish a better price than is currently available, thereby reducing the size of the spread for a security. For example, if the PBBO in a security is $10.05–$10.07, and the buy pegging interest is pegged to the PBO with an offset of $0.01, the buy pegging interest would post on the Exchange as a $10.06 bid, which would be a new PBB that reduces the spread and creates a tighter market. The Exchange notes that unlike Primary Pegging Interest, which currently cannot establish or sustain the PBBO as a result of pegging, Market Pegging Interest can establish or sustain a PBB or PBO.

[9] *See, e.g.,* Securities Exchange Act Release Nos. 67584 (Aug. 2, 2012), 77 FR 47472 (Aug. 8, 2012) (SR–NASDAQ–2012–066) (approving The NASDAQ Stock Market LLC (''Nasdaq'') Rule 4751(f)(15), which establishes a ''Market Maker Peg Order''); 67756 (Aug. 29, 2012), 77 FR 54633 (Sept. 5, 2012) (SR–BATS–2012–026) (approving The BATS Exchange, Inc. (''BATS'') Rule 11.8(e), which establishes a ''Market Maker Peg Order''); and 67755 (Aug. 29, 2012), 77 FR 54630 (Sept. 5, 2012) (SR–BYX–2012–012) (approving BATS–Y Exchange, Inc. (''BYX'') Rule 11.8(e), which establishes a Market Maker Peg Order).

[10] Member organizations are responsible for determining whether their trading activity qualifies as bona fide market making for purposes of the ''locate'' exception and close-out requirements of Regulation SHO under the Exchange Act. Compliance with the quoting requirements of NYSE Rule 104(a)(1)(B), or any other rules of the Exchange, does not necessarily mean that the DMM, or other form of Exchange-registered market maker, is engaged in bona fide market making for purposes of Regulation SHO. *See* 17 CFR 242.203(b)(2)(iii); 17 CFR 242.204(a)(3). The Commission adopted a narrow exception to Regulation SHO's ''locate'' requirement for market makers that may need to facilitate customer orders in a fast moving market without possible delays associated with complying with such requirement. Only market makers engaged in bona fide market making in the security at the time they effect the short sale are excepted from the ''locate'' requirement. *See* Exchange Act Release No. 50103 (July 28, 2004), 69 FR 48008, 48015 (August 6, 2004) (providing guidance as to what does not constitute bona fide market making for purposes of claiming the exception to Regulation SHO's ''locate'' requirement). *See also* Exchange Act Release No. 58775 (October 14, 2008), 73 FR 61690, 61698–9 (October 17, 2008) (providing guidance regarding what is bona fide market making for purposes of complying with the market maker exception to Regulation SHO's ''locate'' requirement including without limitation whether the market maker incurs any economic or market risk with respect to the securities, continuous quotations that are at or near the market on both sides and that are communicated and represented in a way that makes them widely accessible to investors and other broker-dealers and a pattern of trading that includes both purchases and sales in roughly comparable amounts to provide liquidity to customers or other broker-dealers).

[11] 17 CFR 242.611.

[12] 17 CFR 242.600(b)(57).

[13] In most instances, the PBBO and the NBBO are the same. However, if the NBBO is based on a quote that is no longer protected, i.e., a stale quote, the PBBO may change before the NBBO changes. In this regard, the Exchange notes that current Rule 70.26(vii) already specifies that pegging interest may peg to interest available on the Exchange or a protected bid or offer on an away market.

[14] *See* proposed paragraph (c) of the pegging interest text of Rule 13.

[15] *See* proposed paragraph (d) of the pegging interest text of Rule 13.

[16] *See, e.g.,* Nasdaq Rule 4751(f) and BATS Rule 11.9(c)(8).

[17] *See* proposed paragraph (b) of the pegging interest text of Rule 13.

[18] *See* proposed paragraph (c)(4) of the pegging interest text of Rule 13.

[19] *See* proposed paragraph (d)(4) of the pegging interest text of Rule 13. Because an offset value would be required for Market Pegging Interest, Exchange systems would reject Market Pegging Interest that does not include an offset value.

[20] For example, if the PBB is $2.00 and the PBO is $2.05, pegging interest to buy that is set to peg to the same side of the market with an offset of $0.01 would be priced at $1.99 (i.e., $2.00 PBB minus $0.01 offset). Pegging interest to sell that is set to peg to the same side of the market with an offset of $0.01 would be priced at $2.06 (i.e., $2.05 PBO plus $0.01 offset). In contrast, pegging interest to buy that is set to peg to the opposite side of the market with an offset of $0.05 would be priced at $2.00 (i.e., $2.05 PBO minus $0.05 offset). Pegging interest to sell that is set to peg to the opposite side of the market with an offset of $0.05 would be priced at $2.05 (i.e., $2.00 PBB plus $0.05 offset).

[21] Continuing with the example above, if the PBB is $2.00 and the PBO is $2.05, pegging interest to buy that is set to peg to the same side of the market with an offset of $0.015 would be priced at $1.98 (i.e., $2.00 PBB minus $0.015 offset equals $1.985 and rounded down to nearest permissible minimum price variation). Pegging interest to sell that is set to peg to the same side of the market with an offset of $0.015 it would be priced at $2.07 (i.e., $2.05 PBO plus $0.015 offset equals $2.065 and rounded up to nearest permissible minimum price variation). In contrast, pegging interest to buy that is set to peg to the opposite side of the market with an offset of $0.015 would be priced at $2.03 (i.e., $2.05 PBO minus $0.015 offset equals $2.035 and rounded down to nearest permissible minimum price variation). Pegging interest to sell that is set to peg to the opposite side of the market with an offset of $0.015 would be priced at $2.02 (i.e., $2.00 PBB plus $0.015 offset equals $2.015 and rounded up to nearest permissible minimum price variation).

Proposed Specific Rule Changes

As noted above, the Exchange proposes to delete Rule 70.26 in its entirety and move the text that provides for pegging to Rule 13. Because pegging interest is being expanded to include DMM interest, the Exchange believes that Rule 70, which concerns Floor broker interest only, is no longer the proper rule within which to provide for pegging. Rather, because pegging is a type of modifier, the Exchange believes it is more appropriate to provide for pegging within Rule 13 as a defined term referred to as ''pegging interest.'' The Exchange notes that Rule 13 is currently titled ''Definition of Orders.'' However, Rule 13 currently provides for orders *and* order modifiers.[22] Accordingly, the Exchange proposes to change the title of Rule 13 to ''Orders and Modifiers.''

As proposed, the new pegging interest section of Rule 13 would replace the existing text of Rule 70.26, with numerous non-substantive changes, as well as add new rule text to incorporate the elements proposed above, i.e., permitting DMM interest to be set as pegging interest, changing NBBO to PBBO, adding the Market Pegging Interest functionality, and providing for an offset value to be specified. The Exchange believes that the proposed changes to the rule text, as incorporated in Rule 13, result in a more streamlined rule that eliminates redundancy in the current rule while also incorporating the new elements in a logical and comprehensive manner. For example, rather than referring to ''pegging e-Quotes'' or ''pegging d-Quotes'' throughout the rule, the Exchange proposes to use the term ''pegging interest,'' unless the rule is specific only to a particular type of interest. In addition, the Exchange proposes to combine concepts that are currently addressed separately or in multiple locations within Rule 70.26, but that can be logically combined into streamlined rule text (e.g., the text discussing the permissible price range and how it impacts pegging).

The following sets forth the proposed rule changes (all references to proposed paragraphs are to the proposed new pegging interest text of Rule 13):

• Proposed paragraph (a) provides that ''pegging interest'' means displayable or non-displayable interest to buy or sell at a price set to track the PBB or PBO as the PBBO changes. The proposed rule text would replace the general description of pegging in Rule 70.26(i), with certain changes. As discussed above, from a substantive perspective, the Exchange proposes to replace references to the NBB, NBO, and NBBO with references to the PBB, PBO, and PBBO. The Exchange proposes to delete the reference to the limit price of an e-Quote as that concept will now be part of proposed paragraph (a)(4), relating to the specified price range of pegging interest. In addition, the Exchange proposes a clarifying rule change to add that pegging interest may be for displayable or non-displayable interest. The current pegging functionality is available for all e-Quotes and d-Quotes, whether intended for display or not, and the Exchange proposes a clarifying rule change to make clear that pegging interest is available for both displayable and non-displayable interest.

• Proposed paragraph (a)(1) provides that pegging interest can be an e-Quote, d-Quote, or DMM Interest. The proposed rule text would replace without any substantive change rule text from Rule 70.26(i) referencing e-Quotes and Rule 70.26(ii), which references d-Quotes. The proposal to add DMM interest is new rule text, as described in more detail above.

• Proposed paragraph (a)(1)(A) provides that pegging interest may not include a sell ''plus'' or buy ''minus'' instruction, which replaces without any substantive change the current text in Rule 70.26(i) that a tick-sensitive e-Quote is not permitted to peg. A ''tick sensitive'' e-Quote is one that includes a sell ''plus'' or buy ''minus'' instruction, which are existing defined terms in Rule 13. Therefore, the Exchange proposes to use the sell ''plus'' or buy ''minus'' terminology instead of the current ''tick sensitive'' language, which is not a defined term in Exchange rules.[23]

• Proposed paragraph (a)(1)(B) would replace without any substantive change the second sentence of Rule 70.26(iii), which provides that Exchange systems shall reject a pegging e-Quote or d-Quote that is entered 10 seconds or less before the scheduled close of trading.[24] The Exchange notes that the rationale for excluding pegging e-Quotes and d-Quotes 10 seconds prior to the close is to assist the DMM with arranging the close, and because the DMM is aware of DMM interest, this prohibition is not necessary for DMM interest. The Exchange notes that this does not confer any additional benefit to the DMM because the DMM may be required to supply additional liquidity as needed as part of the closing transaction in order to meet the obligation set forth in Rule 104(a)(3) to facilitate the close of trading for each of the securities in which the DMM is registered.

• Proposed paragraph (a)(1)(C) would replace without any substantive change Rule 70.26(xii) by specifying that discretionary instructions associated with a pegging d-Quote would move as the d-Quote pegs to the PBBO, subject to any price range and limit price that may be specified. The Exchange does not propose to include the reference to e-Quote that is currently in Rule 70.26(xii) because a d-Quote is an e-Quote with discretionary instructions.[25] Also, the Exchange proposes to refer to the specified price range instead of the current reference to floor or ceiling price in Rule 70.26(xii). Finally, the Exchange proposes to include a reference to the pegging interest's limit price. The Exchange notes that the textual differences between proposed paragraph (a)(1)(C) and current Rule 70.26(xii) do not make any substantive changes to the rule.

• Proposed paragraph (a)(2) would replace without any substantive change the first sentence of Rule 70.26(iii), by specifying that pegging is only active when auto-quoting is active.

• Proposed paragraph (a)(3) would replace the rule text in Rule 70.26(vii) by specifying that pegging interest shall peg to a price that is based on either (A) a protected bid or offer, which may be available on the Exchange or an away market, or (B) interest that establishes a price on the Exchange, which may include Primary or Market Pegging Interest that has established a price as a result of an offset value. The current rule provides that pegging interest only pegs to other non-pegging interest, which may be available on the Exchange or a protected bid or offer on an away market. The proposed rule text modifies the existing rule text to take into consideration the possibility that either Primary Pegging Interest or Market Pegging Interest may establish a price on the Exchange and therefore pegging interest may peg to other pegging interest.[26] The circumstances where pegging interest may establish a price is as a result of the proposed new offset function, which is why the Exchange

[22] For example, a sell ''plus'' or buy ''minus'' order is not an order type per se, but is instead an order modifier.

[23] This change does not alter the meaning of the current rule text.

[24] The current rule text only refers to e-Quotes, but since d-Quotes are a subset of e-Quotes, Exchange systems currently reject both pegging e-Quotes and d-Quotes that are entered 10 seconds or less before the scheduled close of trading.

[25] *See supra* note 5.

[26] *See* proposed paragraph (d)(2) of the pegging interest text of Rule 13.

proposes to change this aspect of the rule.

Example 1: Assume that the Exchange best bid and offer, which is also the PBBO, is $10.05–$10.07, and there is buy Market Pegging Interest pegged to the PBO with an offset value of $0.01, such Market Pegging Interest would establish a new PBB and Exchange best bid of $10.06. Because the Market Pegging Interest established a new PBB, Primary Pegging Interest to buy could peg to that $10.06 price and therefore would be pegging to pegging interest.

Example 2: Assume again that the Exchange best bid or offer, which is also the PBBO, is $10.05–$10.07, with 100 shares at the bid, and there is buy Primary Pegging Interest ''A'' of 500 shares with an offset of $0.01, which would be at a priced at $10.04, and that is the only Exchange interest priced at $10.04. Assume further there is buy Primary Pegging Interest ''B'' that will only peg if there is minimum same-side volume of 500 shares.[27] Because the Exchange best bid is only 100 shares, Primary Pegging Interest ''B'' would peg to the price that meets the minimum size requirement, which in this case would be the price established by the Primary Pegging Interest ''A'' at $10.04. In this scenario, because of the offset value associated with Primary Pegging Interest ''A'', that interest has established a price and as a result, Primary Pegging Interest ''B'' is pegging to pegging interest.

• Proposed paragraph (a)(4) provides that pegging interest shall peg only within the specified price range for the pegging interest. The Exchange notes that while the proposed language is new rule text, the proposed paragraph does not make any substantive changes to the current rule, but rather consolidates rule text from separate parts of the existing rule in a streamlined format. In particular, the proposed rule would replace the remaining text in Rules 70.26(i) (that pegging interest must be within the e-Quote's limit price), 70.26(vii) (that pegging interest pegs to interest within the price range selected by the Floor broker), and 70.26(ix), including (A) through (D) of that subsection, by replacing the detailed ''price range'' discussion within current Rule 70.26(ix) by specifying instead that pegging interest shall peg only within the specified price range for the pegging interest. For example, Rule 70.26(ix)(D) currently specifies that the price to which pegging interest pegs cannot be higher (lower) than the limit price of the buy (sell) pegging interest, which is also currently covered in Rule 70.26(i).[28] In this regard, the Exchange proposes not to include the text of current Rule 70.26(ix)(A), (B) and (C), which refer to the ''quote price,'' ''ceiling price'' and ''floor price,'' respectively, of pegging interest. The Exchange does not consider these terms necessary and believes that proposed paragraph (a)(4) is clearer and more streamlined without their inclusion.[29]

• Proposed paragraph (a)(4)(A) specifies that if the PBBO, combined with any offset value, is not within the specified price range, the pegging interest would instead peg to the next available best-priced interest that is within the specified price range. Other than addressing how the offset value impacts the pegging interest, the reference to NBBO changing to PBBO, replacing the phrase ''the price range selected by the Floor broker'' with ''the specified price range,'' this text is substantively the same and replaces current Rule 70.26(x)(B).[30]

• Proposed paragraph (a)(4)(B) would replace without any substantive change the current Rule 70.26(xii)(A), (B) and (C) by specifying that pegging interest that has reached its specified price range will remain at that price if the PBBO goes beyond such price range and that if the PBBO returns to a price within the specified price range, it shall resume pegging. The Exchange notes that this text is substantively the same as in current Rule 70.26(xii)(A), (B), and (C), albeit in a streamlined format. The Exchange further notes that the proposed rule text replaces without any substantive change concepts set forth in Rule 70.26(x) (that pegging interest will peg to the NBBO so long as it is in the specified price range) and 70.26(xi) (pegging interest without a specified price range will peg based on the limit price of the order).

• Proposed paragraph (b) defines the ''offset value,'' as discussed in more detail above.

• Proposed paragraph (c) defines the term ''Primary Pegging Interest,'' as discussed in more detail above.

• Proposed paragraph (c)(1) would replace Rule 70.26(x)(A) by specifying that Primary Pegging Interest shall not peg to a price that is locking or crossing the Exchange best offer (bid), but instead would peg to the next available best-priced interest that would not lock or cross the Exchange best offer (bid). In moving the text from Rule 70.26(x)(A), the Exchange proposes two minor changes: to change the reference from the NBB (NBO) to the term ''price'' and to delete the term ''non-pegging interest.'' The Exchange proposes these modifications because, as discussed above in connection with proposed paragraph (a)(3), there may be circumstances where because of the offset value, pegging interest may peg to a price established by pegging interest, which in some cases, may not be the PBBO.

• Proposed paragraph (c)(2) would replace without substantive change Rules 70.26(v), (viii), (viii)(A), and (viii)(B) by specifying that Primary Pegging Interest will not establish a PBB (PBO) or sustain a PBB (PBO) as a result of pegging.[31]

• Proposed paragraph (c)(3) would replace without any substantive change Rule 70.26(vi) by specifying that Primary Pegging Interest may establish an Exchange best bid or offer. The Exchange proposes to replace the rule text set forth in Rule 70.26(vi) that pegging interest that sets the Exchange best bid or offer is entitled to priority by adding to Rule 72 that pegging interest may have priority interest.[32]

• Proposed paragraph (c)(4) provides that Primary Pegging Interest may include an offset value for which the adjusted price for buy (sell) pegging interest shall be the PBB (PBO) minus (plus) the offset value, which is new rule text, as discussed in greater detail above.

[27] *See* proposed paragraph (c)(5) of the pegging interest text of Rule 13.

[28] This addition would not result in a substantive change to pegging. Also, the Exchange notes that Rule 70.26(ix) currently says that the price may not be ''inconsistent with'' the limit price. The Exchange believes that using ''specified price range'' would be clearer than the current ''inconsistent with'' text because the specified price range concept is broad enough to include the limit price of the order as well as any other pricing instructions that may be included with the pegging interest.

[29] The Exchange considers it inherent that a price ''range'' will have upper and lower bounds and therefore does not consider these terms necessary.

[30] The Exchange notes that Rule 70.26(x)(B) provides that pegging interest will ''join'' the interest to which it pegs. The Exchange believes that using ''peg to'' terminology would be more precise than the current ''join'' language.

[31] The Exchange believes that the proposed rule text ''as a result of pegging'' clarifies that the only time that Primary Pegging Interest will not establish or sustain the PBBO is if it is following its pegging instructions. When a Primary Pegging Interest is at a price because it is the limit price of the Primary Pegging Interest, such interest will not have established or sustained the PBBO ''as a result of pegging'' and the Exchange believes that it is no longer necessary to specifically state that pegging interest at its limit price may remain displayed at the PBBO, as currently set forth in Rules 70.26(viii)(A) and (B). In addition, the Exchange proposes not to replace the statement in Rule 70.26(v) that pegging is reactive because that concept was intended to mean that pegging interest cannot create a PBB or PBO. However, because proposed Market Pegging Interest can establish a new PBB or PBO, the limitation to ''reactive'' is no longer relevant and the Exchange believes that the proposed rule text that Primary Pegging Interest cannot establish or sustain the PBBO obviates the need to separately say that pegging is reactive. The Exchange also proposes to delete the term ''new'' as being redundant of the concept of establishing a PBB or PBO.

[32] The Exchange proposes to further amend Rule 72 to change a reference to current Rule 70.26 to the proposed new pegging interest text within Rule 13 and change a reference to e-Quotes to ''pegging interest,'' generally.

• Proposed paragraph (c)(5) would replace without any substantive change Rule 70.26(xiii) by specifying that Primary Pegging Interest may be designated with a minimum size of same-side volume to which such pegging interest shall peg. Other than the references to NBB and NBO changing to PBB and PBO, respectively, this text is substantively the same as in current Rule 70.26(xiii).

• Proposed paragraph (d) provides for new rule text related to the new Market Pegging Interest, which is discussed in greater detail above. More specifically, proposed paragraph (d)(1) would provide that Market Pegging Interest shall not peg to a price that is locking or crossing the Exchange best offer (bid), but instead shall peg to a price one minimum price variation lower (higher) than the Exchange best bid or offer. This proposed functionality is intended to prevent Market Pegging Interest from locking or crossing the Exchange best bid or offer.[33] Proposed paragraph (d)(2) would provide that Market Pegging Interest to buy (sell) may establish or sustain a PBB (PBO). Proposed paragraph (d)(3) would mirror paragraph (c)(3) by specifying that Market Pegging Interest may establish an Exchange best bid or offer. Finally, proposed paragraph (d)(4), would require Market Pegging Interest to include an offset value, as discussed in more detail above.

The Exchange proposes to delete without replacing Rule 70.26(iv), which provides that pegging interest trades on parity with other interest at the NBBO after interest entitled to priority is executed. The Exchange believes that this text is superfluous, in that pegging interest is not treated differently than non-pegging interest for purposes of determining parity, as set forth in Rule 72, and Rule 72 governs the allocation of executions and priority.[34] The Exchange therefore is not proposing to address this concept in new pegging interest section of Rule 13.

The Exchange further proposes to add new subsection (xii) to Rule 72(c) to codify how Exchange systems treat modifications to orders for purposes of time sequencing. Specifically, if an order is modified solely to reduce the size of the order, Exchange systems accept such a modification without changing the time stamp of original order entry.[35] Accordingly, the Exchange proposes to codify in Rule 72(c)(xii) that an order that is modified to reduce the size of the order shall retain the time stamp of original order entry.

Currently, any other modification to an order, including increasing the size of the order or changing the price of the order, results in the order receiving a new time stamp. Accordingly, the Exchange proposes to codify that any other modification of an order, such as increasing the size or changing the price of an order, shall receive a new time stamp. The Exchange notes that the proposed rule language covers any modification of an order, whether directed by a member organization that entered the order or entered by Exchange systems pursuant to rule.[36] For example, Exchange systems may re-price an order if the interest is being re-priced because it is pegging interest, pursuant to Rule 13, or because it is a short sale order during a Short Sale Period, pursuant to Rule 440B(e).

The proposed changes to Rule 72(c)(xii) will be effective on the operative date of this filing. The Exchange will announce the implementation date of the proposed rule change as it relates to pegging interest changes in a Trader Update to be published no later than 90 days publication of the notice in the **Federal Register**. The implementation date will be no later than 90 days following publication of the Trader Update announcing publication of the notice in the **Federal Register**.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[37] in general, and furthers the objectives of Section 6(b)(5),[38] in particular, because 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 proposed rule change is also not designed to permit unfair discrimination.

The Exchange believes that expanding the pegging functionality to DMM interest is consistent with the Act because it will remove impediments to, and perfect the mechanism of a free and open market and national market system and, in general, protect investors and the public interest by providing a mechanism for DMMs to assist them with meeting their market-making obligations to maintain quoting interest at or near the NBBO. The Exchange notes that two other markets have been approved to offer pegging functionality expressly for market markers for a similar purpose.[39] The Exchange's proposal differs because as proposed, the DMM would be able to select whether to enter Primary Pegging Interest or Market Pegging Interest, and would be able to select the offset value, thereby providing the DMM with flexibility to track the PBBO at a tighter ratio than contemplated by the rules of other exchanges that offer a market maker pegging functionality.

The Exchange further notes that expanding pegging functionality to DMM interest is not designed to permit unfair discrimination. The Exchange believes that expanding the functionality to DMMs is consistent

[33] A potential scenario when Market Pegging Interest could lock or cross the Exchange best bid or offer could be if a liquidity replenishment point (''LRP'') is reached pursuant to NYSE Rule 1000, and automatic executions on one side of the market are suspended at the Exchange. In such scenario, assume that the Exchange best bid is $10.04, an LRP is reached and the Exchange is slow on the buy side, a new PBB is published at $10.03, and there is Market Pegging Interest to sell with a $0.01 offset. Because the Market Pegging Interest to sell would peg to the PBB priced at $10.03, with a penny offset, and lock the Exchange's best bid at $10.04, the Exchange proposes to reprice the Market Pegging Interest to sell to $10.05 so that it does not lock the Exchange best bid.

[34] The Exchange proposes to amend Rule 72(a)(i) and (ii) to specify that displayable interest may include pegging interest. Because pegging interest would be included as ''displayable interest,'' the description of allocation of orders would not include pegging interest with any reference to displayable interest. The Exchange also proposes conforming edits to Rule 72(a)(ii)(G) to replace references to Rule 70.26 and e-Quotes with references to Rule 13 and ''pegging interest.''

[35] The manner by which a member organization may reduce the size of an order without impacting the time stamp is to submit a partial cancellation message. For example, if a member organization has entered an order for 400 shares to buy at $10.00 and wants to reduce it to 200 shares to buy at $10.00, the member organization would submit a cancel message for 200 shares to buy at $10.00, which would leave the remaining 200 shares of the buy order with the time stamp of original order entry.

[36] To change the price of an order or increase the size of an order, a member organization would need to enter a ''cancel/replace'' message, which serves to cancel the original order and replace it with a new order. The replacement order receives a new time stamp. The ''cancel/replace'' message can also be used to change the order marking under Regulation SHO of a pending sell order (i.e., from ''long'' to ''short''). For example, if a seller increases the size of a pending sell order, the resulting modified order is considered a new order and must be marked by the broker-dealer to reflect the seller's net position at the time of order modification pursuant to Rule 200 of Regulation SHO. The Exchange notes that if a member organization uses a ''cancel/replace'' message to reduce the size of the order, rather than a partial cancellation, because the ''cancel/replace'' message cancels the original order in its entirety, the replacement order would receive a new time stamp, even if the replacement order represents only a reduction in size of the order.

[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] *See supra* note 9.

with the existing approved rules, as well as consistent with the Act because the expansion is narrowly tailored to offer the functionality to a class of participants that has an affirmative obligation to maintain a quote at or near the NBBO.[40] The Exchange notes that another class of member organizations, Supplemental Liquidity Providers (''SLP''), provide liquidity to the Exchange, and certain SLPs can register as market makers at the Exchange.[41] While the Market Pegging Interest functionality will not be available to SLPs at this time, the Exchange does not believe that this is discriminatory because there is no requirement that a security be assigned to an SLP, and a member organization's participation in the SLP program is voluntary. By contrast, all securities traded at the Exchange must be assigned to a DMM, and a DMM unit cannot withdraw from registration in securities assigned to it.

As discussed above, rather than adding the concepts for the Market Peg functionality, the offset value, and expansion to DMM interest in Rule 70.26, the Exchange proposes to restructure the text of Rule 70.26 and move it to Rule 13. The Exchange believes that this will more appropriately address how pegging operates and consolidates rule text relating to orders and modifiers in single location in the rules. In this regard, the proposal to change references to NBB, NBO and NBBO to PBB, PBO and PBBO, respectively, would add greater specificity regarding the interest to which pegging interest may peg. The Exchange also believes that these changes are more consistent with the requirements of the Regulation NMS Order Protection Rule[42] and the related definition of protected bid and offer, as set forth in Regulation NMS Rule 600(b)(57).[43] As noted above, Exchange systems monitor the PBBO for purposes of the Order Protection Rule and, in this respect, Exchange systems also move pegging interest based on moves to the PBBO, not the NBBO.[44] The Exchange believes that this increased specificity would perfect the mechanism of a free and open market and a national market system and, in general, would protect investors and the public interest.

Additionally, use of the proposed Market Pegging Interest with an offset value, as well as the proposed offset functionality for Primary Pegging Interest, would provide greater flexibility with respect to the price to which pegging interest may peg and would encourage tighter spreads that move as the PBBO moves. The Exchange believes that this would remove impediments to, and perfect the mechanism of, a free and open market and a national market system. Additionally, requiring an offset value to be specified for pegging interest that pegs to the opposite side of the market would prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and foster cooperation and coordination with persons engaged in facilitating transactions in securities by preventing pegging interest from locking or crossing the opposite side of the market. The Exchange further believes that the proposal fosters competition as other markets already offer similar functionality.

The Exchange also believes that the proposed rule change would promote clarity and transparency by adding greater specificity with respect to the interest to which pegging interest may peg. In this regard, the proposed realignment and consolidation of existing rule text would result in a clearer rule, which would benefit all member organizations as well as others that read the rule.

The Exchange further believes that the proposed rule change would promote clarity and transparency by removing superfluous rule text that merely describes the manner in which all trading interest is treated, regardless of whether it is pegging interest. For example, removing the text within current Rule 70.26(iv), which provides that pegging interest trades on parity with non-pegging interest, would eliminate potential confusion regarding whether pegging interest is treated differently than non-pegging interest with respect to determining parity.

Finally, the Exchange believes that the proposed change to Rule 72 to codify which modifications to an order that Exchange systems accept and time stamp treatment for such modified orders would promote clarity and transparency and therefore remove impediments to, and perfect the mechanism of, a free and open market and a national market system because the proposed rule change makes clear when a modification to an order results in a new time stamp for that order.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given 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 proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[45] and Rule 19b–4(f)(6) thereunder.[46]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2012–65 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[40] *See* NYSE Rule 104(a)(1)(A).

[41] *See* NYSE Rule 107B.

[42] *See supra* note 10.

[43] *See supra* note 11.

[44] *See supra* note 12.

[45] 15 U.S.C. 78s(b)(3)(A).

[46] 17 CFR 240.19b–4(f)(6).

Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2012–65. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2012–65 and should be submitted on or before December 24, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–29077 Filed 11–30–12; 8:45 am]

BILLING CODE 8011–01–P

[47] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13396 and #13397]

Connecticut Disaster #CT–00029

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Connecticut (FEMA–4087–DR), dated 11/23/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 11/23/2012.

Physical Loan Application Deadline Date: 01/22/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/23/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/23/2012, private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Fairfield, Litchfield, Middlesex, New Haven, New London, Tolland, Windham, and the Mashantucket Pequot Tribal Nation and Mohegan Tribal Nation located within New London County.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133968 and for economic injury is 133978.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29121 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13369 and #13370]

Connecticut Disaster Number CT–00028

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Connecticut (FEMA—4087—DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 11/23/2012.

Physical Loan Application Deadline Date: 12/31/2012.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Connecticut, dated 10/30/2012 is hereby amended to establish the incident period for this disaster as beginning 10/27/2012 and continuing through 11/08/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29156 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13367 and #13368]

New Jersey Disaster Number NJ–00033

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–4086–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/08/2012.

Effective Date: 11/23/2012.

Physical Loan Application Deadline Date: 12/31/2012.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New Jersey, dated 10/30/2012 is hereby amended to establish the incident period for this disaster as beginning 10/26/2012 and continuing through 11/08/2012 .

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29158 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13394 and #13395]

Maryland Disaster #00025

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Maryland (FEMA—4091—DR), dated 11/20/2012.

Incident: Hurricane Sandy.

Incident Period: 10/26/2012 through 11/04/2012.

Effective Date: 11/20/2012.

Physical Loan Application Deadline Date: 01/21/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/20/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/20/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Allegany, Baltimore City, Calvert, Caroline, Charles, Dorchester, Frederick, Garrett, Harford, Howard, Kent, Queen Annes, Saint Marys, Somerset, Talbot, Washington, Wicomico, Worcester.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133948 and for economic injury is 133958.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29154 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13374 and #13375]

New York Disaster Number NY–00131

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–4085–DR), dated 11/03/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 11/19/2012.

Physical Loan Application Deadline Date: 01/02/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New York, dated 11/03/2012, is hereby amended to establish the incident period for this disaster as beginning 10/27/2012 and continuing through 11/08/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29139 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13365 and #13366]

New York Disaster Number NY–00130

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of New York (FEMA–4085–DR), dated 10/30/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 11/19/2012.

Physical Loan Application Deadline Date: 12/31/2012.

EIDL Loan Application Deadline Date: 07/31/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of New York, dated 10/30/2012 is hereby amended to establish the incident period for this disaster as beginning 10/27/2012 and continuing through 11/08/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29123 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13309 and #13310]

West Virginia Disaster Number WV–00029

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–4071–DR), dated 09/19/2012.

Incident: Severe storms and straight-line winds.

Incident Period: 06/29/2012 through 07/08/2012.

Effective Date: 11/19/2012.

Physical Loan Application Deadline Date: 12/19/2012.

EIDL Loan Application Deadline Date: 06/19/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of West Virginia, dated 09/19/2012 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 12/19/2012.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29136 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13391 and #13392]

Delaware Disaster #DE–00014

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Delaware (FEMA–4090–DR), dated 11/16/2012.

Incident: Hurricane Sandy.

Incident Period: 10/27/2012 through 11/08/2012.

Effective Date: 11/16/2012.

Physical Loan Application Deadline Date: 01/15/2013.

Economic Injury (EIDL) Loan Application Deadline Date: 08/16/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 11/16/2012, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kent, New Castle, Sussex.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations With Credit Available Elsewhere ...	3.125
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 133918 and for economic injury is 133928.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29125 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #13393]

Alaska Disaster #AK–00026 Declaration of Economic Injury

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of Alaska, dated 11/21/2012.

Incident: 2012 Alaska Chinook Salmon Fishery Disaster.

Incident Period: 06/01/2012 through 08/30/2012.

Effective Date: 11/21/2012.

EIDL Loan Application Deadline Date: 08/21/2013.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kenai Peninsula Borough, Lower Kuskokwim REAA, Lower Yukon REAA, Matanuska-Susitna Borough.

Contiguous Counties:

Alaska: Bering Strait REAA, Chugach REAA, Copper River REAA, Delta/Greely REAA, Denali Borough, Iditarod Area REAA, Kashunamiut (Chevak) REAA, Kodiak Island Borough, Kuspuk REAA, Lake And Peninsula Borough, Municipality of Anchorage, Southwest Region REAA, Yupiit REAA.

The Interest Rates are:

	Percent
Businesses And Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for economic injury is 133930.

The State which received an EIDL Declaration # is Alaska.

(Catalog of Federal Domestic Assistance Number 59002)

Dated: November 21, 2012.

Karen G. Mills,

Administrator.

[FR Doc. 2012–29144 Filed 11–30–12; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans; Interest Rate for First Quarter FY 2013

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after November 26, 2012.

Military Reservist Loan Program 4.000%

Dated: November 19, 2012.

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2012–29124 Filed 11–30–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 8100]

30-Day Notice of Proposed Information Collection: Choice of Address and Agent for Immigrant Visa Applicants

AGENCY: Department of State.

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 January 2, 2013.

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 Sydney Taylor, Visa Services, U.S. Department of State, 2401 E. Street NW., L–630, Washington, DC who may be reached on 202–663–3721.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Choice of Address and Agent for Immigrant Visa Applicants.
- *OMB Control Number:* 1405–0126.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* CA/VO/L/R.
- *Form Number:* DS–3032.
- *Respondents:* Immigrant Visa Applicants.
- *Estimated Number of Respondents:* 330,000.
- *Estimated Number of Responses:* 330,000.
- *Average Time per Response:* 10 minutes.
- *Total Estimated Burden Time:* 55,000.
- *Frequency:* Once per Respondent.
- *Obligation to Respond:* Required to Obtain Benefit.

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:

Form DS–3032 permits the principal applicant filing an immigrant visa application to choose an agent living in the United States who will be authorized to receive mailings relating to that application from the National Visa Center (NVC), assist in the paperwork, and pay required fees. The applicant is not required to choose an agent and may have all mailings sent to an address abroad. The applicant's file will be held at NVC until the signed form is returned. In accordance with Section 222(f) of the INA, information obtained from applicants in the immigrant visa process is considered confidential and is to be used only for the formulation, amendment, administration, or enforcement of the immigrant, nationality, and other laws of the United States.

Methodology:

Form DS–3032 is mailed to the principal applicant once the underlying immigrant visa petition has been approved by the Department of Homeland Security (DHS) and NVC has determined that the case is current and active for processing. The applicant then submits the form to NVC via mail and waits for further instructions.

Dated: November 13, 2012.

Edward J. Ramotowski,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 2012–29112 Filed 11–30–12; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Andean Trade Preference Act (ATPA), as Amended: Notice Regarding the 2012 Annual Review

AGENCY: Office of the United States Trade Representative

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received no new petitions in September 2012 to review certain practices in a beneficiary developing country to determine whether such country is in compliance with the ATPA eligibility criteria. USTR received updates related to one matter that is currently under review. This notice specifies the status of the petitions filed in prior years that have remained under review.

FOR FURTHER INFORMATION CONTACT: Bennett M. Harman, Deputy Assistant U.S. Trade Representative for Latin America, at (202) 395–9446.

SUPPLEMENTARY INFORMATION: The ATPA (19 U.S.C. 3201 et seq.), as renewed and amended by the Andean Trade Promotion and Drug Eradication Act of 2002 (ATPDEA) in the Trade Act of 2002 (Pub. L. 107–210) and the ''Act to Extend the Andean Trade Preference Act (Pub. L. 110–436), provides trade

benefits for eligible Andean countries. Pursuant to section 3103(d) of the ATPDEA, USTR promulgated regulations (15 CFR part 2016) (68 FR 43922) regarding the review of eligibility of countries for the benefits of the ATPA, as amended. The 2012 Annual ATPA Review is the eighth such review to be conducted pursuant to the ATPA regulations.

In a **Federal Register** notice dated August 10, 2012, USTR initiated the 2012 ATPA Annual Review and announced a deadline of September 17, 2012 for the filing of petitions (77 FR 47910). Chevron submitted information updating the petition it originally filed in 2004, which remains under review. Several U.S. business associations made submissions which referenced the matter already under review in the Chevron case but which did not contain specific information concerning other potential violations of eligibility criteria. Several other interested parties made submissions supporting the program which were not within the scope of the eligibility review.

Following is the list of all petitions from prior years that will remain under review through July 31, 2013, which is the period that the ATPA is in effect:

Ecuador—Human Rights Watch
Ecuador—U.S./Labor Education in the Americas Project
Ecuador—Chevron Texaco.

Douglas Bell,

Assistant U.S. Trade Representative for Trade Policy and Economics.

[FR Doc. 2012–29046 Filed 11–30–12; 8:45 am]

BILLING CODE 3290–F3–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Random Drug and Alcohol Testing Percentage Rates of Covered Aviation Employees for the Period of January 1, 2013, Through December 31, 2013

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA has determined that the minimum random drug and alcohol testing percentage rates for the period January 1, 2013, through December 31, 2013, will remain at 25 percent of safety-sensitive employees for random drug testing and 10 percent of safety-sensitive employees for random alcohol testing.

FOR FURTHER INFORMATION CONTACT: Ms. Vicky Dunne, Office of Aerospace Medicine, Drug Abatement Division, Program Policy Branch (AAM–820), Federal Aviation Administration, 800 Independence Avenue SW., Room 806, Washington, DC 20591; Telephone (202) 267–8442.

Discussion: Pursuant to 14 CFR 120.109(b), the FAA Administrator's decision on whether to change the minimum annual random drug testing rate is based on the reported random drug test positive rate for the entire aviation industry. If the reported random drug test positive rate is less than 1.00%, the Administrator may continue the minimum random drug testing rate at 25%. In 2011, the random drug test positive rate was 0.462%. Therefore, the minimum random drug testing rate will remain at 25% for calendar year 2013.

Similarly, 14 CFR 120.217(c), requires the decision on the minimum annual random alcohol testing rate to be based on the random alcohol test violation rate. If the violation rate remains less than 0.50%, the Administrator may continue the minimum random alcohol testing rate at 10%. In 2011, the random alcohol test violation rate was 0.097%. Therefore, the minimum random alcohol testing rate will remain at 10% for calendar year 2013.

SUPPLEMENTARY INFORMATION: If you have questions about how the annual random testing percentage rates are determined please refer to the Code of Federal Regulations Title 14, §§ 120.109(b) (for drug testing), and 120.217(c) (for alcohol testing).

Issued in Washington, DC on November 1, 2012.

Frederick E. Tilton,

Federal Air Surgeon.

[FR Doc. 2012–29223 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0278]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 5 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective December 3, 2012. The exemptions expire on December 3, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On September 26, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 59248). That notice listed 5 applicants' case histories. The 5 individuals applied for

exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 5 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 5 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, ruptured eye, scarring, retinal damage, and loss of vision. In most cases, their eye conditions were not recently developed. Three of the applicants were either born with their vision impairments or have had them since childhood.

The two individuals that sustained their vision conditions as adults have had it for a period of 21 to 28 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 5 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 4 to 37 years. In the past 3 years, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the September 26, 2012 notice (77 FR 59248).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 5 applicants, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 5 applicants listed in the notice of September 26, 2012 (77 FR 59248).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 5 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 5 exemption applications, FMCSA exempts James R. Atherton (IN), Jose S. Chavez (AZ), Christopher K. Foot (NV), Patrick J. McMillen (WI), and Gary B. Shipler (WA) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 23, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–29161 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2012–0279]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 15 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). They are unable to meet the vision requirement in one eye for various reasons. The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision requirement in one eye. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective December 3, 2012. The exemptions expire on December 3, 2014.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgement that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf*.

Background

On October 1, 2012, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (77 FR 60008). That notice listed 15 applicants' case histories. The 15 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption

would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 15 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing requirement red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 15 exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including coat's disease, a prosthetic eye, complete loss of vision, amblyopia, a retinal detachment, macular scar, esotropia, choroidopathy, and ocular histoplasmosis. In most cases, their eye conditions were not recently developed. Ten of the applicants were either born with their vision impairments or have had them since childhood.

The two individuals that sustained their vision conditions as adults have had it for a period of 10 to 24 years.

Although each applicant has one eye which does not meet the vision requirement in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing requirements for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 15 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 5 to 35 years. In the past 3 years, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the October 1, 2012 notice (77 FR 60008).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision requirement in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered the medical reports about the applicants' vision as well as their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 15 applicants, none of the drivers were involved in crashes but two were convicted of moving violations in a CMV. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like

interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 15 applicants listed in the notice of October 1, 2012 (77 FR 60008).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 15 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the requirement in 49 CFR 391.41(b)(10) and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 15 exemption applications, FMCSA exempts Deurice K. Dean (MD), Terry J. Edwards (MO), Raymundo Flores (TX), Charles F. Huffman (WA), Ivaylo V. Kanchev (FL), Charlie C. Kimmel (TX), Laine Lewin (MN), Jimmy R. Mauldin (OK), Johnny Montemayor (TX), Christopher S. Morgan (LA), William T. Owens (VA), Jeffrey S. Pennell (VT), Donald R. Strickland (NC), Vaughn J. Suhling (IL), and Max A. Thurman (IL) from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: November 23, 2012.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2012–29160 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2012–0029]

Decision To Rescind Buy America Waiver for Minivans and Minivan Chassis

AGENCY: Federal Transit Administration, DOT.

ACTION: Decision on request to rescind Buy America waiver.

SUMMARY: On June 21, 2010, the Federal Transit Administration waived its Buy America final assembly requirement for minivans and minivan chassis after confirming that no manufacturer was willing and able to supply minivans or minivan chassis that were assembled in the United States. Now, FTA rescinds the waiver after confirming that the Vehicle Production Group has started producing a substantially similar vehicle, the MV–1, in the United States.

FOR FURTHER INFORMATION CONTACT: Mary J. Lee at (202) 366–0985 or *mary.j.lee@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Vehicle Production Group (VPG) petitioned the Federal Transit Administration (FTA) to rescind the non-availability waiver it issued on June 21, 2010 (75 FR 35123). The waiver exempted minivans and minivan chassis from the Buy America final assembly requirement outlined at 49 CFR part 661, stating that it would remain in effect until such a time as a domestic source became available.

With few exceptions, FTA's Buy America requirements prevent FTA from obligating an amount that may be appropriated to carry out its programs for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). For FTA-funded rolling stock procurements, the Buy America requirements are two-fold: (1) At least 60 percent of the components, by dollar value, must be produced in the United States; and (2) final assembly must occur in the United States. 49 U.S.C. 5323(j).

An exception to, or waiver of, the Buy America rules is allowed if ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 5323(j)(2)(B).

On June 21, 2010, in response to formal requests from ElDorado National, Kansas (ElDorado) and the Chrysler Group LLC (Chrysler), and after ascertaining through notice and comment that no manufacturer of minivans or minivan chassis performed final assembly in the United States, FTA waived its Buy America final assembly requirement for minivans and minivan chassis. 75 FR 35123.

When FTA waived the final assembly requirement for minivans, it declined to define the term ''minivan.'' FTA's reluctance to define the term stemmed from its understanding that (1) among the various classifications used by Federal regulatory agencies, minivans like the Chrysler Town and Country, and Dodge Caravan were not uniformly placed in the same class of vehicles; [1]

[1] There is no uniform definition or classification for minivans. The closest things to a definition of a vehicle type, like ''minivan,'' are the classifications used by the National Highway Traffic Safety Administration (NHTSA) and the

Continued

and (2) interested parties understood the waiver would apply to the type of vehicle produced by the parties that petitioned FTA—Chrysler and ElDorado.[2] Because there is no uniform definition or classification for ''minivan,'' and FTA grantees understood that the waiver would apply to vehicles similar to those produced by Chrysler and ElDorado, FTA declined to create a new definition or classification.

Recently, an original equipment manufacturer called the Vehicle Production Group (VPG) started producing a six-passenger vehicle called the Mobility Vehicle 1 (MV–1). The MV–1 is a purpose-built, wheelchair-accessible vehicle that is substantially similar to a minivan. According to VPG sales materials, the MV–1 seats up to six adults, with one full-size wheelchair. Wheelchairs enter the MV–1 via a ramp that stows under the vehicle and deploys to the passenger side. It is available with a Ford Modular 4.6 liter V8 engine and can be purchased with an engine that runs on gasoline or compressed natural gas (CNG). AM General LLC (AM General) assembles the MV–1 at its plant in Mishawaka, Indiana. VPG certifies that the MV–1 complies with Buy America requirements for both domestic content and final assembly. Moreover, VPG maintains that it manufactures the MV–1 in sufficient quantity to meet the current and future demand on FTA-funded projects.

Based on the fact that it produces the MV–1 in the United States, VPG petitioned FTA to rescind the Buy America final assembly waiver it issued on June 21, 2010, for minivans and minivan chassis.

Pursuant to VPG's request, FTA published a notice in the **Federal Register** on August 3, 2012, calling for comments on VPG's request to rescind the 2010 Buy America waiver for minivans and minivan chassis. 75 FR 35124. FTA sought comment from all interested parties regarding the availability of domestically manufactured minivans and minivan chassis in order to fully determine whether a waiver remained necessary.

The August 3, 2012 notice established a deadline of September 4, 2012, for interested parties to submit comments. Following a request from Chrysler, FTA published a second notice on August 28, 2012, extending the comment deadline by one week, from September 4 to September 11, 2012. 77 FR 52134.

II. Response to Public Comments

FTA received approximately 836 comments in response to its notice. Of the 836 comments, three comments were posted to the docket in error, and 88 comments were filed after the September 11, 2012 deadline. FTA considered all comments submitted to the docket on or before September 19, 2012.

The commenters represent a broad spectrum of stakeholders from throughout the United States and include elected officials, state and local governments, transit and other local government agencies, transportation providers, trade associations, vehicle manufacturers, suppliers and retailers, a labor union, members of the disability community, and numerous persons in their individual capacity.

The following is FTA's response to the substantive comments. FTA responds to public comments in the following topical order: (A) General Comments; (B) Definition of a ''Minivan''; (C) Minivan Use for Paratransit Transportation Services; (D) Minivan Use for Vanpool Services; (E) Competition and Price Concerns; (F) U.S. Employment; (G) Safety Concerns; and (H) Miscellaneous Comments. Several commenters raised issues that are outside the scope of FTA's request for comments. FTA declines to address those concerns in this Decision.

A. General Comments

Many commenters expressed support for Buy America and its purposes, including its intent to support U.S. manufacturing and employment. Most commenters generally stated that these are difficult economic times and highlighted FTA's role in assisting U.S. manufacturers.

Hundreds of employees from VPG, AM General, the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW), Amalgamated UAW Local 5, the Ford Motor Company, and many other VPG suppliers submitted comments in favor of rescinding the waiver. FTA also received favorable comments from retailers and consumers, elected officials, and other interested persons.

Many other vehicle manufacturers, suppliers and retailers, including Chrysler, ElDorado National-Kansas, Thor Industries, Inc. (Thor Industries), the Braun Corporation (Braun), state government agencies (including Alabama, Florida, Indiana, Illinois, Montana, Nebraska, South Dakota, Virginia, and Wyoming Departments of Transportation), transit agencies or other local transportation providers, trade associations, an elected official, persons employed in the transit industry, and other interested parties or persons opposed or raised significant concerns about VPG's request to rescind the waiver.

B. The Definition of ''Minivan''

The commenters opposing rescission of the waiver argued that the MV–1 is not a ''minivan,'' and thus, minivans remain unavailable from a U.S. source. These commenters asserted that minivans and the MV–1 differ in several respects—size, sliding side doors, passenger capacity, wheelchair capacity, rear entry vs. side entry for wheelchairs, seating arrangements, rear- vs. front-wheel drive, and fuel economy. Chrysler, for example, stated that its customers ''will not consider the MV–1 to be a suitable replacement for our minivans[, which] * * * are front-wheel drive vehicles with a 6-cylinder engine.'' According to Chrysler, ''[t]he MV–1 is a rear-wheel drive vehicle with an 8-cylinder engine, which is more like an SUV than a minivan.'' Chrysler further stated that:

As a paratransit vehicle, the MV–1 falls short of traditional minivans.

- Chrysler minivans converted for paratransit use have more seating capacity than the MV–1. The Chrysler wheelchair accessible minivan is typically configured to carry 4 ambulatory passengers and 2 wheelchair passengers. The MV–1 configuration that provides 2 wheelchair positions only have space for one ambulatory person—the driver.

* * *

ElDorado also commented that the MV–1 is ''not a minivan'' but a ''Mobility Vehicle,'' the first of its kind. ElDorado reasoned that the MV–1 cannot be a minivan, as most minivans do not come equipped with a standard wheelchair ramp.

Thor Industries, the parent company to ElDorado, made a similar comment and also stated that the MV–1 is not a minivan, but ''the first '*M*obility *V*ehicle' of its kind.'' Moreover, according to Thor Industries, the MV–1 has significantly different features from

Environmental Protection Agency (EPA) to regulate safety and control emissions. However, NHTSA's classifications do not uniformly group vehicles from one regulation to the next. For example, under NHTSA's Corporate Average Fuel Economy (CAFE) standards, most ''minivans,'' like Chrysler's Town and Country, fall under the class of ''light trucks.'' However, when regulating safety, the same vehicle is classified as a ''multipurpose passenger vehicle,'' which includes vehicles built on a truck chassis (or with special features for occasional off-road operation) that carry ten persons or less. *See* 49 CFR 571.3. These distinct classification systems highlight the differences in vehicles based upon various factors, such as fuel economy or passenger capacity, but each classification system uses different factors.

[2] Chrysler is the Original Equipment Manufacturer (OEM) of specific model minivans. ElDorado modifies these same Chrysler model minivans into wheelchair-accessible vehicles.

a ''typical ElDorado minivan.'' It provided a table to illustrate the differences it perceived between ElDorado's Amerivan Minivan (built on a Grand Dodge Caravan and Chrysler Town and Country chassis) and the MV–1. Thor Industries claimed the Amerivan Minivan has the following features that are lacking on the MV–1: one-touch automatic operation for the door and ramp, sliding power ramp door, kneeling rear suspension, removable driver seating for the wheelchair driver, a removable ''co-pilot'' seat, driver/passenger transfer seat option, three wheelchair securement locations, bus-tested at the Altoona Bus Research and Testing Center (Altoona), seven airbags, integrated lap/shoulder seat belts for the wheelchair user, driver/front passenger advanced head restraints, front wheel drive, the ''lowest ground to floor height in the industry,'' and ''dependable structure as proven by Altoona and in-service record,'' a spare tire, various convenience or comfort options, rear heat and air conditioning, a 6-cylinder engine (compared to the MV–1's 8-cylinder engine), a fuel economy of 17 city miles per gallon (mpg) (compared to the MV–1's 13 city mpg), 25 highway miles per gallon (compared to the MV–1's 18 highway mpg), and a range of 500 miles (compared to the MV–1's range of 350 miles).

Another commenter that claimed the MV–1 is not a minivan, Braun, noted the following differences:

> [The MV–1 is] limited to 5 ambulatory passengers with 1 wheelchair, or a driver and 2 wheelchair passengers'' while ''the commercial Braun wheelchair accessible minivan is typically configured to carry 4 ambulatory passengers and 2 wheelchair passengers, and may also be reconfigured to carry 5 ambulatory and 1 wheelchair passengers. The unconverted Chrysler vehicle covered by the waiver is a 7 passenger commuter vehicle configuration.

Other differences identified by Braun include the fact that the MV–1 has no fixed front passenger seat nor an airbag for this seat, is rear-wheel drive, utilizes a swing door for wheelchairs, ''which limits access through the front passenger door,'' has a V–8 engine while Chrysler minivans use a V–6 engine, and the MV–1 does not offer a rear-entry option for wheelchairs.

VPG rebutted these claims in its comments, stating that FTA classified the MV–1 as a minivan when FTA exempted the MV–1 from its bus testing requirements at 49 CFR part 665, and ''[w]hatever it [the MV–1] may be called in other contexts, for purposes of Buy America, it has been indisputably established by FTA under due authority that the MV–1 is qualified as a minivan.''

Regarding comments about the MV–1's seating capacity, VPG responded that the MV–1 seats six (including the driver and 1 wheelchair) and stated that Braun's installation of a 2 passenger flip seat to seat seven passengers ''prevents wheelchair passengers from utilizing the vehicle for its intended purpose, specifically, providing wheelchair accessible transportation.'' In response to the MV–1's lack of a fixed front seat, VPG commented that:

> [The MV–1 was designed] without a fixed front seat in order to permit the wheelchair passenger the opportunity to ride in proximity to the driver, which our research informed us was the preferred position of the wheelchair passenger, despite the fact that ''converted'' vehicles never allowed that freedom of choice and perspective to a wheelchair-using passenger. We note, however, that the MV–1 has multiple tracks for the restraint system, so that a wheelchair passenger, when desired or required, can be separated from the driver.

Braun responded to VPG's comments by stating that the MV–1 does not have ''substantially similar attributes to'' a minivan based upon fuel economy because:

> * * * [I]t is evident that the VPG MV–1 has a [Gross Vehicle Weight Rating or] GVWR rating of 6,600 lbs, falling between the 2005 Ford Econoline full size van and F–150 pickup truck. Since these two vehicles were the only Ford trucks using this powertrain [4.6L V8 RWD 4-speed] in Model 2005 and the only Ford vehicles with ''substantially similar attributes'' as required under [the U.S. Department of Energy's (DOE) Advanced Technology Vehicle Manufacturing or] ATVM program rules, it can only be concluded that these vehicles were used as the basis upon which DOE granted the loan to VPG. Ford did not manufacture a minivan in 2005 that employed the powertrain featured in VPG's loan application and in the current production MV–1.
>
> It can only be concluded based on the above comparison that the VPG's loan was based on a comparison to a full size van and a pickup truck, and never to a minivan. We maintain that the ''vehicles with substantially similar attributes'' found in the ATVM technical documentation were full size vans and/or pickup trucks, and not minivans.

Braun also alleged that the MV–1 does not meet the National Highway Traffic Safety Administration's (NHTSA) definition of a minivan. Braun cited NHTSA's Final Rule for average fuel economy standards for light trucks model years 2008–2011 (49 CFR part 523) published in 71 FR 17566 on April 6, 2006. Braun commented that:

> NHTSA's 2008–2011 final rule tightened the minivan definition [under 49 CFR 523.5(a)(5)(ii)] * * *
>
> The reason NHTSA created the new minivan definition was clearly explained in the final rule:
>
> *''Specifically, unlike the smaller passenger cars, all minivans feature three rows of seats, thus offering greater passenger carrying capability''* [footnote omitted.]''
>
> *In addition to furthering our goal of subjecting all minivans to the CAFE standard for light trucks, the provision adopted today limits the number of vehicles that will be reclassified as light trucks.''* [Footnote omitted.]
>
> The practical effect of NHTSA's rule change was to make certain that vehicles with only two rows of seating as standard equipment would no longer be classified as minivans and no longer be able to compete under the non-passenger vehicle, or truck, CAFE standards.

Braun further stated that:

> A careful examination of the MV–1 vehicle provides the following information:
>
> 1. The MV–1 does not have three rows of seats that are standard equipment,
>
> 2. Even if NHTSA were to determine that a single seating position in the front of a vehicle (as provided in the MV–1) constitutes a ''row'' and that a single rear-facing jump seat in the middle constitutes a ''row,'' the middle jump seat is not standard equipment on the MV–1.
>
> 3. The MV–1 does not have the ability to remove or stow seats to create a flat-leveled surface for cargo-carrying purposes. The aft seating of the MV–1 is fixed, and not removable or stowable.
>
> 4. Whereas all minivans produced and sold in the U.S. today feature front-wheel drive unibody construction, the MV–1 is a rear-wheel drive vehicle body-on-frame vehicle. Because of this, the propeller shaft mates to the rear-drive differential at the rear axle and the floor p[l]an rises under the aft vehicle seating to accommodate this component. The MV–1 has a two-tier floor p[l]an for both gasoline and CNG versions, it therefore is impossible to create a flat, leveled surface to the rear of the automobile as clearly specified under NHTSA's minivan definition.

Braun also cited *www.fueleconomy.gov,* which is maintained by DOE using EPA fuel economy data, to show that the MV–1 is classified as a ''Special Purpose Vehicle 2WD'' and not as a minivan.

Finally, Braun supplemented its comments with a response that FTA classified the MV–1 as an ''unmodified mass-produced van,'' and not a minivan.

FTA Response: Neither FTA's authorizing legislation nor its implementing regulations define the term ''minivan.'' NHTSA does classify vehicles for purposes of regulating emissions and safety, but these classifications do not uniformly group vehicles from one regulation to the next. This is why, for purposes of various Federal regulations, a minivan like Chrysler's Town and Country is not

always in the same class. For example, under NHTSA's CAFE standard, most ''minivans'' fall under the class of ''light trucks.'' The MV–1 is in a different class under the CAFE standard because it does not have three rows of removable seats or seats that stow away into a flat or level surface. *See* 49 CFR 523.5(a)(5). When regulating safety, however, both the MV–1 and traditional ''minivans'' fall under the class of ''multipurpose passenger vehicles,'' which includes all vehicles that carry ten persons or less and are constructed on a truck chassis (or with special features for occasional off-road operation). *See* 49 CFR 571.3. These distinct classification systems highlight the differences in vehicles based upon various factors, such as fuel economy or passenger capacity, but each classification system uses different factors. There is no uniform categorization.

Braun also cites DOE and EPA categories based upon fuel economy to show that the MV–1 is a ''special purpose vehicle'' rather than a ''minivan.'' These categories and their corresponding data are listed at *www.fueleconomy.gov,* which DOE maintains with data from EPA. EPA's Web site, however, specifically states that ''[t]hese categories are used for labeling and consumer information purposes and do not serve any other regulatory purpose.'' [3] Accordingly, the fact that the MV–1 may not fall under the ''minivan'' category for purposes of EPA's comparisons of vehicles based upon fuel economy is immaterial to Buy America.

Thus, to avoid the confusion that may result from creating a new vehicle classification system, FTA will not differentiate or define a ''minivan'' for purposes of Buy America. In applying or waiving Buy America rules, FTA will make decisions based upon the performance or functional specifications used by FTA grantees in actual procurements in conformance with Federal requirements and guidance, including the ''Common Grant Rule'' (49 CFR parts 18 and 19) and the most recent edition of FTA Circular 4220.1 ''Third Party Contracting Guidance.''

C. Minivan Use for Paratransit Transportation Services

Several commenters pointed out the differences between the MV–1's accessibility features and the accessibility features of traditional minivans. The comments noted performance problems (such as binding as a result of ice and gravel collection) with under-floor ramps like those equipped on the MV–1. They also questioned whether the MV–1 could, in fact, accommodate more than one wheelchair at a time. Other commenters stated that the MV–1 has smaller overall passenger capacity compared to traditional minivans. One local transit agency responsible for providing paratransit services commented that its fleet includes both the MV–1 and the Dodge Caravan and, while both are useful in providing paratransit services, they are very different vehicles and the MV–1's rear facing seat is not useable for many of the services it provides.

FTA Response: As stated above, under FTA's Buy America law, a non-availability waiver may be granted only if ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 5323(j)(2)(B). Therefore, as long as there is a domestic manufacturer for a product, FTA cannot grant a non-availability waiver or permit a non-availability waiver to stand. FTA finds here that there is a U.S.-made vehicle—the MV–1—that can sufficiently meet the needs for which the minivan non-availability waiver was issued. Procurement decisions must be made based on performance or functional needs defined in conformance with Federal regulations and guidance, including the ''Common Grant Rule'' and the most recent edition of FTA Circular 4220.1 ''Third Party Contracting Guidance.'' If the need arises for a non-compliant vehicle under Buy America, recipients of FTA financial assistance may petition FTA for waivers on a case-by-case basis. In reviewing any waiver request, FTA only will consider waiving Buy America if the petitioner can articulate and has included in its procurement a performance or functional specification in conformance with Federal requirements and guidance that failed to yield a compliant bid or offer for a U.S.-produced vehicle.

D. Minivan Use for Vanpool Services

A significant number of commenters claim the MV–1 is solely a paratransit vehicle and does not qualify for FTA funding for vanpool services. The comments cite the Moving Ahead for Progress in the 21st Century Act (MAP–21), Public Law 112–141, § 20016 (to be codified at 49 U.S.C. 5323(i)). MAP–21 changed the definition of ''vanpool vehicle'' to mean a vehicle that has a ''* * * seating capacity of which is at least 6 adults (not including the driver). * * *'' According to the comments, the MAP–21 definition excludes the MV–1 (with a seating capacity of only 6, including the driver) and includes Chrysler minivans (with a slightly higher seating capacity). Therefore, these commenters stated that, while the MV–1 may be acceptable for paratransit service, the MV–1 would not qualify for FTA-funded vanpool service.

FTA Response: While the definition of ''vanpool,'' now codified at 49 U.S.C. 5323(i)(2)(C)(ii), applies to certain FTA-funded vanpool projects, FTA prefers to consider waiver requests for limited circumstances and on a procurement-by-procurement basis rather than waiving the Buy America requirements for an entire class of vehicles in all circumstances. If an FTA recipient requests a waiver for a vanpool purchase, FTA will review the procurement based upon established requirements and guidance for third party procurements, including the Common Grant Rule and the most recent edition of FTA Circular 4220.1 ''Third Party Contracting Guidance.

E. Competition and Price Concerns

Most of the comments opposing rescission of the waiver stated that such a rescission would eliminate competition of vehicle manufacturers and suppliers and result in *de facto* sole-source procurements. According to Chrysler, ElDorado, Braun, and other vehicle manufacturers and suppliers, rescission of the waiver would create a public transportation monopoly in favor of VPG and indicated their prediction that prices would rise from the lack of competition. State DOTs, local transit agencies, and other transit providers made similar comments.

FTA Response: This argument is similar to one presented by a manufacturer of motor coaches in 2010 when it sought a public interest waiver from FTA. As was the case with that request, by arguing that a single Buy America-compliant manufacturer has cornered the market and can thus control prices, the commenters ignore the FTA waiver that is intended to address this concern. If limited competition results in a product ceasing to be available to FTA-funded transit agencies at a competitive price (measured by a greater than 25 percent differential between foreign-produced and Buy America-compliant vehicles), the appropriate action would be for the grantee to apply for a waiver based on price-differential.

Claims about price inflation, however, appear to be unfounded. Those in favor of rescinding the waiver stated that the

[3] *http://www.epa.gov/carlabel/gaslabelreadmore.htm.* While EPA has its own classification system for purposes of regulating vehicle emissions (40 CFR part 86), this further shows that classifications systems differ based upon specifications and features. *See* 49 CFR 86.1803–01.

price of the MV–1 is similar to competing vehicles.

F. U.S. Employment

Commenters in support of rescinding the waiver stated that a rescission would result in more U.S. jobs. Commenters opposing the rescission of the waiver stated that a rescission would benefit only VPG and AM General employees, and would negatively impact other vehicle manufacturers and suppliers, including their U.S. employees. Thor Industries, the parent company of ElDorado, commented that since the waiver, ElDorado has been able to create new jobs, both directly and indirectly through its distribution network. Thor Industries further stated that a rescission of the waiver would result in a 39 percent decrease in ElDorado's employment.

FTA Response: Buy America is the mechanism used by FTA to protect and encourage U.S. manufacturing and U.S. jobs. The regulations do not prohibit Chrysler, ElDorado and other manufacturers from adjusting their business practices to perform final assembly in the United States. If they took such action, they also would be able to certify compliance with Buy America and offer their products to FTA's grantees.

G. Safety Concerns

Braun, among other commenters, raised safety concerns about the MV–1, including whether the MV–1 meets the Federal Motor Vehicle Safety Standards (FMVSS), and the number of airbags and seatbelts in the MV–1 compared to Chrysler minivans. Many commenters opposed to the rescission also noted that the MV–1 has not undergone testing per FTA's bus testing requirements at 49 CFR part 665.

VPG certified that the MV–1 has met all applicable FMVSS requirements and received an exemption from FTA from the bus testing requirements of 49 CFR part 665 because of its status as an unmodified, mass-produced van.

FTA Response: All vehicles purchased with FTA funds must meet all applicable safety requirements, which generally include certifying compliance with FMVSS and FTA's bus testing regulations. The MV–1 has satisfied these requirements.

H. Miscellaneous Comments

A number of parties submitted miscellaneous comments. These include commenters that expressed concern that the MV–1 is rear wheel drive, which typically does not perform as well as front-wheel drive in extreme weather conditions such as snow or ice; not produced in sufficient quantity; has an 8-cylinder engine, which consumes more fuel than the Chrysler minivan and other similar vehicles with 6-cylinder engines; and that there are too few MV–1 retailers. One commenter requested information about the potential number of vehicles and the amount of FTA funding that this request affects. Other commenters stated that FTA should not make a decision that will only benefit one U.S. company or ''artificially protect'' a company from competition.

FTA Response: FTA responds to the foregoing miscellaneous comments with a general statement about Buy America waivers.

The purpose of Buy America is for the taxpayer resources used on FTA-funded projects to preserve and encourage U.S. manufacturing jobs. FTA advances this purpose by strictly enforcing Buy America rules that require all steel, iron, and manufactured products on FTA-funded projects to be produced in the United States. Thus, when considering whether to grant (or rescind) a waiver, FTA seeks to grant the most narrowly construed waiver possible. In this instance, the current waiver is broadly construed; it applies to *all* minivans and minivan chassis purchased with FTA funds. A more narrow approach is to rescind the existing waiver and then consider waivers on a case-by-case basis only. This approach will ensure that waivers are granted only when absolutely necessary, and only when construed as narrowly as possible.

Under FTA's Buy America law, a non-availability waiver may be granted only if ''the steel, iron, and goods produced in the United States are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 5323(j)(2)(B). Therefore, as long as there is a manufacturer of the product in question that fully complies with Buy America, FTA cannot grant a non-availability waiver or permit a non-availability waiver to stand. FTA finds here that there is a fully Buy America-compliant vehicle that meets the needs for which the original minivan waiver was granted.

To the extent FTA is willing to consider waiver requests, they will be limited to procurements that include specifications based on performance or functional needs that cannot be met by a Buy America compliant product. Specifications may not be exclusionary and must conform to Federal requirements and guidance, including the Common Grant Rule and the most recent edition of FTA Circular 4220.1 ''Third Party Contracting Guidance.''

Thus, the prohibition against exclusionary and discriminatory specifications notwithstanding, if the need arises for a non-compliant vehicle, recipients may petition FTA for waivers on a case-by-case basis. FTA will only consider waiving Buy America if the petitioner can articulate and has included in its procurement a performance or functional specifications in conformance with Federal requirements and guidance that failed to yield a compliant bid or offer for a U.S.-produced vehicle.

VPG, AM General, and Ford Motor Company responded to the commenters that expressed concern about adequacy of VPG's supply and network. They assert that the MV–1 can be produced in sufficient quantity. VPG and Ford commented that there are sufficient dealerships throughout the United States, including well-established automobile, bus, and mobility dealers, in addition to VPG's retail outlets, that can offer needed service and warranty. According to VPG, the high percentage of U.S.-manufactured parts (approximately 75 percent U.S. content), including a Ford engine, in its vehicles means these parts are readily available in the United States.

FTA does not collect data specifically on ''minivans'' as FTA does not define the term ''minivan.'' Rather, it measures the number of FTA-funded purchases of ''vans, '' which includes minivan purchases, but also includes other vehicle purchases falling within the ''van'' category. In Fiscal Year (FY) 2011, FTA awarded $133,298,132 for 3,279 vans.

Regarding comments from Chrysler and others that FTA should avoid decisions that benefit a single entity, FTA notes that the current waiver has served to the near-exclusive benefit of Chrysler since 2010. Additionally, if Chrysler, ElDorado, or other manufacturers adjusted current business practices to perform final assembly in the United States, their vehicles also would be Buy America compliant.

III. Conclusion

FTA has determined that a Buy America waiver for minivans and minivan chassis is no longer necessary because the Vehicle Production Group now produces a substantially similar vehicle in the United States, in accordance with FTA's Buy America rules. Therefore, FTA hereby rescinds the waiver it issued on June 21, 2010.

Issued this 27th day of November, 2012.

Peter Rogoff,

Administrator.

[FR Doc. 2012–29129 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0107; Notice 1]

The Goodyear Tire & Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: The Goodyear Tire & Rubber Company (GOODYEAR),[1] has determined that certain Goodyear brand tires manufactured between April 8, 2012 and May 12, 2012, do not fully comply with paragraph S5.5(c)&(d) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Goodyear has filed an appropriate report dated July 20, 2012, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR Part 556), Goodyear submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Goodyear's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vehicles Involved: Affected are approximately 1,692 Goodyear Wrangler AT/S, size LT 275/65R18 brand tires manufactured between April 8, 2012, and May 12, 2012 at its plant in Gadsden, Alabama.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 1,692 [2] tires that Goodyear no longer controlled at the time it determined that the noncompliance existed.

Noncompliance: Goodyear explains that the noncompliance is that, due to a mold labeling error, the subject tires are incorrectly labeled as *LR–E/Max Load 3415 lbs Max Pressure 80 psi* when they should have been labeled as *LR–CE/Max Load 2535 lbs Max Pressure 50 psi* and thus do not conform to the requirements of 49 CFR 571.139 paragraph S5.5(c)&(d).

Rule Text: Paragraph S5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one side-wall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width that falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches * * *

(c) The maximum permissible inflation pressure, subject to the limitations of S5.5.4 through S5.5.6 of this standard;

(d) The maximum load rating and for LT tire, the letter designating the tire load range * * *

Summary of Goodyear's Analysis and Arguments:

Goodyear believes that while the noncompliant tires incorrectly state the load range as required by FMVSS No. 139, it is inconsequential as it relates to motor vehicle safety for the following reasons:

1. The subject tires meet or exceed all applicable FMVSS performance standards for a tire labeled as either load range ''E'' or ''C''.

2. All other markings related to tire service (load capacity, corresponding inflation pressure, etc. * * *) are also correct for the mislabeled tires.

3. The subject tires are identical to the intended LR–C tire with the exception of the sidewall labeling, and therefore, do not present a safety concern.

Goodyear has additionally informed NHTSA that it has corrected future production and that all other tire labeling information is correct.

In summation, Goodyear believes that the described noncompliance of its tires is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. By mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. Electronically: By logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act

[1] Goodyear Tire & Rubber Company, is a manufacturer of replacement equipment and is registered under the laws of the state of Ohio.

[2] Goodyear's petition, which was filed under 49 CFR Part 556, requests an agency decision to exempt Goodyear as an equipment manufacturer from the notification and recall responsibilities of 49 CFR Part 573 for the 1,692 affected tires. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Goodyear notified them that the subject noncompliance existed.

Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: January 2, 2013.

Authority: 49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.95 and 501.8.

Issued on: November 28, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–29142 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2012–0108; Notice 1]

Bridgestone Americas Tire Operations, LLC, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Receipt of petition.

SUMMARY: Bridgestone Americas Tire Operations, LLC (BRIDGESTONE),[1] has determined that certain Bridgestone brand tires manufactured between June 19, 2011 and March 17, 2012, do not fully comply with paragraph S5.5(f) of Federal Motor Vehicle Safety Standard (FMVSS) No. 139, *New Pneumatic Radial Tires for Light Vehicles.* Bridgestone has filed an appropriate report dated July 19, 2012, pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports.*

Pursuant to 49 U.S.C. 30118(d) and 30120(h) (see implementing rule at 49 CFR part 556), Bridgestone submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Bridgestone's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Vehicles Involved: Affected are approximately 1,102 Firestone Firehawk Wide Oval AS size 245/40R19 and 245/35R20 brand tires manufactured between June 19, 2011, and March 17, 2012. Only 97 of the affected tires are no longer under the control of the petitioner. Therefore, only those 97 tires are the subject of this petition.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, these provisions only apply to the subject 97 [2] tires that Bridgestone no longer controlled at the time it determined that the noncompliance existed.

Noncompliance: Bridgestone explains that the noncompliance is that, due to a mold labeling error. The sidewall marking on the reference side of the tires incorrectly describes the actual number of plies in the tread area of the tires as required by paragraph S5.5(f). Specifically, the tires in question were inadvertently manufactured with ''TREAD 1 POLYESTER 2 STEEL 1 NYLON.'' The labeling should have been ''TREAD 1 POLYESTER 2 STEEL 2 NYLON.''

Rule Text: Paragraph S5.5 of FMVSS No. 139 requires in pertinent part:

S5.5 Tire markings. Except as specified in paragraphs (a) through (i) of S5.5, each tire must be marked on each sidewall with the information specified in S5.5(a) through (d) and on one side-wall with the information specified in S5.5(e) through (i) according to the phase-in schedule specified in S7 of this standard. The markings must be placed between the maximum section width and the bead on at least one sidewall, unless the maximum section width of the tire is located in an area that is not more than one-fourth of the distance from the bead to the shoulder of the tire. If the maximum section width that falls within that area, those markings must appear between the bead and a point one-half the distance from the bead to the shoulder of the tire, on at least one sidewall. The markings must be in letters and numerals not less than 0.078 inches high and raised above or sunk below the tire surface not less than 0.015 inches * * *

(f) The actual number of plies in the sidewall, and the actual number of plies in the tread area, if different * * *

Summary of Bridgestone's Analysis and Arguments

Bridgestone believes that while the noncompliant tires are mislabeled; the subject tires meet or exceed all performance requirements as required in part by FMVSS No. 139 and that the noncompliant labeling has no impact on the operational performance or safety of vehicles on which these tires are mounted.

Bridgestone also points out that NHTSA has previously granted similar petitions for non-compliances in sidewall markings.

Bridgestone has additionally informed NHTSA that it has corrected future production and will re-label the 1,005 contained tires to reflect correct construction.

In summation, Bridgestone believes that the described noncompliance of its tires is inconsequential to motor vehicle safety, and that its petition, to exempt it from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

Comments: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods:

a. *By mail addressed to:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

b. By hand delivery to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.

c. *Electronically:* by logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments. Comments may also be faxed to 1–202–493–2251.

[1] Bridgestone Americas Tire Operations, LLC, is a manufacturer of replacement equipment and is registered under the laws of the state of Delaware.

[2] Bridgestone's petition, which was filed under 49 CFR part 556, requests an agency decision to exempt Bridgestone as an equipment manufacturer from the notification and recall responsibilities of 49 CFR part 573 for the 97 affected tires that it still controls. However, a decision on this petition will not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Bridgestone notified them that the subject noncompliance existed. The 1,005 affected tires that Bridgestone still controls must be remedied or destroyed.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment Closing Date: January 2, 2013.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.95 and 501.8.

Issued on: November 28, 2012.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2012–29135 Filed 11–30–12; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35698]

Buckeye East Chicago Railroad, LLC—Acquisition and Operation Exemption—Buckeye Partners, L.P.

Buckeye East Chicago Railroad, LLC (BERR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Buckeye Partners, L.P., a noncarrier, and to operate approximately 7,065 feet (1.34 miles) of track,[1] existing railroad right-of-way, and bulk liquid transloading facilities in East Chicago, Ind. BERR will interchange traffic with the Indiana Harbor Belt Railroad Company.

The transaction may be consummated on or after December 16, 2012 (30 days after the notice of exemption was filed).

BERR certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption.[2] Petitions to stay must be filed no later than December 7, 2012 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 35698, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on David C. Dillon, 111 West Washington Street, Suite 1023, Chicago, IL 60602.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 27, 2012.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Unit.

[FR Doc. 2012–29051 Filed 11–30–12; 8:45 am]

BILLING CODE 4915–01–P

[1] Applicant states that the track does not have designated mileposts.

[2] Upon effectiveness of this exemption, only BERR will be authorized to operate the subject track and transloading facilities. In its filing, BERR states that it has reached an agreement, attached to the filing, with Landisville Railroad, LLC (Landisville), a Class III rail carrier, to operate the track and facilities. However, Landisville does not have Board authority to conduct those operations and may not do so until it seeks and obtains appropriate Board authority.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35676 (Sub-No. 1)]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial Revocation of Exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. FD 35676[1] to permit the trackage rights to expire at midnight on December 31, 2012, in accordance with the agreement of the parties, subject to the employee protective conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

DATES: This exemption will be effective on January 3, 2013. Petitions to stay must be filed by December 13, 2012. Petitions for reconsideration must be filed by December 24, 2012.

ADDRESSES: An original and ten copies of all pleadings, referring to Docket No. FD 35676 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on BNSF's representative: Karl Morell, Of Counsel, Ball Janik LLP, 655 Fifteenth Street NW., Suite 225, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, (202) 245–0386. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: November 26, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2012–29053 Filed 11–30–12; 8:45 am]

BILLING CODE 4915–01–P

[1] On September 18, 2012, BNSF filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Union Pacific Railroad Company (UP) to grant local trackage rights to BNSF Railway Company over UP's lines between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey, and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. *See BNSF Ry.–Temp. Trackage Rights Exemption–Union Pac. R.R.,* FD 35676 (STB served Oct. 4, 2012). In its petition for partial revocation, BNSF states that the trackage rights are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of period during which individuals may apply to be appointed to a certain voting membership of the Practitioners Advisory Group; request for applications.

SUMMARY: Because a voting membership of the Practitioners Advisory Group has become vacant before the expiration of the term, the United States Sentencing Commission hereby invites any individual who is eligible to be appointed to complete the unexpired term to apply. *See* section 2(c) of the charter for the advisory group (''When a voting membership becomes vacant before the expiration of the term, an appointment shall, wherever practicable, be made to complete the unexpired term.''). The voting membership covered by this notice is the circuit membership for the Sixth Circuit, and the individual appointed would complete the remainder of the unexpired term, which expires as of October 2014. Applications should be received by the Commission not later than February 1, 2013. Applications may be sent to the address listed below.

DATES: Applications for voting membership of the Practitioners Advisory Group should be received not later than February 1, 2013.

ADDRESSES: Send applications to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs.

FOR FURTHER INFORMATION CONTACT: Jeanne Doherty, Public Affairs Officer, 202–502–4502.

SUPPLEMENTARY INFORMATION: The Practitioners Advisory Group of the United States Sentencing Commission is a standing advisory group of the United States Sentencing Commission pursuant to 28 U.S.C. 995 and Rule 5.4 of the Commission's Rules of Practice and Procedure. Under the charter for the advisory group, the purpose of the advisory group is (1) to assist the Commission in carrying out its statutory responsibilities under 28 U.S.C. 994(o); (2) to provide to the Commission its views on the Commission's activities and work, including proposed priorities and amendments; (3) to disseminate to defense attorneys, and to other professionals in the defense community, information regarding federal sentencing issues; and (4) to perform other related functions as the Commission requests. The advisory group consists of not more than 17 voting members, each of whom may serve not more than two consecutive three-year terms. Of those 17 voting members, one shall be Chair, one shall be Vice Chair, 12 shall be circuit members (one for each federal judicial circuit other than the Federal Circuit), and three shall be at-large members.

To be eligible to serve as a voting member, an individual must be an attorney who (1) devotes a substantial portion of his or her professional work to advocating the interests of privately-represented individuals, or of individuals represented by private practitioners through appointment under the Criminal Justice Act of 1964, within the federal criminal justice system; (2) has significant experience with federal sentencing or post-conviction issues related to criminal sentences; and (3) is in good standing of the highest court of the jurisdiction or jurisdictions in which he or she is admitted to practice. Additionally, to be eligible to serve as a circuit member, the individual's primary place of business or a substantial portion of his or her practice must be in the circuit concerned. Each voting member is appointed by the Commission.

The Commission invites any individual who is eligible to be appointed to a voting membership covered by this notice to apply by sending a letter of interest and a resume to the address above.

Authority: 28 U.S.C. 994(a), (o), (p), 995; USSC Rules of Practice and Procedure 5.2, 5.4.

Patti B. Saris,

Chair.

[FR Doc. 2012–29098 Filed 11–30–12; 8:45 am]

BILLING CODE 2210–40–P

FEDERAL REGISTER

Vol. 77 Monday,

No. 232 December 3, 2012

Part II

Department of Commerce

International Trade Administration

Initiation of Five-Year (''Sunset'') Review; Notice

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (''Sunset'') Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year reviews (''Sunset Reviews'') of the antidumping duty orders listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same orders.

DATES: Effective Date: December 1, 2012.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230. For information from the Commission contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

The Department's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin,* 63 FR 18871 (April 16, 1998), and in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating Sunset Reviews of the following antidumping duty orders:

DOC Case No.	ITC Case No.	Country	Product	Department contact
A–427–818	731–TA–909	France	Uranium (2nd Review)	Dana Mermelstein, (202) 482–1391.
A–201–820	731–TA–747	Mexico	Fresh Tomatoes (3rd Review)	Sally Gannon, (202) 482–0162.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statue and Department's regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department's Internet Web site at the following address: ''*http://ia.ita.doc.gov/sunset/.*'' All submissions in these Sunset Reviews must be filed in accordance with the Department's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''), can be found at 19 CFR 351.303. *See also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

This notice serves as a reminder that any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. *See* section 782(b) of the Act. Parties are hereby reminded that revised certification requirements are in effect for company/government officials as well as their representatives in all AD/CVD investigations or proceedings initiated on or after March 14, 2011. *See Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings: Interim Final Rule,* 76 FR 7491 (February 10, 2011) (''*Interim Final Rule*'') amending 19 CFR 351.303(g)(1) and (2) and supplemented by *Certification of Factual Information To Import Administration During Antidumping and Countervailing Duty Proceedings: Supplemental Interim Final Rule,* 76 FR 54697 (September 2, 2011). The formats for the revised certifications are provided at the end of the *Interim Final Rule.* The Department intends to reject factual submissions if the submitting party does not comply with the revised certification requirements.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. *See* 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department's regulations provide that all parties wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department's information requirements are distinct

from the Commission's information requirements. Please consult the Department's regulations for information regarding the Department's conduct of Sunset Reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218 (c).

Dated: November 14, 2012.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2012–29368 Filed 11–30–12; 2:00 pm]

BILLING CODE 3510–DS–P

[1] In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

Reader Aids

Federal Register

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Monday, December 3, 2012

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

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CFR PARTS AFFECTED DURING DECEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 2606/P.L. 112–197
New York City Natural Gas Supply Enhancement Act (Nov. 27, 2012; 126 Stat. 1461)

H.R. 4114/P.L. 112–198
Veterans' Compensation Cost-of-Living Adjustment Act of 2012 (Nov. 27, 2012; 126 Stat. 1463)

S. 743/P.L. 112–199
Whistleblower Protection Enhancement Act of 2012 (Nov. 27, 2012; 126 Stat. 1465)

S. 1956/P.L. 112–200
European Union Emissions Trading Scheme Prohibition Act of 2011 (Nov. 27, 2012; 126 Stat. 1477)

Last List October 24, 2012

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—DECEMBER 2012

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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